8–9–10 Monday
Vol. 75 No. 152 August 9, 2010

Pages 47699–48272

Federal Register

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

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

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

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

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

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 75, No. 152

Monday, August 9, 2010

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

8 CFR
214.....47699
217.....47701
274a.....47699

9 CFR

Proposed Rules:
307.....47726
381.....47726
590.....47726

11 CFR

Proposed Rules:
9428.....47729

14 CFR
71.....47709

Proposed Rules:
39.....47734
71 (2 documents) 47736, 47737

17 CFR

Proposed Rules:
1.....47738
30.....47738
140.....47738

29 CFR
1926.....47906

32 CFR
199 (2 documents) 47710, 47712

33 CFR
165 (2 documents) 47713, 47715

39 CFR
111.....47717

40 CFR

Proposed Rules:
81.....47746

44 CFR

Proposed Rules:
67.....47751

47 CFR

Proposed Rules:
54.....48238

49 CFR
541.....47720

Proposed Rules:
27.....47753
37.....47753
38.....47753

Rules and Regulations

Federal Register
Vol. 75, No. 152
Monday, August 9, 2010

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2492–10; DHS Docket No. USCIS–2010–0003]

RIN 1615–AB87

Employment Authorization for Dependents of Foreign Officials

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing the employment authorization for dependents of foreign officials classified as A–1, A–2, G–1, G–3, and G–4 nonimmigrants. This rule expands the list of dependents who are eligible for employment authorization from spouses, children, and qualifying sons and daughters of A or G foreign officials to include any other immediate family member who falls within a category of aliens designated by the Department of State as qualifying. This change to DHS regulations provides the Department of State with greater flexibility when entering into bilateral agreements and arrangements with other countries that would extend employment authorization to immediate family members who are recognized as such by the Department of State.

DATES: *Effective date:* This rule is effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Julia C. Kennedy, Adjudications Officer, Business Employment Services Team, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

I. Background

As provided by section 101(a)(15)(A) and (G) of the Immigration and Nationality Act (INA), certain immediate family members of foreign officials are eligible for A–1, A–2, G–1, G–3, and G–4 derivative visa classifications. 8 U.S.C. 1101(a)(15)(A) and (G). Department of State (DOS) regulations at 22 CFR 41.21(a)(3) define immediate family to include "the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien." The "immediate family" of an A or G principal alien also includes individuals who:

- Are not members of some other household;
- Will reside regularly in the household of the principal alien;
- Are recognized as immediate family members of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and
- Are individually authorized by the Department of State.

This definition of "immediate family" reflects an amendment made by DOS in July 2009 removing the requirement that members of the A or G principal alien's household, beyond the alien's spouse and dependent children, must be related to the alien by blood, marriage, or adoption. 74 FR 36112. DOS explained that the purpose of this amendment was to provide for "greater flexibility in responding to requests by foreign governments to issue a diplomatic visa to a person who regularly resides with and is a member of the household of a qualified principal alien and is considered by the principal alien and the sending Government to be a member of the immediate family of the principal alien." *Id.*

Once in the United States under A or G nonimmigrant status, certain immediate family members of A and G principal aliens may request employment authorization from U.S. Citizenship and Immigration Services (USCIS), after obtaining a favorable determination from DOS and meeting other eligibility requirements. *See* 8 CFR 214.2(a)(6) and (g)(6). These immediate family members are called "dependents" under Department of Homeland Security (DHS) regulations.

Currently, the only dependents of A and G foreign officials listed in DHS regulations who are eligible to receive employment authorization, if habitually residing with such officials, include the:

- Spouse;
- Unmarried children under the age of 21;
- Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;
- Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and if such bilateral employment agreement does not specify 23 as the maximum age for employment of such sons and daughters. The Office of Protocol of the Department of State shall maintain a listing of foreign states with which the United States has such bilateral employment agreements;
- Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain or re-establish their own households. DOS or DHS may require certification(s) necessary to document such mental or physical disability. *See* 8 CFR 214.2(a)(2)(i) to (v) and (g)(2)(i) to (v); 8 CFR 274a.12(c)(1) and (4); *see also, e.g., http://www.state.gov/documents/organization/95030.pdf* (Bilateral Agreement between the United States and Kenya).

The extension of employment authorization to select dependents of foreign officials is based on reciprocity stemming from formal bilateral agreements and informal *de facto* arrangements. *See* 8 CFR 214.2(a)(3), (a)(5), (g)(3), and (g)(5). A bilateral agreement is a signed, written agreement which has been negotiated by both the United States (through DOS) and a foreign country. Such agreements generally provide that, on the basis of their status, dependents of members of diplomatic missions and consular posts ("mission members") in the United States will be issued employment authorization. In turn, such agreements generally provide employment authorization for dependents of United

States mission members in the foreign country that signed the agreement.

Informal *de facto* arrangements develop when DOS determines that a foreign government is issuing a work permit to a dependent of a U.S. mission member assigned to duty in that foreign country. Based on that determination, the U.S. government may provide reciprocal employment authorization for dependents of mission members of that foreign country assigned to duty in the United States. A *de facto* arrangement is based on current practices and policies rather than mutually-negotiated, well-defined obligations. However, such arrangements contribute to making duty in a foreign country more attractive to U.S. mission members whose dependents wish to work.

While DOS is authorized to enter into bilateral agreements and *de facto* arrangements, its authority to negotiate for the employment authorization of immediate family members of A or G foreign officials is limited by the definition of "dependent" in DHS regulations. DOS has advised DHS that the limitations in the current regulations are unnecessary and hinder DOS's ability to recognize, for policy reasons, a broader spectrum of individuals who may be eligible for employment authorization.

Determining which individuals are immediate family members of foreign officials and what benefits they may receive while in the United States is a matter of foreign policy within the purview of DOS. Accordingly, DHS, in consultation with DOS, is amending its regulations to be more flexible and allow DOS the necessary deference to determine which immediate family members of foreign officials are qualifying dependents for purposes of employment authorization.

II. Changes to the Definition of "Dependent"

This final rule amends the definitions of A and G dependents by adding a new category of dependents who may be eligible for employment authorization. This new category includes any immediate family member of an A or G foreign official with A or G nonimmigrant status who is covered by DOS regulations at 22 CFR 41.21(a)(3)(i) to (iv) and falls within a category of aliens recognized by the DOS as qualifying dependents. *See* new 8 CFR 214.2(a)(2)(vi) and (g)(2)(vi) (cross-referencing 22 CFR 41.21(a)(3)). This amendment means that, in addition to spouses, children, and unmarried sons and daughters of A and G principal aliens, other categories of immediate family members in the United States in A or G nonimmigrant status could be eligible for employment authorization, as determined by DOS. Qualifying dependents must fall within a bilateral work agreement or *de facto* arrangement, listed on DOS's Web site at *http://www.state.gov/m/dghr/flo/c24338.htm*.

This final rule also makes conforming amendments to the employment authorization regulations at 8 CFR 274a.12(c)(1) and (4) governing dependents of relevant A and G visa holders. Specifically, the amendments remove references to the spouses and children of A and G principals.

III. Regulatory Requirements

A. Administrative Procedure Act

This final rule is exempt from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States. This rulemaking amends DHS regulations to extend eligibility for employment authorization to categories of dependents of A or G foreign officials in A or G nonimmigrant status, as determined by DOS, beyond the spouses and dependent children of such officials. This amendment will provide greater flexibility to DOS when negotiating bilateral agreements and arrangements with foreign governments regarding employment authorization for dependents of foreign officials. Specifically, DOS will be better able to respond to foreign government requests to issue diplomatic visas and extend employment authorization to persons residing with A and G principal aliens and considered by the sending Government to be immediate family members. Since this final rule involves U.S. foreign policy and bilateral agreements and arrangements, it is considered a foreign affairs function of the United States and is exempt from notice and comment rulemaking and delayed effective date requirements under 5 U.S.C. 553.

Further, DHS maintains that it is important to implement this rule as quickly as possible to allow U.S. foreign officials currently being assigned to overseas positions to obtain reciprocal recognition and benefits for immediate family members as defined under the revised Department of State regulations. We have been advised that immediate family members of U.S. foreign officials have been denied work authorization overseas. Delay in implementation of this regulation would have the definitive, undesirable consequence of the continued denial of work authorization for immediate family members of U.S. foreign officials in certain foreign countries.

Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Regulatory Flexibility Act

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604. Consequently, no regulatory flexibility analysis has been prepared. DHS does note that this regulation does not directly regulate any small entities, as defined in 5 U.S.C. 601(6).

C. The Unfunded Mandates Reform Act of 1995

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

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

E. Executive Order 12866

Section 3(d)(2) of Executive Order 12866 provides that the Executive Order does not apply to a proposed regulation that involves a foreign affairs function of the United States, and thus it does not apply to this rule. As previously discussed in more detail in the "Administrative Procedure Act" section, this rule will provide DOS with greater flexibility when negotiating with foreign governments regarding employment authorization for certain dependents of A and G principal aliens.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform

This final rule meets the relevant standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule will require some minor edits to the Form I–566, Inter-Agency Record of Individual Requesting Change/Adjustment to or From A or G Status; or Requesting A, G, or NATO Dependent Employment Authorization, (currently approved OMB Control No. 1615–0027). Accordingly, USCIS has submitted an OMB 83–C, Correction Worksheet, to OMB for review and approval for the minor edits to the form and instructions.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Public Law 110–229; 8 CFR part 2.

■ 2. Section 214.2 is amended by:

■ a. Removing the "." at the end of paragraph (a)(2)(v) and adding "; or" in its place;

■ b. Adding a new paragraph (a)(2)(vi);

■ c. Removing the word "and" at the end of paragraph (g)(2)(iv);

■ d. Removing the "." at the end of paragraph (g)(2)(v) and adding "; or" in its place; and by

■ e. Adding a new paragraph (g)(2)(vi).

The additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(a) * * *

(2) * * *

(vi) An immediate family member of an A–1 or A–2 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with A–1 or A–2 nonimmigrant status, who falls within a category of aliens recognized by the Department of State as qualifying dependents.

* * * * *

(g) * * *

(2) * * *

(vi) An immediate family member of a G–1, G–3, or G–4 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with G–1, G–3, or G–4 nonimmigrant status who falls within a category of aliens designated by the Department of State as qualifying dependents.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Pub. L. 110–229; 8 CFR part 2

■ 4. Section 274a.12 is amended by revising paragraphs (c)(1) and (c)(4) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(1) An alien dependent of a foreign government official A–1 or A–2 principal alien defined in 8 CFR 214.2(a)(2), and who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

* * * * *

(4) An alien dependent of an officer of, representative to, or employee of an international organization G–1, G–3, or G–4 principal alien defined in 8 CFR 214.2(g)(2), and who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010–19620 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 217

[USCBP–2010–0025; CBP Dec. No. 10–25]

RIN 1651–AA83

Electronic System for Travel Authorization (ESTA): Travel Promotion Fee and Fee for Use of the System

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: Nonimmigrant aliens who wish to enter the United States under the Visa Waiver Program at air or sea ports of entry must obtain a travel authorization electronically through the Electronic System for Travel Authorization (ESTA) from U.S. Customs and Border Protection prior to departing for the United States. This rule requires ESTA applicants to pay a congressionally mandated fee of $14.00, which is the sum of two amounts: a $10 travel promotion fee for an approved ESTA statutorily set by the Travel Promotion Act and a $4.00 operational fee for the use of ESTA as set by the Secretary of Homeland Security to ensure recovery of the full costs of providing and administering the ESTA system.

DATES: This interim final rule is effective on September 8, 2010. Comments must be received on or before October 8, 2010.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2010-xxxx.

• *Mail:* Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking.

All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Docket:* For access to the docket to read background material or comments, go to *http://www.regulations.gov.* Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20229. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

• For additional information on ESTA, visit the Web site: *http://www.cbp.gov/esta.*

FOR FURTHER INFORMATION CONTACT: Suzanne Shepherd, Office of Field Operations, *CBP.ESTA@dhs.gov* or (202)–344–2073.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Comments

Interested persons are invited to submit written comments on all aspects of this interim final rule, including the amount of the fee. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of the rule, as well as comments related to the Paperwork Reduction Act. We urge commenters to explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate certain qualifying countries as Visa Waiver Program (VWP) countries.[1] Eligible travelers who are nationals of VWP countries are not required to obtain a visa to travel to the United States. Other nonimmigrant alien travelers generally must obtain a visa from a U.S. embassy or consulate and undergo an interview by consular officials overseas, in advance of travel to the United States.

On August 3, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110–53. Section 711 of the 9/11 Act required that the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, develop and implement a fully automated electronic travel authorization system to collect biographical and other information as the Secretary determines necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. On June 9, 2008, the Department of Homeland Security (DHS) published an interim final rule (IFR) in the **Federal Register** (73 FR 32440) announcing the creation of the Electronic System for Travel Authorization (ESTA) program for aliens traveling to the United States by air or sea under the VWP. *See* 8 CFR 217.5.

The ESTA system now requires VWP travelers arriving in the United States by air or sea to provide certain biographical and other information electronically to CBP in advance of travel so that CBP can determine eligibility for travel to the United States under the VWP. Each ESTA travel authorization generally is valid for two years. Implementation of ESTA as a mandatory requirement initially was delayed to allow carriers and the public to become ESTA-compliant. Since January 12, 2009, all nonimmigrant aliens traveling to the United States under the VWP on an air or sea carrier must obtain travel authorization from the ESTA Web site. 73 FR 67354.

Travel authorization under ESTA allows an alien from a VWP country to travel to the United States, however, it does not serve as a determination of admissibility to the United States. If an alien's travel authorization application is denied, the alien may still seek to obtain a visa to travel to the United States through a U.S. embassy or consulate or may reapply through the ESTA Web site at a later date if circumstances change or an error was made during the application process.

Although the 9/11 Act authorized the Secretary to charge a fee for ESTA to recover the costs of providing and administering the System, the ESTA IFR did not establish a fee. At the time the IFR was issued, DHS was focused on the successful development and deployment of the ESTA system to collect the relevant traveler data and to properly vet applicants. DHS wanted to ensure the efficient operation and maintenance of the ESTA system before establishing an operational fee to recoup the costs of processing ESTA applications and vetting individual applicants. On January 12, 2009, when the ESTA system became mandatory, DHS began evaluating the costs associated with operating and maintaining the system in order to establish a fee. DHS has completed this evaluation and a detailed fee analysis explaining how the ESTA operational fee is calculated and the methodology used can found in the public docket for this rule at *http://www.regulations.gov.*

A. Travel Promotion Act of 2009

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111–145 was enacted. The Travel Promotion Act of 2009 (TPA), which was contained in section 9, mandates that the Secretary establish a fee for the use of the ESTA system and begin assessing and collecting that fee no later than 6 months after enactment of the TPA. *See* section 217(h)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. 1187(h)(3)(B). Accordingly, to comply with the TPA, the Secretary is required to assess and collect the fee by September 4, 2010.

The TPA expressly provides that the required initial ESTA fee shall consist of the sum of "$10 per travel authorization" (travel promotion fee) plus "an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary" (operational fee). The TPA provides that the $10 per travel authorization is to be

[1] The list of countries currently eligible to participate in the VWP is set forth at 8 CFR 217.2(a). Under the VWP, eligible nationals of VWP countries may apply for admission to the United States at a U.S. port of entry as nonimmigrant aliens for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory authority. Further details regarding the VWP are contained in the background section of the June 9, 2008 interim final rule, at 73 FR 32440, and on the Web site *http://www.cbp.gov/esta.* As of the date of publication of this interim final rule, the current list of designated VWP countries can be found at 75 FR 15991 (Mar. 31, 2010).

credited to the Travel Promotion Fund established by the TPA and is to be used by the Corporation for Travel Promotion, also established by the TPA, to promote international travel to the United States. The operational fee is to be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer ESTA. Under the TPA, the travel promotion fee has a sunset provision and the Secretary is authorized to collect this fee only through September 30, 2015.[2] The operational fee, in contrast, does not include a sunset provision but will be reassessed on a regular basis to ensure it is set at a level to fully recover ESTA operating costs.

Based on the TPA, this rule establishes an initial ESTA fee that consists of the sum of "$10 per travel authorization" (travel promotion fee) plus "an amount that will at least ensure recovery of the full costs of providing and administering the [ESTA] System, as determined by the Secretary" (operational fee) no later than 6 months after enactment of the TPA. *See* 8 U.S.C. 1187(h)(3)(B)(i).

B. Operational Fee Amount

DHS has determined that a $4.00 fee is necessary to ensure recovery of the full costs of providing and administering the system. This fee takes into account the costs to develop, implement, maintain, and make any necessary updates to the ESTA system. A full explanation of the methodology used to determine the $4.00 operational ESTA fee is contained in the ESTA Fee Analysis (*Explanation of the Electronic System for Travel Authorization (ESTA) Fee,* April 2010), which can be found in the public docket for this rulemaking at *http://www.regulations.gov.* A brief summary of the methodology is provided below.

The following methodology was employed to determine the $4.00 ESTA fee for applications through FY 2015:

1. Determine the costs associated with ESTA—initial investment, direct, and indirect costs associated with ESTA development, operation, and maintenance. Costs are adjusted upward annually to account for inflation.

2. Estimate the total number of ESTA applicants—total VWP travelers adjusted downward to account for travelers who make multiple trips during the 2-year period each ESTA is valid. Travelers will remit the ESTA fee upon initial application; they need not pay the fee each time they visit the United States during the authorization period.

3. Determine the fee per applicant by dividing the total costs, plus an operating carryover amount, by the number of projected ESTA applicants. The carryover is included to assure there is sufficient funding in the event there is an unforeseen drop in ESTA applicants.

The estimated costs associated with ESTA from FY 2008 through FY 2015 are $312 million. Costs in FY 2008 and FY 2009 totaled approximately $39.5 million. From FY 2010 through FY 2015, costs include the administration, staffing, and operation of the system (plus overhead costs), as well as information technology for other CBP and non-CBP systems that permit information sharing and services that are necessary for ESTA to operate effectively. An additional carryover sum of $12.5 million, equal to one fiscal quarter of operating costs, is added to the total FY 2008 through FY 2015 costs as a contingency in case travel volumes fall below expected levels.

Using traveler projection data from the Department of Commerce, Office of Travel and Tourism Industries, CBP estimated the future number of VWP travelers for FY 2011 through FY 2015. CBP then adjusted that estimate to account for the estimated number of "repeat travelers" during that period. These repeat travelers would, in most cases, be required to apply for a travel authorization only once over a 2-year period, not each time they traveled to the United States. Using data from CBP's Advance Passenger Information System (APIS), CBP calculated an actual percentage of past repeat travelers, which was then applied as an estimated percentage of "repeat travelers" during the period from FY 2011 through FY 2015. With this adjustment for repeat travelers, the cumulative total of ESTA applicants FY 2011 through FY 2015 is an estimated 86 million travelers.

The $4.00 fee was determined by dividing the total estimated costs ($312 million in costs + $12.5 million for a carryover reserve) by the total ESTA applicants (86 million) through FY 2015, then rounding up to the nearest whole dollar amount. Exhibit 1 shows the calculation of the fee.

EXHIBIT 1—CALCULATION OF ESTA OPERATIONAL FEE

(A) Cumulative costs from FY 2008–2015	$312,025,861
(B) Carryover reserve funding	12,470,060
(C) Total (A + B)	324,495,921
(D) Estimated number of ESTA applications from FY 2011–2015	86,180,659
(E) Calculated fee (C ÷ D)	3.77
Calculated fee, rounded up to the nearest whole dollar	4.00

Any changes to the $4.00 ESTA operational fee will be accomplished through a future rulemaking consistent with the Administrative Procedure Act.

C. Fee Collection

During the ESTA application process, the ESTA user will be directed to provide credit card information to pay the non-refundable $4.00 operational fee and authorize the $10 travel promotion fee through the Federal Government's online payment system, Pay.gov. The $10 travel promotion fee will be charged to the applicant's credit card only when the ESTA is granted. Pay.gov is a system by which parties can make secure electronic payments to many Federal Government agencies. The Pay.gov Web site is available 24 hours a day, 7 days a week (holidays included) for users to submit payments.

The operational fee discussed in this notice is for processing the application and vetting the individual applicant. The operational fee is nonrefundable if a traveler's application is denied. In the event that an ESTA application is denied, the traveler may apply for a visa through a U.S. embassy or consulate or may reapply through the ESTA Web site at a later date if circumstances change or an error was made during the ESTA

[2] On July 2, 2010, the Homebuyer Assistance and Improvement Act of 2010, in part, amended the TPA by extending the sunset provision of the travel promotion fee and authorizing the Secretary to collect this fee through September 30, 2015. *See* Pub. L. 111–198.

application process. Each ESTA applicant will incur the $4.00 operational fee when he or she submits an ESTA application. By contrast, an applicant will incur the $10 travel promotion fee only if he or she receives travel authorization.

VWP travelers with a valid travel authorization will be able to update and/or correct certain information provided on the ESTA application (such as the destination address in the United States) without having to pay another operational or travel promotion fee. However, as provided in the ESTA IFR, certain events, such as the issuance of a new passport, will require the VWP traveler to apply for a new travel authorization through ESTA. In that case, the traveler would be required to pay the operational fee as part of the new application process. Travelers receiving a new authorization before September 30, 2015 would also be required to pay the $10 travel promotion fee. Detailed instructions are available on the ESTA Web site regarding how to make ESTA updates and corrections and when a new travel authorization is required.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The APA generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking is not required when the agency determines, for good cause, that notice and public participation is impracticable, unnecessary, or contrary to the public interest.

In this case, the TPA requires the Secretary of Homeland Security to begin assessing and collecting a fee equal to the sum of the travel promotion fee ($10) and the operational fee ($4.00) within 6 months of the TPA's enactment, which is September 4, 2010. *See* 8 U.S.C. 1187 (h)(3)(B)(i). The $10 travel promotion fee is intended to fund the Corporation for Travel Promotion (Corporation) and, once collected, the $10 travel promotion fees are to be made available by the Secretary of the Treasury to the Corporation for start-up expenses. Accordingly, the TPA requires DHS to be able to collect the ESTA fees to fund the Corporation. If DHS is unable to collect the ESTA fee, the Secretary of the Treasury would be unable to appropriate funding to cover the Corporation's initial expenses and activities. Moreover, given the limited duration of the travel promotion fee, which expires on September 30, 2015, it seems likely that Congress intended that the ESTA fee would be collected as soon as possible, but no later than six months from enactment of the TPA, which is September 4, 2010.

Considering the TPA's time constraints, implementing the new ESTA fees through notice and comment rulemaking process would prevent the Corporation from promptly receiving the funds necessary to serve its function of promoting tourism to the United States. As such, the statutory timeline imposed by the TPA to collect the sum of the travel promotion fee and the operational fee by September 4, 2010, when coupled with the sunset provision for the travel promotion fee, makes it impracticable for DHS to engage in the notice and comment rulemaking process. This IFR provides the mechanism through which DHS is able to assess and collect the ESTA fees in a manner consistent with the statutory provisions.

In sum, providing the public the opportunity to comment on these regulations prior to implementation would hamper the ability of DHS to collect the necessary fees as required under the TPA by September 4, 2010. Accordingly, DHS has determined that there is good cause to publish this rule without prior public notice and comment procedures. The Department, however, is interested in obtaining public comments on this interim final rule prior to the issuance of a final rule. Therefore, DHS is providing the public with the opportunity to comment after publication of this interim final rule. All comments received will become a matter of the public record.

B. Executive Order 12866

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include those that may "(1) [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." This rule is a significant regulatory action because the annual effect on the economy is $100 million or more in any one year. The annualized cost to applicants, primarily in the form of transfers from foreign citizens to the U.S. government, is estimated between $152 million and $258 million. As a result, this rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The following summary presents the costs to applicants and benefits of the rule.[3]

OMB Circular A–4 states the following with regard to the scope of Federal regulatory assessments: "Your analysis should focus on benefits and costs that accrue to citizens and residents of the United States. Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately."[4] Additionally, Circular A–4 states: "You should not include transfers in the estimates of the benefits and costs of a regulation. Instead, address them in a separate discussion of the regulation's distributional effects."[5] CBP notes that the costs estimated in this analysis are primarily transfers, in the form of fees, from foreign visitors to the U.S. government. As described in more detail below, CBP has also estimated a charge for currency conversion that ESTA users will incur when they make their fee payments in pay.gov. These currency conversion costs are not transfers, but they are incurred by foreign travelers and are paid to foreign financial institutions. Thus, the costs to applicants presented in this section are transfers or costs incurred by foreign entities.

To determine the total cost to applicants of ESTA, CBP used the population of travelers identified in the analysis for the ESTA IFR.[6] For that analysis, CBP developed four methods to predict ESTA-affected travelers to the

[3] The complete "Regulatory Assessment" can be found in the docket for this rulemaking: *http://www.regulations.gov*.

[4] *See* U.S. Office of Management and Budget. September 17, 2003. Circular A–4 "Regulatory Analysis." Page 15.

[5] *See* OMB Circular A–4, Page 38.

[6] *See* "The Regulatory Assessment for the Interim Final Rule for Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization." U.S. Customs and Border Protection, June 2008. This document is available at *http://www.regulations.gov* under docket no. USCBP—2008–0003, supporting and related materials.

United States over the next 10 years using information available from the Department of Commerce, Office of Travel and Tourism Industries (OTTI), documenting historic travel levels and future projections. Method 1 employs the travel-projection percentages provided by OTTI and extrapolates them to the end of the period of analysis (OTTI projects travel only through 2013; CBP calculates a simple extrapolation to 2020). Method 2 (modified OTTI projections) presents a more pessimistic outlook on travel: all projected percentages from Method 1 are reduced by 2 percent throughout the period of analysis. Methods 3 and 4 incorporate periodic downturns (one late in the period; one early), which are prevalent, though not necessarily predictable, in international travel. CBP used Method 1 for the fee calculation because it takes into account the most recent OTTI estimate, accounts for the 2008 downturn in air travel, and it is a midrange estimate compared to the other methods. The other methods are presented here for further information.

Because a travel authorization obtained through ESTA generally is valid for 2 years, CBP adjusted the populations in accordance with the ESTA Fee Analysis to reflect only those travelers who will be required to apply for authorization in any given year. For the purposes of this analysis and to make the calculations more tractable, CBP assumed the fee will be charged beginning in January 2011. Exhibit 2 compares the estimated number of travelers and the estimated number of ESTA applicants ("Applicants") per year.

EXHIBIT 2—TOTAL TRAVELERS AND ESTA APPLICANTS

[2011–2020, in millions]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Method 1:										
Total Travelers	19.40	20.19	20.92	21.68	22.47	23.29	24.15	25.04	25.97	26.94
Applicants	15.97	16.62	17.23	17.85	18.50	19.18	19.88	20.62	21.38	22.18
Method 2:										
Total Travelers	18.26	18.64	18.94	19.25	19.57	19.89	20.23	20.57	20.92	21.28
Applicants	15.03	15.35	15.59	15.85	16.11	16.38	16.65	16.93	17.22	17.52
Method 3:										
Total Travelers	19.40	17.72	20.63	24.03	27.29	26.36	29.93	33.94	39.65	38.38
Applicants	15.97	14.59	16.99	19.79	22.48	21.71	24.67	27.98	32.69	31.65
Method 4:										
Total Travelers	24.04	27.29	26.33	29.94	33.93	39.62	38.29	43.62	50.60	59.28
Applicants	19.81	22.48	21.69	24.68	27.96	32.67	31.57	35.97	41.75	48.92

Costs to Travelers

CBP determined that the ESTA operational fee will be $4.00 per application. The methodology and calculations used to determine this fee can be found in the ESTA Fee Analysis (*Explanation of the Electronic System for Travel Authorization (ESTA) Fee,* April 2010). The TPA also requires a $10 travel promotion fee to be charged through ESTA that will be credited to the Travel Promotion Fund established by the TPA and is to be used by the Corporation for Travel Promotion, also established by the TPA, to promote international travel to the United States. Per the legislation, this fee will be effective through September 30, 2015.

In addition to the ESTA operational and travel promotion fees, many credit card issuers charge a fee for foreign currency transactions, which is generally a percentage of the total transaction amount. Because the ESTA fees must be paid by credit card in U.S. dollars and not local currency, travelers from VWP countries will likely incur a transaction fee. For this analysis, CBP assumes all travelers will incur a transaction fee, whether they apply using the ESTA website or are registered by a carrier or travel agent who will then pass the fee on to the traveler. CBP calculated a weighted average of foreign currency transaction fees based on market share in order to take into account not only the fee charged by each issuer, but the volume of purchases made using the cards of each issuer.

When the average foreign currency transaction fee of 2.7 percent is applied to the ESTA fees, the total charge will be $14.37. Exhibit 3 displays the total fees, including those charged by the credit card companies, for visitors from each country in 2011, the first full year CBP estimates that the fee will be charged. These totals are based on the populations used by CBP to calculate the fee and only reflect unique travelers who would be required to apply in 2011.[7]

EXHIBIT 3—TOTAL ESTA FEES FOR ALL TRAVELERS IN 2011

[Undiscounted]

	Method 1	Method 2	Method 3	Method 4
Australia	$ 9,435,603	$ 8,892,390	$ 9,435,603	$ 10,091,673
Austria	2,224,768	2,094,348	2,224,768	2,800,120
Belgium	3,317,849	3,123,469	3,317,849	4,011,893
Czech Republic	782,466	737,637	782,466	773,296
Denmark	3,441,443	3,240,839	3,441,443	4,009,018

[7] Because Andorra, Brunei, Monaco, Lichtenstein, and San Marino have limited historic data, no predicted growth rates, or very few visitors (only about 1,000 each on an annual bases), they are excluded from the analysis. Travelers from these countries will still be subject to the ESTA application fee.

EXHIBIT 3—TOTAL ESTA FEES FOR ALL TRAVELERS IN 2011—Continued

[Undiscounted]

	Method 1	Method 2	Method 3	Method 4
Estonia	132,189	123,881	132,189	199,972
Finland	1,527,821	1,438,263	1,527,821	1,839,227
France	17,975,811	16,915,414	17,975,811	21,624,714
Germany	22,406,375	21,077,979	22,406,375	28,683,080
Greece	842,330	793,361	842,330	941,230
Hungary	612,894	576,300	612,894	708,057
Iceland	474,855	444,672	474,855	755,962
Ireland	7,114,881	6,690,302	7,114,881	9,835,632
Italy	11,195,318	10,529,662	11,195,318	13,987,260
Japan	44,835,862	42,216,569	44,835,862	58,384,185
Latvia	130,794	122,602	130,794	184,118
Lithuania	167,330	157,298	167,330	177,061
Luxembourg	137,535	129,371	137,535	147,108
Malta	69,105	64,966	69,105	61,186
Netherlands	9,043,867	8,513,431	9,043,867	10,595,705
New Zealand	2,699,106	2,544,999	2,699,106	2,790,044
Norway	2,611,488	2,459,019	2,611,488	2,924,101
Portugal	1,511,077	1,422,122	1,511,077	1,818,487
Singapore	1,367,203	1,287,189	1,367,203	1,667,412
Slovakia	349,336	329,832	349,336	291,686
Slovenia	261,574	246,195	261,574	283,967
South Korea	8,728,408	8,224,994	8,728,408	11,154,010
Spain	8,829,048	8,303,456	8,829,048	11,715,276
Sweden	5,141,050	4,839,519	5,141,050	6,103,610
Switzerland	3,561,371	3,352,158	3,561,371	4,320,266
UK	58,650,315	55,176,504	58,650,315	71,806,658
Total	$229,579,076	$216,068,741	$229,579,076	$284,686,015

CBP next totaled these costs to applicants over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in OMB Circular A–4. Total present value of the costs to applicants over the period of analysis could total $1.2 billion to $2.2 billion. Annualized costs to applicants are estimated at $152 million to $258 million. Method 1 was the method used to estimate the total costs and transfers due to the fee and is our primary estimate. Again, CBP notes that the bulk of these costs to applicants are transfers from foreign travelers to the U.S. government. See Exhibit 4.

EXHIBIT 4—TOTAL PRESENT VALUE AND ANNUALIZED COSTS TO APPLICANTS OF THE ESTA FEE, 2011–2020

	Total present value ($millions)		Annualized costs to applicants ($millions)	
	3%	7%	3%	7%
Method 1	$1,510	$1,295	$172	$179
Method 2	1,338	1,159	152	159
Method 3	1,672	1,398	190	195
Method 4	2,208	1,829	251	258

Travelers using ESTA will incur costs in addition to the fee, including the time burden of applying for authorization and the time burden and cost to obtain a visa if authorization is denied. These costs were already addressed in the Regulatory Assessment for the June 2008 ESTA IFR and should not be considered here in order to avoid double counting these costs.

Change in Travel Demand

While the ESTA operational and travel promotion fees are very low relative to the overall costs of international travel, it is still possible that they could cause a reduction in the number of travelers coming to the United States from VWP countries. For this reason, CBP uses an "elasticity of demand" for long-haul international leisure and long-haul international business trips available from the published travel literature to analyze the impact of the change in cost (out-of-pocket expenses) for travelers using ESTA. Using an elasticity of demand allows CBP to get a sense of potential changes in the number of travelers in response to a change in the cost of a trip. Elasticities should not be viewed as the definitive level that demand could decrease due to an increase in travel price. In reality, a relatively minimal charge of $14.37 is much more likely to reduce the amount of money a traveler spends on other portions of the trip than to cause a traveler to cancel the trip altogether.

Because the elasticity of demand differs for business and leisure travelers, we first identify the portion of travel to the United States from VWP countries that can be assigned to those purposes using air traveler survey data from OTTI. CBP then uses OTTI data to identify the average cost per VWP traveler for a flight to the United States.

Airfare costs vary by purpose of travel, but range from an average $1,406 per flight for a leisure traveler on vacation to $2,687 per flight for a business traveler.[8]

To calculate the percent change in the average cost per flight, CBP divided the amount of the total charges by the original average cost per flight. CBP then multiplied the resulting percent increase by the elasticity of demand for air travel estimated in a study by the Canadian Department of Finance, -0.265 for long-haul international business travel and -1.040 for long-haul international leisure travel, to calculate the expected percent decrease in passenger volume.[9] Exhibit 5 shows the total estimated number of passengers that could potentially be lost for each of the four population projections. While the impact varies for different categories of travelers, CBP estimates that up to 0.85 percent of travelers could be lost in a given year.

EXHIBIT 5—TOTAL CHANGE IN VISITORS BY YEAR, 2011–2020

[Excluding intended benefits to tourism from spending the TPA revenue]

	Method 1	Method 2	Method 3	Method 4
2011	−135,337	−127,363	−135,337	−167,978
2012	−140,542	−129,715	−123,615	−190,212
2013	−145,501	−131,698	−143,820	−182,306
2014	−150,652	−133,728	−167,269	−208,382
2015	−156,005	−135,807	−189,536	−235,856
2016	−50,142	−42,808	−56,415	−85,365
2017	−51,936	−43,484	−64,418	−81,972
2018	−53,802	−44,177	−72,961	−93,111
2019	−55,742	−44,888	−85,111	−108,127
2020	−57,759	−45,615	−81,877	−126,441

It is important to recognize, however, the positive impacts that the Travel Promotion Fund could have on international travelers to the United States. CBP is not able to estimate or project these impacts with any degree of confidence because the program and fund are not yet in place and the details of the administration of the fund to promote travel is currently unknown. Consequently, this analysis is not making specific projections about the *overall* net increase or decrease increase in travel due to the Travel Promotion Act.

Because there are many unknown variables in this analysis, there are potential costs that CBP cannot quantify with any degree of confidence. Costs that are important to consider, but that CBP has not quantified include potential decreases in visitor spending, and possible reciprocity by VWP countries (where these countries could develop ESTA-like systems and charge U.S. VWP travelers for applications of admissibility).

Benefits of the Regulation

This rule allows CBP to comply with the TPA's express mandate that the Secretary establish a fee for the use of the ESTA system and also establish a $10 travel promotion fee. The benefits of ESTA include enhanced security, cost savings associated with advanced determination of inadmissibility, and costs forgone by travelers, such as visa fees. These are discussed in the ESTA IFR Regulatory Assessment and are not considered here to avoid double-counting.

As noted above, the United States travel and tourism may benefit from increased international travelers based on promotion efforts made possible by the Travel Promotion Fund.

A–4 Accounting Statement

Note that the transfers listed in the A–4 Accounting Statement below are only for the ESTA fees ($14.00), and do not include the currency conversion charge ($0.37). This $0.37 charge is paid by foreign entities to foreign entities and is not included in this accounting statement of impacts to the U.S. economy.

CLASSIFICATION OF EXPENDITURES, 2011–2020

[$2010]

	3% Discount rate	7% Discount rate
Costs:		
Annualized monetized costs		
Annualized quantified, but un-monetized costs.		
Qualitative (un-quantified) costs		
Transfers		
Benefits:		
Annualized monetized benefits		
Annualized quantified, but un-monetized benefits.		

[8] U.S. Office of Travel and Tourism Industries. 2008. "Overseas Travelers to the United States." Table 26.

[9] Gillen, David W., William G. Morrison and Christopher Stewart. "Air Travel Demand Elasticities: Concepts, Issues and Measurement." Canada Department of Finance, October 6, 2008. Available at *http://www.fin.gc.ca/consultresp/Airtravel/airtravStdy_-eng.asp.*

CLASSIFICATION OF EXPENDITURES, 2011–2020—Continued

[$2010]

	3% Discount rate	7% Discount rate
Qualitative (un-quantified) benefits	Allows compliance with the TPA's express mandate to establish a fee for the use of the ESTA system and also establish a $10 travel promotion fee.	Allows compliance with the TPA's express mandate to establish a fee for the use of the ESTA system and also establish a $10 travel promotion fee.
Transfers	$168 million from foreign visitors to the U.S. government.	$175 million from foreign visitors to the U.S. government.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603(a)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for any proposed rule.

Since a general notice of proposed rulemaking is not necessary, a regulatory flexibility analysis is not required. Nonetheless, DHS has considered the impact of this rule on small entities. This rule directly regulates individuals, and individuals are not considered small entities. Some small entities may be indirectly impacted to the extent that business travelers work for small businesses. However, the combined charge (the ESTA fees and the credit card transaction fee) of $14.37 is only 0.3 percent of the average cost of a business trip as estimated by OTTI ($5,231).[10] Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

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

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

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

G. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. These regulations are being issued without prior public notice and comment procedures pursuant to the APA, as described above. For this reason, CBP obtained temporary, emergency approval from OMB, in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) for the portion of OMB clearance 1651–0111 that was affected by this rule. CBP will solicit public comments when CBP submits a request for permanent OMB approval. The estimated burden hours related to ESTA for OMB Control Number 1651–0111 are as follows:

Estimated Number of Respondents: 18,900,000.

Estimated Time per Response: 15 minutes (0.25 hours).

Estimated Total Annual Burden Hours: 4,725,000 hours.

The burden hours in this collection have been updated to reflect new traveler levels predicted in 2011. Additionally, a portion of these travelers is new ESTA applicants, while a portion is repeat travelers. Only the new applicants or applicants whose authorization has expired will be required to pay the new fees. As noted above, approximately 16 million applicants will need to pay the fee annually (Method 1), for a total cost of $230 million. This is based on the average estimated number of respondents paying the combined charge (the ESTA fees and the credit card transaction fee) annually (16,000,000) × $14.37 = $229,920,000.

H. Privacy Interests

DHS published an ESTA Privacy Impact Assessment (PIA) for the Interim Final Rule announcing ESTA on June 9, 2008. Additionally, at that time, DHS prepared a separate System of Record Notice (SORN) which was published in conjunction with the IFR on June 9, 2008. DHS has updated the ESTA PIA and SORN and both are available for viewing on CBP's Web site at *http://www.foia.cbp.gov/.*

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to Regulations

■ For the reasons stated in the preamble, DHS is amending part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217) as follows:

PART 217—VISA WAIVER PROGRAM

■ 1. The authority citation for Part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. Section 217.5 is amended by revising paragraph (a) and adding a new paragraph (h) to read as follows:

§ 217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air or sea to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization,

[10] U.S. Office of Travel and Tourism Industries. 2008. "Overseas Travelers to the United States." Table 26.

each nonimmigrant alien intending to travel to the United States by air or sea under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein, and must pay a fee as described in paragraph (h) of this section.

* * * * *

(h) *Fee.* (1) Until September 30, 2015, the fee for an approved ESTA is $14.00, which is the sum of two amounts: a $10 travel promotion fee to fund the Corporation for Travel Promotion and a $4.00 operational fee to at least ensure recovery of the full costs of providing and administering the system. In the event the ESTA application is denied, the fee is $4.00 to cover the operational costs.

(2) Beginning October 1, 2015, the fee for using ESTA is an operational fee of $4.00 to at least ensure recovery of the full costs of providing and administering the system. ESTA applicants must pay the ESTA fee through the Treasury Department's Pay.gov financial management system.

Janet Napolitano,

Secretary.

[FR Doc. 2010–19700 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0709; Airspace Docket No. 09–AGL–28]

RIN 2120–AA66

Amendment of VOR Federal Airways V–8, V–14, V–38, V–47, V–279, and V–422 in the Vicinity of Findlay, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the VHF Omnidirectional Range (VOR) Federal Airways V–8, V–14, V–38, V–47, V–279, and V–422 in the vicinity of Findlay, OH. The FAA is taking this action because the Findlay VHF Omnidirectional Range/Tactical Air Navigation (VORTAC), included as part of the V–8, V–14, V–38, V–47, V–279, and V–422 route structure, is being renamed the Flag City VORTAC.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of six VOR Federal Airways in the vicinity of Findlay, OH. Currently, V–8, V–14, V–38, V–47, V–279, and V–422 have Findlay, OH, [VORTAC] included as part of their route structure. The Findlay VORTAC and the Findlay Airport share the same name and facility identifier (FDY), but are not co-located and are greater than 5 nautical miles apart. To eliminate the possibility of confusion, and a potential flight safety issue, the Findlay VORTAC will be renamed the Flag City VORTAC and assigned a new facility identifier (FBC). All VOR Federal Airways with Findlay, OH, [VORTAC] included in their legal description will be amended to reflect the Flag City, OH, [VORTAC] name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Additionally, this action makes administrative corrections to the V–8 and V–14 legal descriptions. Specifically, the V–8 description is amended to reflect the termination point "DC" as "Washington, DC", and the V–14 description is amended to reflect the navigation aid "DRYER" as "Dryer". These administrative corrections have no operational impact to the existing airways.

Since this action merely involves editorial changes in the legal descriptions of VOR Federal Airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the legal description of six VOR Federal Airways in the vicinity of Findlay, OH.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal Airways listed in this document will be published subsequently in the Order.

Environmental Review

There are no changes to the lateral limits. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–8 [Amended]

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; Flag City, OH; Mansfield, OH; Briggs, OH; Bellaire, OH; INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

* * * * *

V–14 [Amended]

From Chisum, NM; Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Brickyard, IN; Muncie, IN; Flag City, OH; INT Flag City 079° and Dryer, OH, 240° radials; Dryer; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT.

* * * * *

V–38 [Amended]

From Moline, IL; INT Moline 082° and Peotone, IL, 281° radials; Peotone; Fort Wayne, IN; Flag City, OH; INT Flag City 131° and Appleton, OH, 312° radials; Appleton; Zanesville, OH; Parkersburg, WV; Elkins, WV; Gordonsville, VA; Richmond, VA; Harcum, VA; Cape Charles, VA.

* * * * *

V–47 [Amended]

From Pine Bluff, AR; Gilmore, AR; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Nabb, IN; Cincinnati, OH; Rosewood, OH; Flag City, OH; to Waterville, OH.

* * * * *

V–279 [Amended]

From INT Flag City, OH, 146° and Rosewood, OH, 083° radials; to Flag City; 7 miles wide (4 miles northeast and 3 miles southwest of the centerline) to Flag City.

* * * * *

V–422 [Amended]

From INT Chicago O'Hare, IL, 127° and Chicago Heights, IL, 358° radials; Chicago Heights; INT Chicago Heights 117° and Knox, IN, 276° radials; Knox; Webster Lake, IN; INT Webster Lake 097° and Flag City, OH, 289° radials; to Flag City.

* * * * *

Issued in Washington, DC, on July 27, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–19271 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2009–HA–0095]

RIN 0720–AB33

TRICARE; Extended Care Health Option

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to implement the requirements enacted by Congress in Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 which changes the limit of the Government's share of providing certain benefits under the Extended Care Health Option (ECHO) from $2,500 per month to $36,000 per year, and for other non-legislated changes to the ECHO.

DATES: *Effective Date:* This rule is effective August 9, 2010 and applicable October 14, 2008. and all claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3520.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1079 of Title 10, United States Code (U.S.C.), as amended by Section 701(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2002 [Pub. L. 107–107], required the Department of Defense to establish a program of extended benefits for eligible dependents. That program, known as the Extended Care Heath Option (ECHO), replaced the Program for Persons with Disabilities (PFPWD) and was implemented on September 1, 2005. The primary purpose of the ECHO is to provide eligible beneficiaries with benefits that are not available through the TRICARE Basic Program. The term "eligible beneficiary" means an individual who is a dependent of an active duty service member (ADSM) or is a transitional survivor of a deceased ADSM and who has a qualifying condition. Qualifying conditions include moderate or severe mental retardation, serious physical disability, or an extraordinary physical or psychological condition. The benefits available through the ECHO are intended to assist in the reduction of the disabling effects of an ECHO qualifying condition.

Section 1079(e)(3) and (4) authorizes benefits, including training, rehabilitation, special education, assistive technology devices, institutional care in private, nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities in which the beneficiary is receiving institutional care.

Section 1079(f)(2) limited the Government's liability for benefits authorized by Section 1079(e)(3) and (4) to $2,500 per month and required that the beneficiary's sponsor be liable for any amount of the monthly total cost for those benefits that exceeded the Government's limit. Section 1079(e) also authorized the extended benefits program to provide additional benefits including diagnostic services, inpatient and outpatient care, comprehensive home health care, respite care, and other services and supplies as determined appropriate by the Secretary. However, Section 1079(f) did not limit the Government's liability for those additional benefits. By final rule published in the **Federal Register** (FR) on August 20, 2004, (69 FR 51559) the Department established that those additional benefits accrued to the $2,500 per month limit.

Section 732 of the Duncan Hunter NDAA for FY 2009 [Pub. L. 110–417] (NDAA 2009) changed the limit of the Government's liability for benefits authorized under Section 1079(e)(3) and (4) from $2,500 per month to $36,000 per year, prorated as determined by the Secretary. This rule does not prorate the annual limit of Government liability. Section 732 does not affect other benefits authorized under Section 1079(e).

This rule changes the Government's share of providing all benefits available through the Extended Care Health

Option from $2,500 per month to $36,000 per FY. This rule does not change the Government's liability for benefits provided by the ECHO Home Health Care (EHHC) benefit or the EHHC Respite Care benefit.

Additionally, Section 732 changed the sponsor's liability for costs exceeding the limit of the Government's liability from a per-month basis to a per-year basis; this rule includes that change.

The following additional changes contained in this rule are further discussed below: Deletes references to the PFPWD, eliminates allocating the allowable cost of durable equipment authorized for purchase through the ECHO, clarifies the monthly reimbursement for benefits received through the EHHC, and allows a waiver of the requirement to enroll in the sponsor's branch of Service Exceptional Family Member Program (EFMP) in order to register in the ECHO.

Active duty family members who have a qualifying condition are eligible to receive benefits through the ECHO. Qualifying conditions include moderate or severe mental retardation, a serious physical disability, or an extraordinary physical or psychological condition such that the beneficiary is homebound. Serious physical disabilities include those conditions that preclude an individual from the unaided performance of at least one major life activity such as breathing, cognition, hearing, seeing, and age-appropriate ability essential to bathing, dressing, eating, grooming, speaking, stair use, toilet use, transferring, and walking.

The ECHO, as the replacement for the PFPWD, has been fully implemented for several years; it is, therefore, appropriate to delete references in the regulations to the transition of the PFPWD to the ECHO.

Durable equipment, which is defined as a device or apparatus which does not qualify as "Durable Medical Equipment" under the TRICARE Basic Program but which is essential to the efficient arrest or reduction of the functional loss resulting from, or the disabling effects of an ECHO-qualifying condition, is eligible for TRICARE coverage through the ECHO. Paragraph (g)(2) within Sec. 199.5 provides for prorating the allowable amount for durable equipment over a calculated period of time. The method of proration resulted in the monthly benefit limit of $2,500 being divided, at the ECHO-registered beneficiary's sponsor's discretion, at least equally between the allowable cost of purchasing ECHO-authorized durable equipment and the cost of other authorized ECHO benefits. As a result of Section 732 and the changes made in this rule, the allowable expense for durable equipment accrues to the maximum FY Government limit of $36,000. Therefore, proration of allowable durable equipment expense is no longer an appropriate option. As a result, the ECHO beneficiary's sponsor will have only one cost-share liability for each authorized item of durable equipment purchased through the ECHO.

The ECHO Home Health Care benefit is limited on a FY basis to the amount TRICARE would reimburse a Skilled Nursing Facility (SNF) if the beneficiary were a patient in the SNF. Paragraph (g)(4)(iii) of Sec. 199.5 limits the maximum monthly Government reimbursement for the EHHC, including EHHC respite care, to no more than one-twelfth of the annual maximum Government cost-share. Because the actual number of days in the month varies, the one-twelfth limit can be over or understated for a given month. This rule revises that requirement by taking into account the actual number of days in a month EHHC benefits are received.

As required by Section 1079(d)(1), eligible beneficiaries must register in the ECHO in order to receive ECHO benefits. Evidence of enrollment in the sponsor's branch of Service's EFMP is required in order to register in the ECHO. The Department recognizes there are circumstances when that requirement is not appropriate. This rule specifies when the EFMP enrollment requirement can be waived.

Except as specified herein, all other requirements of the ECHO remain as currently published.

II. Public Comments

We provided a 60-day public comment period following publication of the proposed rule in the **Federal Register** (74 FR 44800) on August 30, 2009. No comments were received. However, following additional Department review, Section 199.5(g)(2)(ii) was revised further to clarify the sponsor's cost-share liability for benefits received under this section.

III. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Section 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

Executive Order 13132, "*Federalism*"

This rule has been examined for its impact under E.O. 13132 and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Extended benefits for disabled family members of active duty service members, health care, military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.5 is amended by:

■ a. Removing paragraphs (b)(4), (g)(2)(ii) introductory text through (g)(2)(ii)(C)(*2*), and (g)(2)(ii)(E);

■ b. Redesignating paragraph (g)(2)(ii)(D) as (g)(2)(ii); and
■ c. Revising paragraphs (c)(6), (c)(7)(iii), (f)(3)(i), (g)(2)(i), newly redesignated paragraph (g)(2)(ii), (g)(4)(iii), (h)(2), (h)(3)(v)(A), and (j) to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

* * * * *

(c) * * *

(6) Transportation of an ECHO beneficiary receiving benefits under paragraph (c)(5), and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

(7) * * *

(iii) The Government's cost-share incurred for these services accrues to the fiscal year benefit limit of $36,000.

* * * * *

(f) * * *

(3) * * *

(i) *ECHO.* The total Government share of the cost of all ECHO benefits, except ECHO Home Health Care (EHHC) and EHHC respite care, provided in a given fiscal year to a beneficiary, may not exceed $36,000 after application of the allowable payment methodology.

* * * * *

(g) * * *

(2) *Equipment.* (i) The TRICARE allowable amount for durable equipment shall be calculated in the same manner as durable medical equipment allowable through Section 199.4, and accrues to the fiscal year benefit limit specified in paragraph (f)(3) of this section.

(ii) Cost-share. A cost-share, as provided by paragraph (f)(2) of this section, is required for each month in which equipment is purchased under this section. However, in no month shall a sponsor be required to pay more than one cost-share regardless of the number of benefits the sponsor's dependents received under this section.

* * * * *

(4) * * *

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section and adjusted according to the actual number of days in the month the services were provided.

(h) * * *

(2) *Registration.* Active duty sponsors must register potential ECHO-eligible beneficiaries through the Director, TRICARE Management Activity, or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity, or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System accordingly. Unless waived by the Director, TRICARE Management Activity or designee, sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) * * *

(v) *Public facility use.* (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirements shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate for beneficiaries receiving institutional care, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to $36,000 per fiscal year per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

* * * * *

(j) *Effective date.* All changes to this section are effective as of October 14, 2008, and claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19312 Filed 8–6–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2009–HA–0097]

RIN 0720–AB35

TRICARE; Elimination of Voluntary Disenrollment Lock-Out

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule eliminates the 1 year lock out for non-Active Duty members who disenroll from TRICARE Prime before their annual enrollment renewal date.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Larkin, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The TRICARE benefit was directed by Congress in section 1097 of the National Defense Authorization Act for Fiscal Year 1995. For further information on TRICARE, the reader may refer to the final rule regarding TRICARE published in the **Federal Register** on October 5, 1995.

Administrative Change

When TRICARE Prime was implemented, it was envisioned that TRICARE Prime enrollees would transfer their enrollment when they moved to a new location. The reality is that some enrollees, such as college students, move several times a year. When TRICARE Prime is available at their new location, they transfer enrollment. However, TRICARE Prime might not be available at the gaining location, so they voluntarily disenroll in advance of their annual enrollment date. This automatically triggers a one year lock-out. This final rule eliminates the lock-out for active duty family members and allows TRICARE Prime enrollment when they relocate in an area that offers TRICARE Prime.

II. Public Comments

The proposed rule was published in the **Federal Register** on October 29, 2009, for a 60-day comment period. We received one comment and we thank the person for commenting.

Comment: As someone who deploys, leaving my spouse to contend with TRICARE issues, it is important that this rule is adopted.

Response: We agree and are pleased to promulgate the rule.

III. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*" *and Public Law 96–354,* "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not a significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this final rule is not subject to any of these requirements.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public.

Executive Order 13132, "*Federalism*"

We have examined the impacts of the rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

Section 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

■ 2. Section 199.17 (o)(4) is revised to read as follows:

§ 199.17 TRICARE program.

* * * * *

(o) * * *

(4) *Voluntary disenrollment.* Any non-active duty beneficiary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs). Retired beneficiaries and their family members who disenroll prior to their annual enrollment renewal date will not be eligible to reenroll in Prime for a -1-year period from the effective date of the disenrollment. Active Duty family members may change their enrollment status twice in an enrollment year. Any additional disenrollment changes will result in an enrollment lock out for a 1-year period from the effective date of the disenrollment. Enrollment rules may be waived by the Assistant Secretary of Defense (Health Affairs) based on extraordinary circumstances.

* * * * *

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19309 Filed 8–6–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0931]

RIN 1625–AA11

Regulated Navigation Area; Galveston Channel, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) across the entire width of the Galveston Channel in the vicinity of Sector Field Office (SFO) Galveston, Texas. This RNA will require vessels to navigate at no wake speeds within this area. Vessel transits at greater than minimum safe speed and causing wake in this area will be prohibited unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative. This RNA is needed to protect the Coast Guard SFO Galveston assets, break wall, and piers from further damage associated with excessive wake and to protect ongoing base construction.

DATES: This rule is effective September 8, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0931 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0931 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant junior grade Margaret Brown, Coast Guard Sector Houston-Galveston, telephone (713) 678–9001, or e-mail *margaret.a.brown@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 13, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Galveston Channel" in the **Federal Register** (75 FR 18766). We received no comments on the proposed rule and are issuing the final rule without change from the NPRM.

Basis and Purpose

The basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas, under 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. A regulated navigation area is a water area within a defined boundary for which regulations for vessels navigating within the area have been established, to control vessel traffic in a place determined to have hazardous conditions. 33 CFR 165.10;

U.S.C.G. Commandant Instruction Manual M16704.3A, 1–6.

The purpose of this final rule is to establish a regulated navigation area in Galveston Channel, to protect the surrounding areas from the harmful effects of excessive wake. This RNA will require vessels to navigate at minimum safe speeds which produce no wake within the area of the Coast Guard SFO Galveston, Texas. Vessel transits at greater than minimum safe speed and causing wake in this area will be prohibited unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative. This RNA is intended to protect the Coast Guard assets, break wall, and piers from further damage associated with excessive wake and to protect ongoing base construction.

Discussion of Comments and Changes

No comments were received regarding this rule. No changes have been made in the text we proposed in the NPRM.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation was unnecessary. The basis of this finding is that the area considered in this regulated navigation area is limited in nature and would not create undue delay to vessel traffic in and around the Port of Galveston.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: The extent of the proposed regulated navigation area is limited in size and would not create undue delay to vessel traffic in and around the Port of Galveston.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because this rule involves a regulation establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—SPECIFIC REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new § 165.827 to read as follows:

§ 165.827 Regulated Navigation Area; Galveston Channel, TX.

(a) *Location.* The following area is a regulated navigation area: All waters of the Galveston Channel within the area from Latitude 29°20′19″ N, Longitude 094°46′36″ W, east to Latitude 29°20′06″ N, Longitude 094°46′15″ W, south to Latitude 29°19′47″ N, Longitude 094°46′27″ W, west to Latitude 29°19′51″ N, Longitude 094°46′45″ W, and north to Latitude 29°20′19″ N, Longitude 094°46′36″ W.

(b) *Regulations.* (1) Vessels navigating this area must do so at a minimum safe speed so as to not cause any wake.

(2) Vessels may proceed at greater than a minimum safe speed with permission of the Captain of the Port Houston-Galveston or a designated representative.

(3) To request permission as required by these regulations, contact the Sector Houston-Galveston Command Center by telephone at (713)671–5113.

Dated: July 27, 2010.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard, District 8 Commander.

[FR Doc. 2010–19521 Filed 8–6–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0208]

RIN 1625–AA00

Safety Zone; Kanawha River Mile 56.7 to 57.6, Charleston, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Kanawha River beginning at mile 56.7 (C&O Railroad) and ending at mile 57.6 (Interstate Route 64 Bridge), extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the Toyota Governor's Cup Jet Ski Race. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 12 p.m. on August 20, 2010, to 5:30 p.m. on August 22, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0208 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0208 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Sean Lewis, Marine Safety Unit Huntington Coast Guard; telephone 304–733–0198 extension 2135, e-mail *Sean.T.Lewis@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be impracticable given the short period of time before the race. Immediate action is needed to protect the race participants, vessels, and mariners from the hazards associated with this race. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be impracticable, as immediate action is needed to protect the race participants, vessels, and mariners from the hazards associated with this race.

Basis and Purpose

The Upstate Watercraft Promotions, Inc. is sponsoring a jet ski race from 12 p.m. to 6 p.m. on August 20, 2010 and from 6 a.m. to 5:30 p.m. on the dates of August 21 and 22, 2010. This race will be held on the Kanawha River in Charleston, WV at mile 57.6–57.6. The Coast guard believes a safety zone is necessary because a hazardous situation could exist for vessels, mariners and spectators in the vicinity of the jet ski race. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this race.

Discussion of Rule

The Captain of the Port Ohio Valley is establishing a temporary safety zone for the waters of the Kanawha River beginning at mile 56.7 (C&O Railroad) and ending at mile 57.6 (Interstate Route 64 Bridge). The term "participating vessel" includes all vessels registered with the jet ski race event officials to work in the event. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. The Captain of the Port Ohio Valley may be contacted on VHF–

FM Channels 13 or 16, or by telephone at 800–253–7465. This rule will be enforced from 12 p.m. to 6 p.m. on August 20, 2010, and from 6 a.m. to 5:30 p.m. on the dates of August 21 and 22, 2010. The Captain of the Port Ohio Valley will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because of the following reasons: (a) It does not affect the economy over the upper limit given in section 3(f)(1) of Executive Order 12866. (b) It does not create any inconsistencies nor interferes with any action or planned actions taken by other agencies. (c) It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (d) It will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Kanawha River beginning at mile marker 56.7 and ending at mile marker 57.6 from 12 p.m. to 6 p.m. on August 20, 2010, and from 6 a.m. to 5:30 p.m. on the dates of August 21 and 22, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The sponsor of the event has worked closely with users of the river to provide awareness and gain their support of this event. The event sponsor took similar measures during the 2009 inaugural event and was successful at minimizing any burden on users of the river. Although, the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Finally, before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves regulations establishing, disestablishing, or changing Regulated navigation areas and security or safety zones. The rule fits this category because the Coast Guard is establishing a safety zone from mile 56.7 to 57.6 on the Kanawha River.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0208 is added to read as follows:

§ 165.T08–0208 Safety Zone; Kanawha River Mile 56.7 to Mile 57.6 Charleston, WV.

(a) Location. The waters of the Kanawha River beginning at mile 56.7 (C&O Railroad) and ending at mile 57.6 (Interstate Route 64 Bridge), extending the entire width of the river.

(b) Enforcement periods. This section of this rule will be enforced from 12 p.m. to 6 p.m. on August 20, 2010, and from 6 a.m. to 5:30 p.m. on the dates of August 21 and 22, 2010.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley.

(2) Persons or vessels requiring entry into or passage through this zone must request permission from the Captain of the Port Ohio Valley, or a designated representative. They may be contacted on VHF–FM Channels 13 or 16, or by telephone at 800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel.

(4) On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 21, 2010.

A.E. Tucci,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Ohio Valley.

[FR Doc. 2010–19520 Filed 8–6–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE™

39 CFR Part 111

Content of Periodicals Mail

AGENCY: Postal Service™

ACTION: Final rule; revised.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 707.3, to update "content requirements" on materials eligible for mailing at Periodicals prices with authorized Periodicals publications.

DATES: *Effective Date:* August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry Lease, 202–268–7264.

SUPPLEMENTARY INFORMATION: The final rule titled "Content of Periodicals Mail" published by the **Federal Register** on July 20, 2010 (75 FR 41989–41991) is revised to incorporate minor changes in text and an earlier effective date. The DMM standards will be updated during its regular monthly update on September 7, 2010.

After discussions with Periodicals customers, the Postal Service agreed to review the standards governing contents of Periodicals mail, and decided to update several standards. This rule removes the current advertising limitation on loose supplements, except for unwrapped copies of loose addressed supplements included in a mailing for an authorized Periodicals publication. The final rule also revises the regulations on pages, specifically multi-layer pages, giving publishers more latitude in page design. The provisions concerning the mailing of products and product samples have been updated and simplified. Finally, the standards governing protective covers and attachments have been updated for consistency with past rulings. This final rule was developed in collaboration with numerous publishers and Periodicals industry associations.

Background

In the 1980s, and again in the 1990s, the Postal Service undertook extensive reviews of the standards governing content that could be mailed as part of a periodical publication at Periodicals prices (formerly second-class rates). Advances in technology, and difficulty in applying the standards, were key factors in those reviews. On March 27, 1995, the Postal Service published a final rule in the **Federal Register** (60 FR 10021–10029) revising the standards.

Since that time, the standards governing contents of a publication eligible for Periodicals prices have not changed, except for several minor modifications. In addition, there has been no discernable movement of printed advertising materials, or other matter, from Standard Mail to Periodicals mail.

The changes to the standards reflected in this final rule concentrate on four areas of "content" provisions and mailpiece construction:

- DMM 707.3.3.1, *Pages.*
- DMM 707.3.3.5, *Supplements.*
- DMM 707.3.4.3, *Products.*
- DMM 707.3.5, *Mailpiece Construction.*
  - Specifically DMM 707.3.5.4, *Without Mailing Wrapper.*
  - and DMM 707.3.5.6, *Cover Page and Protective Cover.*

Pages

A requirement for all Periodicals publications is that they be comprised

of "printed sheets." In the March 27, 1995 rulemaking, however, the printed sheet requirement was relaxed to allow small amounts of "fastening" material, such as grommets, string, and rubber bands, used to assemble a page. The Postal Service concluded at that time allowing such materials was not a significant deviation from the "printed sheet" rule because the changes were consistent with the existing practice of allowing Periodicals publications to be bound with staples, saddle stitching, or spiral binding.

More recently, publishers have argued that the 1995 changes, unduly limit creativity in designing publications that appeal to their readers and advertisers. These publishers also point out advances in technology enable inclusion of sound devices and video as part of a printed page. Finally, they point out that private delivery companies do not impose similar restrictions on the delivery of their publications, nor are they prohibited from using such technologies in the newsstand editions of their publications.

Accordingly, DMM 707.3.3.1a is revised to replace "fastening" with "non-paper" in the first sentence to permit non-paper materials other than fastening materials in the construction of a multilayer page. This change would allow additional creativity in page design. The sentence "Not all elements that make up a multilayer page must be printed" is added to 3.3.1a, for additional transparency That sentence is currently incorporated in Customer Support Ruling (CSR) PS–234, titled "Multilayer pages in Periodicals Publications." Finally, the sentence "In addition, multilayer pages may contain novel characteristics such as an LED display, a sound device, or battery operated movable parts" is added to 3.3.1a, to allow publishers to take advantage of current technologies, within the boundaries of mailable versus nonmailable matter as described in DMM 601.

In addition, it should be noted that publishers continue to be required to adhere to the mailing standards governing the Periodicals price category claimed.

Supplement

Many publishers have considered the 25 percent nonadvertising standard for loose supplements to be burdensome, and inappropriate as a means of limiting advertising in Periodicals mail. It is often viewed as an unnecessary restriction on a publisher's ability to choose whether to place advertising matter in the host publication or accompanying loose supplement.

Moreover, the existing standards are hard to apply. This problem exists for customers and postal personnel, as demonstrated by the numerous requests for guidance directed to the Pricing and Classification Service Center (PCSC) and headquarters Mailing Standards concerning what is advertising or nonadvertising matter. Often, when supplements are produced by third parties, it becomes particularly difficult to make such judgments. Contracts must be reviewed to evaluate the relationship(s) between parties. Payment arrangements by outside parties for the advertising portion of supplements must be examined in determining whether the material qualifies as nonadvertising matter.

The Postal Service agrees that the 25 percent nonadvertising requirement should be eliminated except for separately addressed loose supplements mailed with the host publication outside a wrapper or polybag. The Postal Service is revising DMM 707.3.3.5 as follows:

- In the first sentence of 3.3.5a., the words "on the front cover/page" are added to ensure that the required "Supplement to * * *" endorsement is shown on the front of the supplement.
- The words "contain at least 25% nonadvertising material and" are deleted from the first sentence of 3.3.5a.
- The words "must contain at least 25% nonadvertising material" apply only to loose addressed supplements when a wrapper is not required.

Product Samples

Product samples in Periodicals are not new. However, no explicit DMM standard acknowledges product samples are mailable at Periodicals prices. Mailability at Periodicals prices of product samples is achieved by "altering" a product, such as by changing the ingredients in fragrance samples, limiting significantly the size of a cosmetics sample, and requiring a disclaimer that the sample "simulates" or is a "rendition" of an actual product. Preparation guidelines are contained in Customer Support Ruling (CSR) PS–273. However, the Postal Service finds these guidelines difficult to administer, with documentation and verification of compliance burdensome on publishers and postal personnel.

In earlier rulemakings, the Postal Service expressed the view that applying the general requirement that all Periodicals publications must be formed of printed sheets is a sufficient standard to limit the inappropriate mailing of products and products samples at Periodicals prices (*see* DMM 707.4.5). Changes to the standards described in this rule will continue to exclude products such as stationery, cassettes, floppy disks, DVDs, CDs, and similar media, since they are not printed sheets.

But allowing de minimis product samples will reduce the burden of the current guidelines. Consequently, and consistent with requests by many Periodicals publishers and Periodicals association representatives, the Postal Service has adopted a new provision in the DMM allowing product samples in de minimis form to be included as part of a printed sheet. This change will enhance both the value of some advertisements to the reader, and the overall value of the publication to the reader. Although not explicitly required, including the name of the host publication and the issue or issue date on the sample, and relating the sample to advertising or nonadvertising within the content of the host publication, will provide further support that the piece is properly prepared as a printed page (or a portion of a multilayer page) in the publication.

Product samples may not be included in a Periodicals publication mailed at letter-sized prices. The combined weight of product samples in an issue of a Periodicals publication cannot exceed 3.3 ounces. Any product sample that is a "packet" is limited to a weight of no more than one ounce with a burst strength minimum of 3,000 pounds per square inch (PSI). Attachable product samples, including packets weighing no more than one ounce, may not be affixed to either the front or back cover page of a Periodicals publication, or permissible component of a Periodicals publication, even if the publication is enclosed in a wrapper. Placement of attachable product samples must conform to machinability and uniform thickness standards, and must be placed no closer than ¾ inch from any open edge of any interior page.

Publishers are aware that in an environment of ever-increasing automated processing by the Postal Service of all types of mail including letters, flats, and parcels, it is critical that Periodicals publications not impede postal processing or damage postal processing equipment. Accordingly, it is reemphasized that any mailpiece to which a product sample is added under this new provision must meet the standards for physical characteristics related to basic mailability and to the eligibility for the specific postage prices claimed. In addition, all of the mailability restrictions and prohibitions in DMM 601 apply. *See* specifically DMM 601.2.1, *Packaging,* and 601.10.5,

Mailer Responsibility for Mailing Hazardous Materials.

Products

Under impermissible mailpiece components, "products" are redefined to update the examples of impermissible products in Periodicals.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

707 Periodicals

* * * * *

3.0 Physical Characteristics and Content Eligibility

* * * * *

3.3 Permissible Mailpiece Components

3.3.1 Pages

* * * Pages are also subject to these standards:

[Revise 3.3.1a. to replace "fastening" with "non-paper" materials in the first sentence and to include new language to further describe a multilayer page as follows:]

a. Multilayer pages (including pages formed by sheets glued together and pages that have unusual shapes, such as cutouts, movable flaps, or "pop-ups") may include small amounts of non-paper material such as grommets, string, or rubber bands as needed to assemble the page. Not all elements that make up a multilayer page must be printed. In addition, multilayer pages may contain novel characteristics such as an LED display, a sound device, or battery operated movable parts. Multilayer pages may also be formed as pouches or pockets, but may contain only permissible loose enclosures (*see* 3.3.4) or other securely affixed permissible components.

* * * * *

3.3.5 Supplement

* * * Supplements are also subject to these conditions as applicable:

[Revise 3.3.5a. to make clear that the required supplement endorsement must be shown on the front/cover page. In addition, the requirement that a supplement to a bound Periodicals publication contain at least 25% nonadvertising is eliminated except for unwrapped loose supplements.]

a. A loose supplement to a bound Periodicals publication must bear on the front/cover page the endorsement "Supplement to" followed by one of the following: The title of the publication, the name of the publisher, or "Periodicals Publication." A bound publication with one or more supplements must be enclosed in a wrapper. However, a wrapper is not required when a loose supplement is included within the same mailing as the host publication, bears a proper delivery address, contains at least 25% nonadvertising material, and includes on the front/cover page the endorsement "Periodicals Supplement to" followed by the exact title and issue date of the host publication. The external dimensions of such unwrapped supplements may exceed those of the host publication provided they are of the same processing category as the host publication. If a supplement to a bound publication is formed of more than one sheet, all sheets making up the supplement must be bound together.

* * * * *

[Renumber current 3.3.9 and 3.3.10 as 3.3.10 and 3.3.11 accordingly, and add new 3.3.9 to provide for "product samples" in Periodicals publications as follows:]

3.3.9 Product Samples

Subject to the requirements in 3.3.1 and 3.4.5, product samples: Related to print advertising in the issue and are not offered for sale within the meaning of 3.4.2a and 3.4.3 may be included in a Periodicals publication as a page, or part of a multilayer page. Examples include, but are not limited to, a swatch of cloth; a paper towel as part of a printed page, or printed paper towel; a bandage; and fragrance, cosmetics, lotions, or edibles in packet form. The combined weight of product samples in an issue is limited to 3.3 ounces. Any product sample in the form of a packet is limited in total weight to no more than one ounce, but does not include the page weight upon which the packet is affixed. Packet product samples also must have a minimum burst strength of 3,000 pounds per square inch (psi). Travel size and similar small products in commercially available form or packaging do not qualify as permissible product samples, even if less than 3.3 ounces. In addition, CDs, DVDs, and similar media do not qualify as permissible product samples. Permissible product samples:

a. Are not eligible with letter-size pieces;

b. Must comply with hazmat standards (601.10.5);

c. Must comply with machinability standards, e.g. uniform thickness (301.1.4);

d. Must not be attached to the front or back cover page of the host Periodicals publication, or any other permissible component;

e. Must be secured in place (spine or tip-on interior page) to prevent shifting (601.2.1); and,

f. Must be placed at least ¾ inch from all non-bound edges of any interior page.

* * * * *

3.4 Impermissible Mailpiece Components

* * * * *

3.4.3 Products

[Revise 3.4.3 to update examples of impermissible "products" in Periodicals publications as follows:]

Except as provided for in 3.3.9, products may not be mailed at Periodicals prices. Examples include stationery (such as pads of paper or blank printed forms); cassettes; floppy disks; CDs; DVDs; merchandise, including travel-size merchandise in commercially available form or packaging; and wall, desk, and blank calendars. Printed pages, including oversized pages and calendars, are not considered products if they are not offered for sale.

* * * * *

3.5 Mailpiece Construction

* * * * *

3.5.4 Without Mailing Wrapper

[Revise the last sentence of 3.5.4 to allow for ¾ inch clearance of any open edge on attachments to a Periodicals publication as follows:]

When the mailpiece does not have a mailing wrapper, all the components of an unbound publication must be combined with and inserted inside the publication. Only enclosures mailable at Periodicals prices under 3.3.4 may be included loose inside a bound unwrapped publication. An enclosure under 3.3.3c, *Enclosures at First-Class Mail or Standard Mail Prices,* or 3.3.4, *Loose Enclosures at Periodicals Prices,* or a single sheet prepared as an attachment under 3.3.8c, may be securely attached along the bound edge on the outside of an unwrapped publication if it does not exceed any dimension of the cover of the publication and comes within ¾ inch of any open edge.

* * * * *

3.5.6 Cover Page and Protective Cover

[Revise the first sentence of 3.5.6 to allow for ¾ inch clearance of any open edge on a protective cover to a Periodicals publication as follows:]

If the piece is not completely enclosed in a mailing wrapper, then any protective cover or cover page must cover both the front and back of the host publication and extend to within at least ¾ inch of any open edge. Exception: Flat-size pieces may have short covers as provided in 301.3.5.2. If the host publication is bound, the protective cover must be permanently attached to the publication.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–19619 Filed 8–6–10; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2009–0085]

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of 2007 final theft data; Correction.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) published in the **Federal Register** of March 10, 2010, a document on thefts of model year (MY) 2007 passenger motor vehicles that occurred in calendar year (CY) 2007. The document was published with several errors. In that publication, a vehicle line was omitted from the theft rate data which affected the overall theft rate calculation, the number of vehicle lines above the 1990/1991 median theft rate and the vehicle rankings. Additionally, vehicle line names and production numbers were listed incorrectly. The republishing of this document in its entirety corrects those errors.

This document publishes the final data on thefts of model year (MY) 2007 passenger motor vehicles that occurred in calendar year (CY) 2007. The final 2007 theft data indicated a decrease in the vehicle theft rate experienced in CY/MY 2007. The final theft rate for MY 2007 passenger vehicles stolen in calendar year 2007 is 1.85 thefts per thousand vehicles, a decrease of 11.1 percent from the rate of 2.08 thefts per thousand in 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: This final notice revises the **Federal Register** notice published on March 10, 2010 (75 FR 11005) which omitted a vehicle line from the theft rate list. This omission affected the theft rate calculation, the number of vehicle lines above the 1990/1991 median theft rate and the vehicle rankings. Additionally, vehicle line names and production numbers erroneously were not listed correctly. The document has been revised and is reprinted below in its entirety.

NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 2007, the most recent calendar year for which data are available.

In calculating the 2007 theft rates, NHTSA followed the same procedures it used in calculating the MY 2006 theft rates. (For 2006 theft data calculations, see 73 FR 60633, October 14, 2008). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

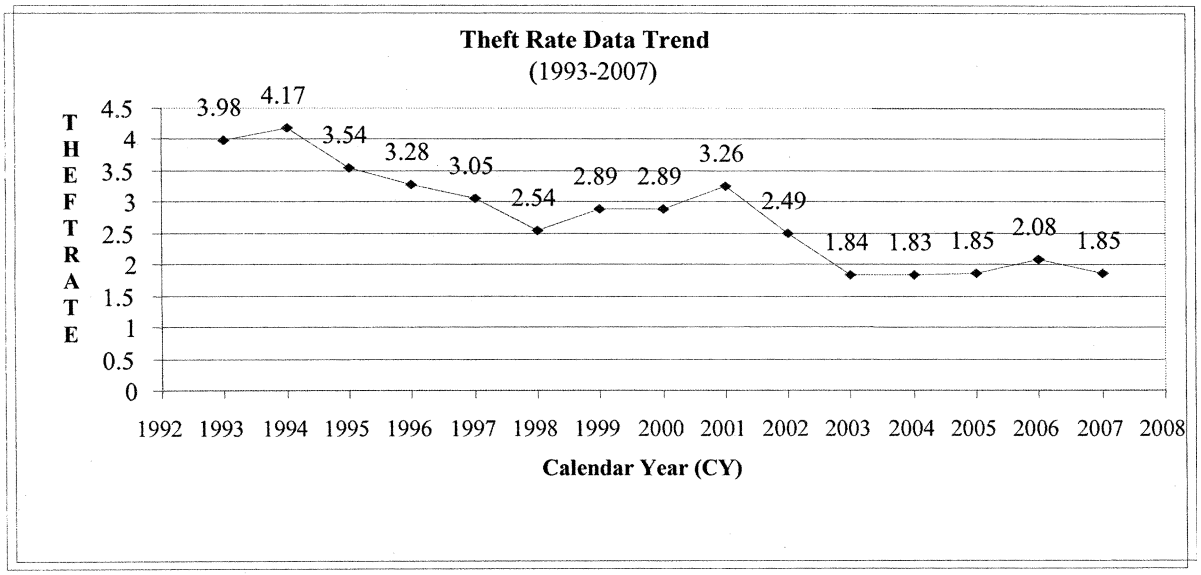
The 2007 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2007 vehicles of that line stolen during calendar year 2007 by the total number of vehicles in that line manufactured for MY 2007, as reported to the Environmental Protection Agency (EPA).

The final 2007 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2006. The final theft rate for MY 2007 passenger vehicles stolen in calendar year 2007 decreased to 1.85 thefts per thousand vehicles produced, a decrease of 11.1 percent from the rate of 2.08 thefts per thousand vehicles experienced by MY 2006 vehicles in CY 2006. The data has shown an overall decreasing trend in theft rates since CY 1993, with periods of increase from one year to the next.

For MY 2007 vehicles, out of a total of 206 vehicle lines, 15 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (*See* 59 FR 12400, March 16, 1994). Of the 15 vehicle lines with a theft rate higher than 3.5826, 13 are passenger car lines, two are multipurpose passenger vehicle lines, and none are light-duty truck lines.

The MY 2007 theft rate reduction is consistent with the general decreasing trend of theft rates over the past 15 years as indicated by Figure 1. We note, however, that the theft rate from 2003 to 2007 is virtually unchanged (1.84 to 1.85). This suggests that the progress made since 1992 may have reached the limits of current approaches to reducing vehicle thefts, and that some new approaches should be added.

Figure 1: Theft Rate Data Trend (1993-2007)



Theft rate per thousand vehicles produced

The agency believes that the theft rate reduction could be the result of several factors including the increased use of standard antitheft devices (*i.e.,* immobilizers), vehicle parts marking, increased and improved prosecution efforts by law enforcement organizations and increased public awareness measures.

On Wednesday, June 10, 2009, NHTSA published the preliminary theft rates for CY 2007 passenger motor vehicles in the **Federal Register** (74 FR 27493). The agency tentatively ranked each of the MY 2007 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency used written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the June 2009 notice. The agency received written comments from Volkswagen Group of America, Inc. (VW) and Nissan North America, Inc. (Nissan).

In its comments, VW informed the agency that the entries for the Audi RS4, Audi A8, Audi A4/A4 Quattro/S4/S4 Avant and Audi RS4 were listed with incorrect manufacturer designations. The final theft data has been revised to reflect that Audi is the manufacturer for the Audi RS4, Audi A8, Audi A4/A4 Quattro/S4/S4 Avant and Audi RS4 vehicles.

Additionally, Nissan informed the agency that its Nissan Xterra and Versa vehicle lines were not listed in the agency's June 2009 publication of preliminary data. Upon review, the agency notes that the Nissan Xterra and the Nissan Versa were erroneously omitted from the publication of preliminary theft data and therefore, has corrected the final theft data to reflect the theft rate information for both vehicle lines. As a result of this correction, the Nissan Xterra is ranked No. 69 with a theft rate of 1.6061 and the Nissan Versa is ranked No. 95 with a theft rate of 1.3216.

Reanalysis of the theft rate data revealed that the Pontiac G6 was listed twice with a ranking at No. 13 and No. 66. The correct ranking for the Pontiac G6 is No. 13 with a theft rate of 3.8282. The final theft data has been revised to reflect the correct rank of the Pontiac G6. Further reanalysis of the theft rate revealed that the Pontiac G5 was also omitted from the theft rate list. The Pontiac G5 has been added to the list. The final theft list has been revised accordingly. As a result of this correction, the Pontiac G5 previously not listed is now ranked No. 66 with a theft rate of 1.6416.

Review of the theft rate data also revealed that the Chrysler Crossfire was not included on the publication of preliminary theft data. NHTSA has corrected the final theft data to include the Chrysler Crossfire. As a result of this correction, the final theft list has been revised accordingly. The Chrysler Crossfire, previously omitted, is now ranked No. 194 with a theft rate of 0.0000.

The following list represents NHTSA's final calculation of theft rates for all 2007 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2007 motor vehicle thefts of model year 2007 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles (produced)
1	CHRYSLER	DODGE MAGNUM	344	28059	12.2599

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles (produced)
2	CHRYSLER	DODGE CHARGER	1148	120636	9.5162
3	GENERAL MOTORS	CHEVROLET MONTE CARLO	174	21689	8.0225
4	GENERAL MOTORS	PONTIAC GRAND PRIX	534	77689	6.8736
5	CHRYSLER	300	715	121529	5.8834
6	MITSUBISHI	LANCER	12	2355	5.0955
7	ROLLS ROYCE	PHANTOM	2	398	5.0251
8	MERCEDES–BENZ	215 (CL–CLASS)	43	9296	4.6256
9	FORD MOTOR CO	TAURUS	510	114616	4.4496
10	CHRYSLER	SEBRING	338	78059	4.3301
11	CHRYSLER	PT CRUISER	443	104546	4.2374
12	SUZUKI	FORENZA	133	34236	3.8848
13	GENERAL MOTORS	PONTIAC G6	629	164306	3.8282
14	GENERAL MOTORS	CHEVROLET MALIBU	487	127718	3.8131
15	MITSUBISHI	GALANT	103	27141	3.7950
16	MAZDA	6	201	56178	3.5779
17	AUDI	AUDI RS4	5	1475	3.3898
18	CHRYSLER	PACIFICA	197	60392	3.2620
19	GENERAL MOTORS	CHEVROLET COBALT	703	215663	3.2597
20	FORD MOTOR CO	MUSTANG	518	159345	3.2508
21	FORD MOTOR CO	LINCOLN TOWN CAR	114	35281	3.2312
22	CHRYSLER	DODGE CALIBER	560	175537	3.1902
23	KIA	OPTIMA	127	40914	3.1041
24	NISSAN	350Z	49	15831	3.0952
25	NISSAN	INFINITI FX35	40	13346	2.9972
26	GENERAL MOTORS	CADILLAC DTS	140	47396	2.9538
27	GENERAL MOTORS	CHEVROLET IMPALA	769	267375	2.8761
28	KIA	SPECTRA	171	64591	2.6474
29	KIA	RIO	83	31947	2.5981
30	MITSUBISHI	ECLIPSE	107	42300	2.5296
31	FORD MOTOR CO	FOCUS	576	229738	2.5072
32	GENERAL MOTORS	CHEVROLET AVEO	166	67104	2.4738
33	HYUNDAI	SONATA	302	123439	2.4466
34	VOLVO	S40	53	21905	2.4195
35	HYUNDAI	ELANTRA	192	80133	2.3960
36	NISSAN	MAXIMA	152	63601	2.3899
37	BMW	M6	8	3400	2.3529
38	MITSUBISHI	ENDEAVOR	30	12805	2.3428
39	NISSAN	SENTRA	225	96584	2.3296
40	FORD MOTOR CO	CROWN VICTORIA	17	7424	2.2899
41	CHRYSLER	JEEP LIBERTY	209	91466	2.2850
42	GENERAL MOTORS	CHEVROLET HHR	223	99681	2.2371
43	MERCEDES–BENZ	220 (S–CLASS)	91	41867	2.1735
44	TOYOTA	COROLLA	740	351414	2.1058
45	NISSAN	INFINITI FX45	1	475	2.1053
46	GENERAL MOTORS	CHEVROLET TRAILBLAZER	257	122918	2.0908
47	GENERAL MOTORS	BUICK LACROSSE/ALLURE	113	54938	2.0569
48	HUMMER	H3	95	46341	2.0500
49	NISSAN	ALTIMA	413	202162	2.0429
50	SUZUKI	RENO	62	30424	2.0379
51	FORD MOTOR CO	MERCURY GRAND MARQUIS	81	39757	2.0374
52	JAGUAR	XK8	6	2965	2.0236
53	KIA	SORENTO	64	31798	2.0127
54	MAZDA	5	33	16424	2.0093
55	GENERAL MOTORS	SATURN ION	185	94117	1.9656
56	AUDI	AUDI A8	10	5106	1.9585
57	HYUNDAI	ACCENT	86	44314	1.9407
58	GENERAL MOTORS	CADILLAC CTS	97	53360	1.8178
59	FORD MOTOR CO	FUSION	266	146464	1.8161
60	NISSAN	PATHFINDER	76	42137	1.8036
61	HYUNDAI	AZERA	40	22218	1.8003
62	CHRYSLER	DODGE CARAVAN/GRAND CARAVAN.	284	164003	1.7317
63	GENERAL MOTORS	CHEVROLET CORVETTE	65	37744	1.7221
64	BMW	M5	2	1163	1.7197
65	VOLKSWAGEN	JETTA	146	84922	1.7192
66	GENERAL MOTORS	PONTIAC G5	54	32894	1.6416
67	BMW	6	11	6779	1.6227
68	FORD MOTOR CO	FREESTAR VAN	30	18579	1.6147

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles (produced)
69	NISSAN	XTERRA	74	46074	1.6061
70	NISSAN	INFINITI M35/M45	48	30144	1.5924
71	TOYOTA	YARIS	252	159292	1.5820
72	HONDA	ACCORD	664	421206	1.5764
73	CHRYSLER	DODGE NITRO	133	84441	1.5751
74	MAZDA	RX–8	9	5728	1.5712
75	FORD MOTOR CO	MERCURY MILAN	55	35375	1.5548
76	AUDI	AUDI A6/A6 QUATTRO/S6/S6 AVANT	18	11660	1.5437
77	FORD MOTOR CO	FIVE HUNDRED	94	61270	1.5342
78	TOYOTA	AVALON	121	79137	1.5290
79	NISSAN	MURANO	137	92516	1.4808
80	TOYOTA	HIGHLANDER	148	100956	1.4660
81	TOYOTA	CAMRY/SOLARA	1003	685729	1.4627
82	NISSAN	INFINITI G35	83	57041	1.4551
83	GENERAL MOTORS	CHEVROLET UPLANDER VAN	87	60061	1.4485
84	GENERAL MOTORS	CADILLAC STS	24	16746	1.4332
85	GENERAL MOTORS	CADILLAC XLR	2	1400	1.4286
86	HONDA	S2000	7	4907	1.4265
87	KIA	AMANTI	6	4343	1.3815
88	MERCEDES–BENZ	208 (CLK–CLASS)	19	13825	1.3743
89	NISSAN	FRONTIER PICKUP	87	64010	1.3592
90	GENERAL MOTORS	CHEVROLET COLORADO PICKUP	95	70012	1.3569
91	GENERAL MOTORS	GMC CANYON PICKUP	25	18483	1.3526
92	BMW	7	22	16421	1.3397
93	TOYOTA	FJ CRUISER	112	83830	1.3360
94	MAZDA	3	153	114723	1.3336
95	NISSAN	VERSA	107	80962	1.3216
96	SUBARU	IMPREZA	51	39198	1.3011
97	AUDI	AUDI A4/A4 QUATTRO/S4/S4 AVANT	64	49645	1.2892
98	NISSAN	QUEST VAN	47	36661	1.2820
99	HONDA	ACURA TSX	29	22669	1.2793
100	KIA	SPORTAGE	58	45512	1.2744
101	TOYOTA	TACOMA PICKUP	206	165714	1.2431
102	FORD MOTOR CO	RANGER PICKUP	94	77539	1.2123
103	TOYOTA	4RUNNER	132	109124	1.2096
104	MERCEDES–BENZ	170 (SLK–CLASS)	9	7459	1.2066
105	GENERAL MOTORS	SATURN AURA	77	64851	1.1873
106	GENERAL MOTORS	PONTIAC TORRENT	35	29918	1.1699
107	HONDA	CIVIC	389	332639	1.1694
108	GENERAL MOTORS	CADILLAC FUNERAL COACH/ HEARSE.	1	857	1.1669
109	MITSUBISHI	OUTLANDER	37	31873	1.1609
110	AUDI	AUDI A3/A3 QUATTRO	8	6992	1.1442
111	VOLKSWAGEN	GOLF/RABBIT/GTI	46	41314	1.1134
112	GENERAL MOTORS	CHEVROLET EQUINOX	94	87031	1.0801
113	HYUNDAI	TIBURON	15	13951	1.0752
114	VOLKSWAGEN	PASSAT	42	39867	1.0535
115	MERCEDES–BENZ	129 (SL–CLASS)	8	7648	1.0460
116	FORD MOTOR CO	MERCURY MONTEGO	16	15439	1.0363
117	GENERAL MOTORS	GMC ENVOY	38	36989	1.0273
118	HYUNDAI	TUCSON	45	44033	1.0220
119	HONDA	ACURA 3 2 TL	5	4905	1.0194
120	GENERAL MOTORS	BUICK TERRAZA VAN	8	7865	1.0172
121	FORD MOTOR CO	ESCAPE	110	108788	1.0111
122	JAGUAR	X–TYPE	3	3018	0.9940
123	HONDA	ACURA 3 5 RL	49	49471	0.9905
124	JAGUAR	VANDEN PLAS/SUPER V8	1	1010	0.9901
125	SUZUKI	SX4	15	15421	0.9727
126	VOLVO	S80	10	10805	0.9255
127	GENERAL MOTORS	PONTIAC VIBE	30	32499	0.9231
128	HONDA	ELEMENT	31	33688	0.9202
129	MAZDA	B SERIES PICKUP	3	3285	0.9132
130	BMW	5	47	51970	0.9044
131	GENERAL MOTORS	SATURN SKY	14	15546	0.9006
132	GENERAL MOTORS	BUICK LUCERNE	76	85922	0.8845
133	TOYOTA	LEXUS LS	31	35167	0.8815
134	HONDA	ACURA RDX	22	25159	0.8744
135	CHRYSLER	JEEP WRANGLER	88	100955	0.8717

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles (produced)
136	FORD MOTOR CO	EDGE	105	121525	0.8640
137	KIA	RONDO	22	25524	0.8619
138	TOYOTA	LEXUS RX	82	98473	0.8327
139	VOLKSWAGEN	EOS	11	13406	0.8205
140	TOYOTA	RAV4	145	181051	0.8009
141	FORD MOTOR CO	FREESTYLE	30	38047	0.7885
142	HYUNDAI	SANTA FE	89	113815	0.7820
143	BMW	Z4/M	8	10568	0.7570
144	GENERAL MOTORS	PONTIAC SOLSTICE	16	21310	0.7508
145	SUZUKI	AERIO	4	5544	0.7215
146	PORSCHE	CAYMAN	4	5552	0.7205
147	PORSCHE	911	9	12521	0.7188
148	TOYOTA	LEXUS IS	41	57055	0.7186
149	MERCEDES–BENZ	203 (C–CLASS)	83	116282	0.7138
150	BENTLEY MOTORS	CONTINENTAL	3	4265	0.7034
151	BMW	X3	22	31365	0.7014
152	SUBARU	B9 TRIBECA	8	11538	0.6934
153	BMW	3	97	139966	0.6930
154	MAZDA	CX–7	52	75137	0.6921
155	VOLVO	S60	14	20268	0.6907
156	CHRYSLER	JEEP PATRIOT	20	29421	0.6798
157	ASTON MARTIN	VANTAGE	1	1474	0.6784
158	KIA	SEDONA VAN	41	60873	0.6735
159	HONDA	FIT	46	68642	0.6701
160	SUBARU	LEGACY/OUTBACK	10	14963	0.6683
161	TOYOTA	SIENNA VAN	63	96072	0.6558
162	HONDA	ACURA MDX	35	53550	0.6536
163	FORD MOTOR CO	MERCURY MONTEREY VAN	1	1553	0.6439
164	FORD MOTOR CO	LINCOLN MKX	22	34571	0.6364
165	GENERAL MOTORS	BUICK RAINIER	3	4723	0.6352
166	SUBARU	OUTBACK	27	42747	0.6316
167	HONDA	PILOT	77	122033	0.6310
168	FORD MOTOR CO	LINCOLN ZEPHYR	20	32952	0.6069
169	JAGUAR	XKR	3	5030	0.5964
170	TOYOTA	LEXUS GS	17	28638	0.5936
171	VOLVO	V50	2	3373	0.5929
172	MERCEDES–BENZ	210 (E–CLASS)	31	52557	0.5898
173	MAZDA	MX–5 MIATA	7	13353	0.5242
174	VOLVO	XC90	15	30762	0.4876
175	GENERAL MOTORS	BUICK RENDEZVOUS	14	29187	0.4797
176	VOLKSWAGEN	NEW BEETLE	13	27249	0.4771
177	HYUNDAI	VERACRUZ	6	12726	0.4715
178	VOLVO	XC70	6	13197	0.4546
179	HONDA	CR–V	104	229378	0.4534
180	PORSCHE	BOXSTER	2	4427	0.4518
181	TOYOTA	LEXUS ES	54	121577	0.4442
182	SUBARU	FORESTER	19	43985	0.4320
183	BMW	MINI COOPER	15	38511	0.3895
184	JAGUAR	S–TYPE	1	2582	0.3873
185	TOYOTA	PRIUS	53	158715	0.3339
186	SAAB	9–3	7	22401	0.3125
187	HONDA	ODYSSEY VAN	64	208166	0.3074
188	FORD MOTOR CO	MERCURY MARINER	6	20842	0.2879
189	VOLVO	C70	1	5612	0.1782
190	TOYOTA	LEXUS SC	8	80617	0.0992
191	ASTON MARTIN	DB9	0	688	0.0000
192	BENTLEY MOTORS	ARNAGE	0	140	0.0000
193	BENTLEY MOTORS	AZURE	0	184	0.0000
194	CHRYSLER	CROSSFIRE	0	3412	0.0000
195	FERRARI	141	0	364	0.0000
196	FERRARI	430	0	1382	0.0000
197	FERRARI	612 SCAGLIETTI	0	66	0.0000
198	GENERAL MOTORS	CADILLAC LIMOUSINE	0	648	0.0000
199	JAGUAR	XJ8/XJ8L	0	1645	0.0000
200	JAGUAR	XJR	0	221	0.0000
201	LAMBORGHINI	GALLARDO	0	558	0.0000
202	LAMBORGHINI	MURCIELAGO	0	164	0.0000
203	MASERATI	QUATTROPORTE	0	2176	0.0000

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles (produced)
204	SAAB	9–5	0	4084	0.0000
205	SPYKER	C8	0	7	0.0000
206	VOLVO	V70	0	3899	0.0000

Issued on: July 29, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–19100 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 75, No. 152
Monday, August 9, 2010

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 381, and 590

[Docket No. FSIS–2010–0014]

RIN 0583–AD35

Changes to the Schedule of Operations Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the meat, poultry products, and egg products regulations pertaining to the schedule of operations. FSIS is proposing to amend these regulations to define the 8-hour work day as including time that inspection program personnel need to spend at the workplace donning and doffing required gear, time spent walking to their workstations after donning required gear, and time spent walking from their work stations prior to doffing required gear. FSIS is amending these regulations to ensure effective and prudent expenditure of Agency budgetary and other resources while administering its inspection program in accord with the Supreme Court's holding in *IBP, Inc.* v. *Alvarez,* 546 U.S. 21 (2005) and policy guidance from the Office of Personnel Management.

DATES: Submit comments on or before September 8, 2010.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0014. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Acting Asst. Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA), 21 U.S.C. 601 *et seq.,* and the Poultry Products Inspection Act (PPIA), 21 U.S.C. 451 *et seq.,* provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments and of meat and poultry products processed at official establishments, respectively. The Egg Products Inspection Act (EPIA), 21 U.S.C. 1031 *et seq.,* provides for mandatory inspection of egg products processed at official plants. FSIS bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Official establishments and egg products plants pay for inspection services performed on holidays or on an overtime basis.

In November 2005, the Supreme Court of the United States (Court), rendered a decision in *IBP, Inc.* v. *Alvarez,* 546 U.S. 21 (2005), relative to donning and doffing claims brought under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* (FLSA).

As discussed in *Alvarez,* the FLSA, as amended by the Portal-to-Portal Act, excludes from the calculation of an employee's compensable work time (1) time spent walking to and from the place where the employee performs his principal activity or activities and (2) time spent on activities that are preliminary to or postliminary to the employee's principal activity or activities (29 U.S.C. 254(a)).

In *Alvarez,* the petitioner (IBP) was a large producer of fresh beef, pork, and related products. All production workers had to wear outer garments, hard hats, hairnets, boots, and other gear. Production workers' pay was based on the time spent cutting and bagging meat. In 1999, IBP employees filed a class action suit to recover compensation for pre-production and post-production work, including the time spent donning and doffing protective gear and walking between the locker rooms and the production floor before and after their assigned shifts. The lower courts had concluded that, for these employees, the donning and doffing of unique safety gear, such as chain link metal aprons and plexiglass armguards, are activities that are integral and indispensable to their primary jobs. Accordingly, the lower courts held that donning and doffing of such gear constitute "principal activities" that are compensable under the FLSA. The parties did not dispute this conclusion before the Court *Id.* at (27–30).

The Court then addressed the question of whether compensable time under the FLSA includes: (1) time spent walking between the area where employees don their gear and the production area and (2) time spent walking from the production area back to the area where employees doff their gear. The Court held that this post-donning and pre-doffing walking time is compensable because donning and doffing of required gear are principal activities marking the beginning and end of a continuous workday (*Id.* at 35).

Finally, the Court addressed the question of whether time employees spend waiting to don and doff required gear is compensable under the FLSA. The Court held that time spent waiting to doff gear is compensable under the FLSA because it occurs prior to doffing, which is an employee's last principal activity, and thus during the continuous workday (*Id.* at 37). By contrast, the Court held that time spent waiting to don required gear is not compensable under the FLSA because it occurs prior

to donning, which is an employee's first principal activity, and is thus a preliminary activity under 29 U.S.C. 254(a)(2) (*Id.* at 38).

Under OPM regulations at 5 CFR 551.412(a), a preparatory or concluding activity that is closely related to an employee's principal activities and is indispensable to the performance of the principal activities is compensable under the FLSA when the total time spent in that activity is more than 10 minutes per workday. OPM's regulation only applies to Federal employees, and the determination of which preparatory and concluding activities are compensable is made by agencies. FSIS historically took the position that donning and doffing are not compensable activities, because such activities took less than 10 minutes per workday. In reaching this conclusion, however, FSIS did not include the walking time.

In June 2008, an OPM letter to the National Treasury Employees Union clarified that 5 CFR 551.412 required that time spent at the workplace donning and doffing required gear, including walking time, was to be counted as hours of work.

In August of 2008, the National Joint Council of Food Inspection Locals, American Federation of Government Employees, AFL–CIO (the NJC) filed a nationwide grievance under the 2008 Labor Management Agreement (LMA) seeking compensation for donning and doffing activities nationwide for all inspection personnel covered by the bargaining unit. In consideration of the 2008 OPM interpretation of its regulation and the *Alvarez* ruling, the Agency entered into a settlement with the NJC in March 2010.

In light of the foregoing discussion, FSIS has determined it needs to modify its regulations and do so as quickly as possible. Accordingly, FSIS is proposing this amendment to its current regulations and providing for a 30-day comment period.

Proposed Amendment to 9 CFR 307.4(c), 381.37(c), and 590.124

FSIS's regulations state that official meat and poultry products establishments, importers, exporters, and official egg products plants shall be provided inspection service, without charge, up to 8 consecutive hours per shift during the basic workweek. The regulations also define the basic workweek as 5 consecutive 8-hour days, excluding the lunch period (9 CFR 307.4(c) and 381.37(c)).[1] For the reasons discussed above, FSIS is proposing to amend these regulations to provide that the 8-hours of inspection service includes the necessary time for inspection program personnel to put on required gear and walk to a work station and the necessary time for inspection program personnel to return from a work station and remove required gear. Any time over those 8 hours is overtime charged to an establishment.

For egg product plants, FSIS's regulations at 9 CFR 590.124 defines the normal operating schedule as consisting of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch) 5 consecutive days per week. FSIS does not believe additional time for donning and doffing will typically be necessary for inspection program personnel in egg product plants because inspection program personnel at those plants do not need to be at a required station for operations to begin. To ensure compliance with the applicable law and OPM guidance, however, the Agency is proposing to amend 9 CFR 590.124 to define the 8-hour work day as including the necessary time for inspection program personnel to put on required gear and walk to a work station and the necessary time for inspection program personnel to return from a work station and remove required gear. The Agency anticipates that this proposed change is likely to have little application to the work of the Agency's egg product inspection personnel.

Executive Order 12866 and the Regulatory Flexibility Act

This rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant.

Cost to the Industry

Under this proposal, the most direct cost to the industry would be the overtime fee that the Agency would need to charge establishments for the time FSIS inspection personnel spend donning required gear, walking to a work station, returning from a work station, and doffing required gear. If meat and poultry slaughter establishments want to maintain their normal shift length of operating for eight hours, they would incur some overtime fees. The choice is voluntary. Some meat and poultry slaughter establishments may choose not to incur the overtime charges if they expect that the decline in revenues from operating for a shorter amount of time will be smaller than the overtime fee cost. However, the Agency expects that most meat and poultry slaughter establishments will choose to pay the overtime charge and maintain their current shift-time, as shortening the shift time will decrease production and revenue while wasting existing capacity.

The actual time FSIS inspection personnel will take to don and doff required gear will vary in each meat and poultry slaughter establishment depending on plant-specific variables. FSIS conducted an on-site study of a sample of establishments to estimate the average time to travel from the donning and doffing location to the inspection station.[2] This pacing data was combined with data that was collected during a donning and doffing timing study, and the estimated time for donning, doffing, and walking is, on average, about 6.5 minutes for poultry inspectors and 12.24 minutes for livestock inspectors. For the purpose of its analysis, FSIS is using 15 minutes for donning, doffing, and walking time at all meat and poultry slaughter establishments as a reasonably conservative estimate for both poultry and livestock inspectors. The overtime fee that the Agency charges for 15 minutes of overtime inspection is $14.73, which, according to the recently proposed fee schedule (74 FR 51800), would increase to $16.71 and $17.21 in FY 2011 and 2012, respectively.[3] These costs are far less than the value of the poultry or livestock an establishment can slaughter in 15 minutes per line.

FSIS calculated costs for the meat and poultry slaughter establishments because slaughter establishments cannot begin operations until Agency inspection personnel are at on-line inspection work stations. Meat and poultry processing establishments and egg product plants would not be affected because those establishments can begin operations without FSIS inspection personnel being at an on-line inspection work station. Furthermore, very-small slaughter establishment typically will not be affected by this rule

[1] 9 CFR 307.4(b) and 381.37(b) provide that the lunch periods may be 30 minutes, 45 minutes, or in any case may not exceed one hour in duration.

[2] Management personnel counted the number of paces from the point in which inspection personnel don and doff equipment and garments to the farthest FSIS inspection station of the slaughter floor using the normal route. To ensure the most accurate results, the numbers of paces were counted twice at each plant before the Agency's Industrial Engineer analyzed the results. The Industrial Engineer calculated time in minutes using the internationally recognized Methods-Time Measurement 1 (MTM–1), published by the MTM Association for Standards and Research.

[3] As proposed in the FSIS Proposed Rule of Changes in Fees for Meat, Poultry, and Egg Products Inspection Services.

because there are no donning and doffing activities for inspection program personnel at such establishments. Because of the nature of how slaughter is conducted in very-small establishments and because many of the inspectors at such establishments are on patrol assignments, inspectors typically drive up to the establishment, go in to the establishment and simply put on their frock.

The most recent agency data shows that there are 1,041 meat and poultry slaughter establishments, of which 263 are small and 566 are very small (by SBA size standards.)

FSIS started by calculating the number of inspection personnel that this proposed rule will affect. Agency data show that there are 2,911 inspection personnel in the poultry and meat slaughter establishments—1,954 in poultry and 957 in meat. Assuming all the establishments pay the 15-minute overtime charge per inspection personnel, and that the establishments operate 260 days (5 days a week times 52 weeks), the annual cost for one online inspector will be about $4,345 at the FY 2011 rate. The cost to the industry will be about $12.7 million and $13.0 million in FY 2011 and 2012, respectively (*see* Table 1). Given that the annual revenue of meat slaughtering industry alone in 2009 is about $67.2 billion,[4] the overtime cost to the industry is insignificant. If we break down the cost for FY 2011 by establishment size, based on the numbers of inspectors for each SBA size category, it will be $10.5 million for the large establishments, $2 million for the small and $0.065 million for the very small establishments.[5]

TABLE 1—ESTIMATED ANNUAL COST OF THE OVERTIME CHARGE TO THE INDUSTRY

	Number of inspection personnel	Overtime fee (15 min.)	Daily cost	Number of days	Annual cost (daily × No. of days)
FY 2011	2,911	$16.71	$48,643	260	$12,647,131
FY 2012	2,911	17.21	50,098	260	13,025,561

Cost to the Consumer

The industry is likely to pass the increased costs on to consumers because of the inelastic nature of the consumer demand for meat and poultry products. However, given that the total volume of meat and poultry slaughtered under Federal inspection in 2009 was about 91 billion pounds,[6] the increased cost per pound due to the overtime fee will be only $0.0001, on average.

Benefit of the Rule

This proposed rule will ensure compliance with the law and the best use of Agency resources.

Regulatory Flexibility Analysis

The FSIS Administrator has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). There are 263 small and 566 very small meat and poultry slaughter establishments. Based on the data and information contained in the cost to industry section of this rule, the fee is, at most, $4,345 per year for one online inspector for an extra 15 minutes (FY 2011 rate). The time required for donning and doffing for small and very small establishments is likely much less than 15 minutes. If the donning and doffing takes 10 minutes, the annual cost becomes about $2,897 for one inspector (*i.e.,* two-thirds of $4,345.) Furthermore, almost all the very-small establishments will not be affected by this rule because they are on a patrol assignment. Therefore, the impact will not be significant.

Paperwork Reduction Act

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Proposed_Rules_Index/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 307

Facilities for Inspection.

9 CFR Part 381

Poultry Products Inspection Regulations.

9 CFR Part 590

Inspection of Eggs and Egg Products (Egg Products Inspection Act).

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

[4] Summary of the *Animal (except Poultry) Slaughtering Industry in the U.S. and its International Trade [2010 edition,]* Supplier Relations US, LLC. *http://www.htrends.com/report-2700858-Animal_except_Poultry_Slaughtering_Industry_in_the_U_S_and_its_International_Trade_Edition.html,* as of 7/16/2010.

[5] Among the 2,911 inspectors, 2,410 are for the large establishments, 480 are for the small establishments, and 15 are for the very small establishments.

[6] *Livestock, Dairy, & Poultry Outlook*/LDP–M–188/February 24, 2010; Economic Research Service, USDA. The Web-link to the report is *http://www.ers.usda.gov/Publications/ldp/2010/02Feb/ldpm188.pdf.*

PART 307—FACILITIES FOR INSPECTION

1. The authority citation for part 307 continues to read as follows:

Authority: 7 U.S.C. 394; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In § 307.4(c), revise the second sentence to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * * The basic workweek shall consist of 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, and shall include the necessary time for FSIS inspection program personnel to put on required gear and to walk to a work station, and the necessary time for FSIS inspection program personnel to return from a work station and remove required gear, excluding the lunch period; except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, and shall include the necessary time for FSIS inspection program personnel to put on required gear and to walk to a work station, and the necessary time for FSIS inspection program personnel to return from a work station and remove required gear, excluding the lunch period. * * *

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

4. In § 381.37(c), revise the second sentence to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * * The basic workweek shall consist of 5 consecutive 8-hour days within the administrative workweek Sunday through Saturday, and shall include the necessary time for FSIS inspection program personnel to put on required gear and to walk to a work station, and the necessary time for FSIS inspection program personnel to return from a work station and remove required gear, excluding the lunch period; except that, when possible, the Department shall schedule the basic workweek so as to consist of 5 consecutive 8-hour days Monday through Friday, and shall include the necessary time for FSIS inspection program personnel to put on required gear and to walk to a work station, and the necessary time for FSIS inspection program personnel to return from a work station and remove required gear, excluding the lunch period. * * *

* * * * *

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

5. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

6. In § 590.124, in the second sentence, after the word "day", add the phrase "and shall include the necessary time for FSIS inspection program personnel to put on required gear and to walk to a work station, and the necessary time for FSIS inspection program personnel to return from a work station and remove required gear".

Done at Washington, DC, on August 2, 2010.

Alfred Almanza,

Administrator.

[FR Doc. 2010–19346 Filed 8–6–10; 8:45 am]

BILLING CODE 3410–DM–P

ELECTION ASSISTANCE COMMISSION

11 CFR Part 9428

[EAC–2010–0025]

National Voter Registration Act

AGENCY: Election Assistance Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Election Assistance Commission (EAC) seeks comments on proposed changes to its regulations pertaining to the National Voter Registration Act of 1993 (NVRA). Section 9(a) of the NVRA requires the responsible agency to issue regulations for developing a national mail voter registration form and for submitting a biennial report to Congress on the impact of the NVRA. EAC proposes to amend its NVRA regulations to ensure that they are consistent with the Help America Vote Act of 2002 (HAVA) and to make some technical amendments. EAC also invites public comments on additional changes to the NVRA regulations to improve voter registration through the content and format of the Federal form and to change the date by which States are required to submit data to EAC for use in the biennial report to Congress on the impact of the NVRA. EAC will not make any changes to the NVRA regulations until after the November 2010 Federal election. EAC anticipates issuing a final rule pertaining to the regulations necessitated by HAVA. EAC may also issue new regulations about the content and format of the Federal form and the biennial report to Congress based on the comments it receives on the topics discussed in Section VI either in the same final rule or in a separate final rule.

DATES: Comments must be received no later than 5 p.m.. e.s.t. on November 23, 2010.

ADDRESSES: You may submit comments, identified by docket number EAC–2010–0025, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Those commenting are strongly encouraged to submit comments via http://www.regulations.gov to ensure timely receipt and consideration.*
- *E-mail: NVRAregs@eac.gov.* Include docket number (EAC–2010–0025) in the subject line of the message. Comments sent via e-mail must include the full name, e-mail address, and the postal address of the commenter. E-mail comments that do not contain the full name, e-mail address, and postal address of the commenter will not be considered.
- *Mail:* Send to "EAC Regulations" at U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. Comments sent by mail must include the full name and the postal address of the commenter and be unbound, be on paper no larger than 8.5″ by 11″; and be submitted in duplicate. Comments received via mail that do not contain the full name, e-mail address, and postal address of the commenter will not be considered. Mailed comments will not be accepted in electronic form (floppy disk, CD, etc.).

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All submissions must include the following in the subject line: "Election Assistance Commission National Voter Registration Act Regulations." All comments received will be publicly posted, including any personal information provided. However, EAC will not post comments that contain profanity, vulgarity, threats, or other inappropriate language.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lynn-Dyson, Director, Division of Research, Policy and Programs or Mr. William P. Boehm, Deputy Director of

Policy, (202) 566–3100 or (866) 747–1471 (toll free). You may also contact Ms. Lynn-Dyson or Mr. Boehm at *NVRAregs@eac.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Voter Registration Act of 1993 (NVRA), 42 U.S.C. 1973gg *et seq.* requires the responsible agency to develop a national mail voter registration form for elections to Federal office, and to submit a report to Congress no later than June 30 of each odd-numbered year that assesses the impact of the NVRA on the administration of elections for Federal office during the preceding 2-year period and recommends improvements in Federal and State procedures, forms, and other matters affected by the NVRA. The NVRA requires the U.S. Election Assistance Commission (EAC) to promulgate regulations to administer its responsibilities under the NVRA in consultation with the chief election officers of the States. EAC considers the public comment period provided in this notice of proposed rulemaking as fulfilling the requirement to consult with the chief election officers of the States.

After receiving public comment, the Federal Election Commission (FEC), which previously had responsibility for the NVRA, issued regulations implementing these requirements on June 23, 1994. *See* 59 FR 32323 June 23, 1994. The Help America Vote Act of 2002 (HAVA) 42 U.S.C. 15301 *et seq.,* transferred to EAC functions fulfilled by the FEC under Section 9(a) of the NVRA. The FEC and EAC entered into a joint rulemaking to transfer the NVRA regulations from the FEC to EAC on July 29, 2009. *See* 74 FR 37520 July 29, 2009. The transfer became effective on August 28, 2009. In this notice of proposed rulemaking, EAC proposes to amend the NVRA regulations within the authority granted by the NVRA to reflect HAVA requirements and to make technical amendments. EAC also invites public comments on additional changes to the NVRA regulations to improve voter registration through the content and format of the Federal form and to change the date by which States are required to submit data to EAC for use in the biennial report to Congress on the impact of the NVRA.

II. National Mail Voter Registration Form

Persons wishing to register to vote may use the national mail voter registration form ("Federal form" or "form") to apply for voter registration. After completing the form, an applicant submits her/his form for processing. States covered by the NVRA process the information from the form to register an applicant to vote. The NVRA does not apply to States "in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office." *See* 42 U.S.C. 1973gg–2(b)(1). North Dakota is exempt from implementing the NVRA under this provision. Nor does the NVRA apply to States "in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994 and by its terms is to come into effect upon the enactment" of the NVRA, "so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office." *See* 42 U.S.C. 1973gg–2(b)(2). Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming are exempt from the NVRA under this provision. Neither EAC nor any other Federal agency processes or collects any information from the Federal form that a registration applicant submits to a State. Rather, EAC prescribes the Federal form, and States collect and record the information applicants submit.

The Federal form is composed of the registration application, instructions for completing the application (General Instructions and Application Instructions), and State-specific instructions that identify each State's particular requirements. A copy of the current form is available on EAC's Web site, at *http://www.eac.gov* (click on National Voter Registration Act). Information about obtaining a form can be obtained by calling EAC at (202) 566–3100 or (866) 747–1471 (toll free).

In seeking comments on the proposed regulation applicable to the Federal form, EAC encourages commenters to consider the usability and clarity of the Federal form while accommodating requirements under the NVRA and HAVA.

HAVA requirements affect both the content and the format of the Federal form. HAVA requires the addition of specific questions on citizenship and age, mandates the inclusion of instructions concerning documentation that is required from first-time voters registering by mail, and specifies voter identification number requirements for some States. The FEC, in accordance with the mandates of HAVA, incorporated the HAVA requirements on the Federal form in 2003. The NVRA regulations, however, have not been similarly amended to reflect the requirements of HAVA. EAC seeks comment on how the regulations applicable to the Federal form should be amended to incorporate these requirements. EAC's current regulations implementing the NVRA can be found at 11 CFR 9428.

A copy of the proposed regulations with amendatory language can be reviewed at the EAC Web site: *http://www.eac.gov* by clicking on the tab for the National Voter Registration Act.

III. Contents of the National Mail Voter Registration Form

Title 11 CFR 9428.4(a) and (c), in compliance with the NVRA requirements at 42 U.S.C. 1973gg–7(b)(1), directs applicants to provide: (1) Their full name; (2) any former name(s) (if applicable); (3) their residential address; (4) their mailing address (if different); (5) a former address under certain circumstances; (6) their date of birth; (7) their telephone number (optional); (8) their voter identification number, with reference to the State-specific instructions for the State identification number requirements; (9) their political party preference (for those States that require the declaration of party affiliation in order to participate in that party's nominating process); and (10) a statement of race/ethnicity (if required by the applicant's State). In accordance with 11 CFR 9428.4(b)(5) and in compliance with NVRA requirements at 42 U.S.C. 1973gg–7(b)(1), the application also provides a field for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form, if the applicant is unable to sign the application without assistance. In accordance with 11 CFR 9428.4(b)(1)–(3) and the NVRA requirements at 42 U.S.C. 1973gg–7(b)(2), the form: (1) Specifies each eligibility requirement (including citizenship and age), with reference to the eligibility requirements listed in the State-specific information; (2) contains an attestation that the applicant meets each such requirement; and (3) provides a field on the application for the signature of the applicant, under penalty of perjury. In addition, in accordance with 11 CFR 9428.4(b)(4), (6), and (7) and the NVRA requirements at 42 U.S.C. 1973gg–6(a)(5) and 7(b)(4)(i), the form includes: (1) A statement informing the applicant of the penalties provided by law for submitting a false voter registration application; (2) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and

will be used only for voter registration purposes; and (3) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and the information provided will be used only for voter registration purposes.

EAC is proposing to modify the regulations that address the contents of the Federal form to account for HAVA requirements, and any exemptions to: (1) Voter identification number, in accordance with provisions at 42 U.S.C. 15483(a)(5)(A) and (D) and 42 U.S.C. 15483(d)(1); (2) questions concerning citizenship and age, along with associated check boxes and instructions, in accordance with 42 U.S.C. 15483(b)(4)(A)(i) through (iii); and (3) instructions for first-time voters who are required to provide voter identification documents, in accordance with requirements at 42 U.S.C. 15483(b)(1)–(3) and (4)(A)(iv). These proposed revisions would affect information about the applicant's voter identification number, addressed by 11 CFR 9428.4(a)(6), and the additional information listed in 11 CFR 9428.4(b).

A. Voter Identification Number

HAVA, at 42 U.S.C. 15483(a)(5)(A)(i), provides that a State may not accept or process an application for voter registration for an election for Federal office unless the applicant includes: (1) A driver's license number, in the case of an applicant who has been issued a current and valid driver's license; or (2) the last four digits of the applicant's social security number, if the applicant does not have a valid driver's license. HAVA exempts States from implementing this requirement if the applicant does not have a driver's license number or social security number. 42 U.S.C. 15483(a)(5)(A)(ii). HAVA also provides that the identification (ID) number requirements of HAVA, at 42 U.S.C. 15483(a)(5), are optional for those States permitted to use the social security number on voter registration application in accordance with the Privacy Act of 1974 (5 U.S.C. 552a note). 42 U.S.C. 15483(a)(5)(D).

EAC proposes to revise 11 CFR 9428.4(a)(6)(i) to recognize that requirements of Federal law may affect the notices that States are required to provide to applicants. The effect of this proposed amendment will be to retain the current instructions for completing Box 6–ID Number, which were previously placed on the form to comply with HAVA. EAC also proposes a technical amendment to 11 CFR 9428.4(a)(6)(ii) to include the Privacy Act notice provided when the social security number is requested or required.

EAC invites comments on the proposed regulation, at 11 CFR 9428.4(a)(6), and specific suggestions for the instructions for Box 6–ID Number to provide clear direction to applicants.

B. Additional Information Required

HAVA, at 42 U.S.C. 15483(b)(4)(A)(i)–(iii), requires that the following four statements be included on the form: (1) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States; (2) the question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day; (3) the statement "If you checked 'no' in response to either of these questions, do not complete this form"; and (4) a statement informing the applicant that if the form is submitted by mail and the individual is registering for the first time, additional documentation must be submitted with the mail-in registration form in order to avoid having to provide it upon voting the first time. The referenced documentation requirements and relevant implementation provisions are addressed at 42 U.S.C. 15483(b)(1)–(3).

EAC proposes to amend 11 CFR 9428.4(b) to recognize that Federal requirements other than the NVRA may affect the listed requirements—for example, the Privacy Act and HAVA—and to insert in the subsequent list the four HAVA items described above. The elements of the Federal form required by HAVA are in addition to those previously included by the NVRA. Therefore, nothing in the original FEC regulations or corresponding language on the Federal form should be revised or deleted. The insertion of the items will require the renumbering of the regulations.

The inclusion of the question "Will you be 18 years of age on or before election day?" that is mandated by 42 U.S.C. 15483(b)(4)(A)(ii) requires additional amendment to the NVRA regulations. Several States permit persons under age 18 to use a voter registration form to register and to vote in primary elections if they will be 18 years of age by the date of the general election. Further, other States permit persons under age 18 to use a voter registration form to pre-register to vote so that upon achieving 18 years of age, that applicant is registered to vote.

Due to differences in State age eligibility requirements, EAC proposes to amend 11 CFR 9428.4(b)(3) to provide for the placement of a notice underneath the sentence on the application that instructs applicants not to complete the form if they checked "No" in response to either question: The notice will advise applicants to review their State-specific instructions for rules regarding eligibility to register prior to age 18. The effect of this proposal is to retain the current exception notice, placed on the form in 2003 to accommodate State age eligibility requirements.

Under HAVA, at 42 U.S.C. 15483(b)(1) and (2), first-time voters have additional documentation requirements that must be included along with the application. First-time voters are individuals who have not "previously voted in an election for Federal office in the State" or who have not "previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of" 42 U.S.C. 15483(a), 42 U.S.C. 15483(b)(1)(B). First-time voters who register by mail must provide current and valid photo identification in person (or a copy of such photo identification if voting by mail), or they must provide a copy of another document, such as a current utility bill or bank statement, that shows their name and address before they will be allowed to vote. This requirement does not apply if the voter includes a copy of current and valid photo identification or other acceptable documentation as part of his or her voter registration application. 42 U.S.C. 15483(b)(3)(A). This requirement also does not apply to an individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act, at 42 U.S.C. 1973ff–1 *et seq.;* who is provided the right to vote otherwise than in person under Section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act, at 42 U.S.C. 1973ee–1(b)(2)(B)(ii); or who is entitled to vote otherwise than in person under any other Federal law. Additionally, this requirement is inapplicable to those who submit either a driver's license number or the last four digits of the individual's social security number, and the State or local election official matches the information with an existing State identification record bearing the same number, name, and date of birth. 42 U.S.C. 15483(b)(3)(B).

While the 2008 Election Administration & Voting Survey indicates that all States have a computerized list, the type of list and voter identification requirements vary from State to State. Given the potential variations among the States, EAC

proposes to amend 11 CFR 9428.4(b) to require that an instruction be placed on the Federal form for first-time voters who register by mail advising them: (1) Of the acceptable forms of voter identification documents; (2) to review their State-specific instructions to determine if they must provide the documentation with the application to avoid having to provide it the first time they vote; and (3) of Federal statutes under which certain persons entitled to vote by absentee ballot are exempt from providing such documentation.

EAC seeks comment on how the current form and corresponding regulations should be revised to incorporate the first-time voters who register by mail provisions and the variations in the provision's application in a concise and clear manner.

IV. Format of the National Mail Voter Registration Form

The current regulations contain specifications for a sealable application printed on card stock to facilitate the submission of the form by mail and to withstand the subsequent handling by the postal service and election officials. The format requirements for the Federal form are set forth at 11 CFR 9428.5. This regulation addresses size, layout, color, signature field, and type size requirements for the form. EAC proposes to change the current requirements related to format to facilitate the inclusion of any required voter identification document. Specifically, EAC proposes to remove any reference to a "card" in 11 CFR 9428.5, including the references to postal service stock, weight regulations, and the perforated fold. In addition, EAC proposes to delete 11 CFR 9428.5(c)(1)–(2), which include the layout requirement for a sealable application, and any references to a two-sided application. Paragraph § 9428.5(c)(3) will become paragraph (c).

In lieu of a sealable, two-sided application card that meets postal service regulations and includes address lines to be completed by the applicant using the State information provided, EAC proposes to adopt requirements for a lighter weight application that can be enclosed, along with any required documentation, in an envelope when submitted by mail. Instructions relating to this proposed change are already contained on the form in the instruction entitled "How to Submit Your Application." This instruction directs the applicant to enclose the application, along with any required voter identification document, in an envelope and to affix sufficient first-class postage. Inclusion of this instruction on the form will require additional language in the regulations. Accordingly, EAC proposes to amend 11 CFR 9428.4(b) by adding a new requirement for this instruction.

EAC moreover proposes to amend the format-specific regulations to accommodate first-time voters who register by mail. The current format specifications cannot be implemented easily with the HAVA requirements using the sealable application card because documentation submitted with the card could be lost in the mail. Because this lighter weight stock does not meet postal service regulations for postcard mailings, such applications either have to be submitted by mail in an envelope addressed to the proper authority or submitted in person. The proposed revision to the format regulations and the corresponding specifications would require all States that accept the Federal form to accept the form on lighter weight paper.

EAC seeks comment on its proposed amendment of the current format-specific regulations, especially as to how it may affect the submission of the application by applicants and the subsequent handling of the application by election officials.

V. Technical Amendments

EAC proposes several technical amendments to 11 CFR 9428. First, 11 CFR 9428.1 should be amended to clearly identify that EAC is the agency responsible for issuing regulations under the NVRA and to clarify that the regulations are impacted by the passage of HAVA. Second, 11 CFR 9428.3 is similarly amended to clarify that Subpart B of the regulations contains the requirements for the Federal form. Finally, there are a number of sections which contain dates that are no longer relevant and, therefore, should be deleted. These dates are contained in 11 CFR 9428.6(a) and 9428.7(c).

Title 11 CFR 9428.6 contains a list of information that each State is to provide to EAC regarding its State-specific instructions. Title 11 CFR 9428.6(a) specifies a deadline for each State to provide the information for its initial State-specific instructions to the FEC after the NVRA was enacted. Paragraph (a) states currently that "Each chief State election official shall certify to the EAC within 30 days after July 25, 1994." EAC proposes that 11 CFR 9428.6(a) be amended to reflect that the information included in this subsection is required to appear in the State-specific instructions.

Should the public wish to see previous requirements, those remain available through archived versions of the Code of Federal Regulations. Further, should EAC take action in its final rulemaking to remove 11 CFR 9428.6(a), its final rulemaking notice will explain the change. The **Federal Register** notice of any final rulemaking will be available through the printed and electronic versions of the **Federal Register** for historical information.

VI. Request for Other Comments

The primary purpose of this notice of proposed rulemaking is to promulgate regulations necessitated by HAVA about the content and format of the national mail voter registration form. However, EAC recognizes that the public may have comments about other aspects of NVRA regulations under EAC's authority. EAC anticipates issuing a final rule pertaining to the regulations necessitated by HAVA. EAC may also issue new regulations about the content and format of the Federal form and the biennial report to Congress based on the comments it receives on the topics that follow either in the same final rule or in a separate final rule.

A. Content and Format of the National Mail Voter Registration Form

EAC encourages comments that seek to improve the content of the Federal form other than those required by HAVA. EAC is particularly interested in receiving comments on the following: (1) Providing an applicant for voter registration the option of inserting an e-mail address on the Federal form and amend accordingly 11 CFR 9428.4(a)(5) and Box 5 on the form, and (2) considering ways to accommodate overseas citizens and military voters, such as through the placement of boxes on the Federal form for applicants to indicate if they are a military or overseas citizen, which may assist States in fulfilling the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). EAC seeks comment on these specific areas in addition to other specific recommendations for changes to the content of the national mail voter registration form consistent with EAC's authority under the NVRA and HAVA.

EAC further realizes that additional changes to format might be necessary or desirable. EAC welcomes recommendations for changes in the format of the Federal form. Commenters who offer specific suggestions on how to incorporate elements consistent with the NVRA and HAVA are urged to consider how their proposed changes would impact format requirements and, if appropriate, suggest any revisions to 11 CFR 9428.5 that might be necessary should their recommendations be considered for adoption.

EAC has created a "fillable" Federal form available in an electronic format on its Web site for use by the public. Persons wishing to register to vote may access the form on the Web site, fill the form out, print the form, sign it, and mail it to the appropriate State address. At this time, EAC has not proposed an amendment to the current NVRA regulations to address the use of the Federal form in an electronic format. EAC, however, seeks comment on amending the regulations to incorporate new technologies to facilitate applicants' use of the Federal form. EAC is particularly interested in receiving comments on how EAC's regulations may be amended to accommodate the use of new technologies in an accessible and usable format, consistent with Federal statutes and regulations.

B. Report to Congress

While HAVA did not affect the NVRA requirement that EAC submit a biennial report to Congress, EAC requests NVRA-specific information as part of its Election Administration and Voting Survey. EAC also uses this survey to request UOCAVA information. The UOCAVA reporting deadline, however, is earlier than the current NVRA reporting deadline at 11 CFR 9428.7(a). EAC believes these deadlines should be uniform.

Title 11 CFR 9428.7 prescribes the data that each State covered by the NVRA must provide to EAC to enable it to submit the NVRA-required report to Congress in the year following a Federal election. The deadline in 11 CFR 9428.7(a) requires each chief State election official to file the prescribed information by March 31 of each odd-numbered year. EAC obtains this information via the Election Administration and Voting Survey. The Survey also contains questions related to election administration including those prescribed by UOCAVA, relative to absentee ballots for military and overseas citizens. Section 102(c) of UOCAVA states "Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public." Since UOCAVA information is obtained from the States via the same survey containing information used to file the report to Congress required by the NVRA at 42 U.S.C. 1973gg–7(a), EAC is interested in receiving public comment on changing the March 31 deadline contained in 11 CFR 9428.7(a) to be consistent with the 90 day submission requirement specified in UOCAVA.

List of Subjects in 11 CFR Part 9428

Elections, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, EAC proposes to amend its regulations at 11 CFR part. 9428 as follows:

PART 9428—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg–1 et seq.)

1. The authority citation for part 9428 is revised to reads as follows:

Authority: 42 U.S.C. 1973gg–1 *et seq.,* 42 U.S.C. 15301 *et seq.*

2. Revise the first sentence of § 9428.1 to read as follows:

§ 9428.1 Purpose & scope.

The regulations in this part implement the responsibilities delegated to the U.S. Election Assistance Commission under Section 9 of the National Voter Registration Act of 1993, Public Law 103–31, 97 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* ("NVRA") as amended by the Help America Vote Act of 2002 (Pub. L. 107–252, 116 Stat. 1666, 42 U.S.C. 15301 *et seq.*).* * *

3. Revise paragraph (c) of § 9428.3 to read as follows:

§ 9428.3 General Information.

* * * * *

(c) States shall accept, use, and make available the form described in this subpart.

4. Amend § 9428.4 as follows:

a. Revise paragraphs (a)(6);

b. Redesignate paragraphs (b)(1) through (b)(7) as (b)(6) through (b)(12);

c. Revise the introductory text of (b); and

d. Add new paragraphs (b)(1) through (b)(5).

§ 9428.4 Contents.

(a) * * *

(6) Voter Identification number as required or requested by the applicant's State of residence for election administration purposes or as required by Federal law.

(i) The application shall direct the applicant to consult the accompanying State-specific instructions to determine what type of voter identification number is required or requested by the applicant's State or by Federal law affecting that State.

(ii) For each State that requests or requires the applicant's full social security number as its voter identification, the State's Privacy Act notice required at 11 CFR 9428.6(c) shall be reprinted with instructions for that State.

* * * * *

(b) *Additional information required by Federal law.* (42 U.S.C. 1973gg–7(b)(2) and (4) and the Help America Vote Act of 2002, 42 U.S.C. 15483(b)(4)(i)–(iv)). The form shall also:

(1) Include the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) Include the question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(3) With regard to the statements required in paragraphs (b)(1) and (b)(2) of this section, include the statements "If you checked 'no' in response to either of these questions, do not complete this form." and "(Exception: If you will be under 18 years of age as of the next election, you may complete this form if your State-specific instructions for item 9 on the form indicate that you are eligible to register to vote now.)"

(4) Include instructions for first-time voters who register by mail that include the list of acceptable voter identification documents, reference to the State instructions so that applicants may determine if they must provide this documentation with the application to avoid having to provide it the first time they vote, and the reference to Federal statutes under which certain persons are entitled to vote by absentee ballot and are exempt from providing such documentation.

(5) Include an instruction advising applicants how to mail their completed application.

* * * * *

5. Revise paragraphs (a), (b), and (c) of § 9428.5 to read as follows:

§ 9428.5 Format.

(a) The application shall conform to the technical specifications described in this Chapter.

(b) *Size.* The application shall consist of the top half of an 8.5″ by 11″ sheet of paper. The bottom half of the paper shall contain space for the information set forth at § 9428.4(c) of this part.

(c) *Layout.* Both sides of the application shall contain space designated "For Official Use Only."

* * * * *

6. Amend § 9428.6 by revising paragraph (a) introductory text to read as follows:

§ 9428.6 Chief State Election Official.

(a) The following information shall be included for each state in the State-specific instructions on the form:

* * * * *

§ 9428.7 [Amended]

7. Remove paragraph (c) of § 9428.7.

Donetta L. Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–19514 Filed 8–6–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0778; Directorate Identifier 2010–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model PIAGGIO P–180 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 23, 2010.

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 20590, 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;* 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.*

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–2010–0778; Directorate Identifier 2010–CE–034–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2010–0124 (Correction: June 22, 2010), dated June 22, 2010, (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products The MCAI states:

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

This AD requires:

(1) Inspection of the hinges fittings for corrosion and of the stabilizer for delamination;

(2) Repair of the stabilizer, if necessary;

(3) Replacement of the fittings, if corroded;

(4) Improvement of fittings installation;

(5) Installation of aluminum strips in the stabilizer to improve bonding, in accordance with Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0262 Revision 2.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A. has issued Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 96 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $73,440, or $765 per product.

In addition, we estimate that any necessary follow-on actions would take about 32 work-hours and require parts costing $11,000, for a cost of $13,720 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this 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 AD:

Piaggio Aero Industries S.p.A.: Docket No. FAA–2010–0778; Directorate Identifier 2010–CE–034–AD.

Comments Due Date

(a) We must receive comments by September 23, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PIAGGIO P–180 airplanes, serial numbers 1002 and 1004 through 1191, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

This AD requires:

(1) Inspection of the hinges fittings for corrosion and of the stabilizer for delamination;

(2) repair of the stabilizer, if necessary;

(3) replacement of the fittings, if corroded;

(4) improvement of fittings installation;

(5) installation of aluminum strips in the stabilizer to improve bonding, in accordance with Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0262 Revision 2.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 1,500 hours time-in-service (TIS) after the effective date of this AD or within 4 years after the effective date of this AD, whichever occurs first, do the following:

(i) Remove the left-hand (LH) and the right-hand (RH) elevators and do all of the inspections and corrective actions following the Accomplishment Instructions in Parts A, B, C, D, and E of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010.

(ii) Reinstall the LH and RH elevators and do the final checks following the Accomplishment Instructions, Part F, of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262 Revision 2, dated March 17, 2010.

(2) We will allow "unless already done" credit for inspections and corrective actions already done, before the effective date of this AD, following PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletins (MANDATORY) N.: SB–80–0262, original issue dated September 24, 2009; or Revision 1 dated December 23, 2009, for compliance with the requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act

(44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD No.: 2010–0124 (Correction: June 22, 2010), dated June 22, 2010; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010, for related information.

Issued in Kansas City, Missouri, on August 2, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–19551 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0428; Airspace Docket No. 10–AEA–13]

Amendment of Class D and E Airspace, Establishment of Class E Airspace; Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and E airspace at Patuxent River Naval Air Station (NAS), Patuxent River, MD, to reflect the part-time operating status of the control tower and establish Class E airspace designated as surface areas to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for the airport. This action would enhance the safety and management of Instrument Flight Rules (IFR) operations at Patuxent River NAS, Patuxent, MD.

DATES: 0901 UTC. Comments must be received on or before September 23, 2010.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0428; Airspace Docket No. 10–AEA–13, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0428; Airspace Docket No. 10–AEA–13) and be submitted in triplicate to the Docket Management System (*see* **ADRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0428; Airspace Docket No. 10–AEA–13." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D airspace and Class E airspace designated as an extension to Class D surface area at Patuxent River NAS, Patuxent River, MD, to reflect the part-time operations of the airport control tower, establishing in advance the dates and times by a Notice to Airmen, and establish Class E airspace designated as surface areas to provide controlled airspace required to support the SIAPs developed for Patuxent River NAS.

Class D airspace designations, Class E surface airspace designations and Class E airspace designations as extensions to a Class D surface area are published in Paragraph 5000, 6002, and 6004 respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class D and existing Class E airspace and establish Class E airspace designated as surface areas at Patuxent River NAS, Patuxent River, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA MD D Patuxent River, MD [Amended]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′30″ N., long. 76°24′59″ W.)
Chesapeake Ranch Airpark, MD
(Lat. 38°21′40″ N., long. 76°24′19″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Patuxent River NAS (Trapnell Field) and within a .5-mile radius of Chesapeake Ranch Airpark excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA MD E2 Patuxent River, MD [New]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′30″ N., long. 76°24′59″ W.)
Patuxent VORTAC
(Lat. 38°17′16″ N., long. 76°24′01″ W.)
Patuxent River NDB
(Lat. 38°17′09″ N., long. 76°24′11″ W.)
Chesapeake Ranch Airpark, MD
(Lat. 38°21′40″ N., long. 76°24′19″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of Patuxent River NAS (Trapnell Field) and within 1.8 miles each side of the Patuxent VORTAC 045° radial extending from the 4.5-mile radius of Patuxent River NAS to 6.1 miles northeast of the VORTAC; and within 1.8 miles each side of the Patuxent VORTAC 235° radial extending from the 4.5-mile radius to 6.6 miles southwest of the VORTAC; and within 1.8 miles each side of the Patuxent River NDB 233° bearing extending from the 4.5-mile radius to 6.1 miles southwest of the NDB; and within 1.8 miles each side of the Patuxent VORTAC 140° radial extending from the 4.5-mile radius to 10.5 miles southeast of the VORTAC; and within a .5-mile radius of Chesapeake Ranch Airpark, excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class E airspace area is effective during those times when the Class D airspace is not in effect.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Patuxent River, MD [Amended]

Patuxent River NAS (Trapnell Field), MD
(Lat. 38°17′30″ N., long. 76°24′59″ W.)
Patuxent VORTAC
(Lat. 38°17′16″ N., long. 76°24′01″ W.)
Patuxent River NDB
(Lat. 38°17′09″ N., long. 76°24′11″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Patuxent VORTAC 045° radial extending from the 4.5-mile radius of Patuxent River NAS (Trapnell Field) to 6.1 miles northeast of the VORTAC; and within 1.8 miles each side of the Patuxent VORTAC 235° radial extending from the 4.5-mile radius to 6.6 miles southwest of the VORTAC; and within 1.8 miles each side of the Patuxent River NDB 233° bearing extending from the 4.5-mile radius to 6.1 miles southwest of the NDB; and within 1.8 miles each side of the Patuxent VORTAC 140° radial extending from the 4.5-mile radius to 10.5 miles southeast of the VORTAC, excluding that airspace within Restricted Areas R–4005 and R–4007 when active. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

Issued in College Park, Georgia, on July 30, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–19583 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0453; Airspace Docket No. 10–AAL–14]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airway G–4; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 8, 2010 (75 FR 32317). In that action, the FAA proposed to remove Federal Airway Green (G–4) in Alaska. The FAA has determined that the withdrawal is warranted since the proposed action was based on the decommissioning of the Wood River Non-directional Beacon near the town of Dillingham, Alaska, which will now remain in service.

DATES: Effective date 0901 UTC, August 9, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 8, 2010, the FAA published in the **Federal Register** an NPRM proposing to remove Federal Airway G–4 (75 FR 32317), Docket No. FAA–2010–0453. A review of Alaska airspace revealed that numerous aircraft depend on G–4 to support remote communities, therefore the FAA has determined to withdraw the proposed action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the FAA withdraws the NPRM published in the **Federal Register** June 8, 2010, (75 FR 32317) [2010–13609].

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

Issued in Washington, DC, July 28, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–19489 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, and 140

RIN 3038–AC72

Acknowledgment Letters for Customer Funds and Secured Amount Funds

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend its regulations regarding the required content of the acknowledgment letter that a registrant must obtain from any depository holding its segregated customer funds or funds of foreign futures or foreign options customers, and certain technical changes.

DATES: Submit comments on or before September 8, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *E-mail: acknowledgmentletter@cftc.gov.* Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* or Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation 1.20 (17 CFR 1.20) requires futures commission merchants (FCMs) that accept customer funds and derivatives clearing organizations (DCOs) that accept customer funds from FCMs to segregate and separately account for those funds.[1] Currently, Regulation 1.20 requires such FCMs and DCOs to obtain from the bank, trust company, FCM or DCO [2] holding customer funds in the capacity of a depository (each, a "Depository") a written acknowledgment that the Depository was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Commodity Exchange Act (Act) [3] and CFTC regulations.[4] Regulation 1.26 (17 CFR 1.26), which requires FCMs and DCOs to segregate and separately account for instruments purchased with customer funds, repeats the requirement to obtain an acknowledgment letter. FCMs also must obtain a similar written acknowledgment from Depositories holding "secured amount" funds [5] required under Regulation 30.7 (17 CFR 30.7), which governs the treatment of money, securities, and property held for or on behalf of the FCM's foreign futures and foreign options customers.

On February 20, 2009, the Commission published proposed amendments to Regulations 1.20, 1.26, and 30.7 for public comment.[6] The proposed amendments set out specific representations that would be required in the acknowledgment letters in order to reaffirm and clarify the obligations that Depositories incur when accepting customer funds or secured amount funds. The Commission also proposed several technical changes.

In response, the Commission received comment letters from the Futures Industry Association ("FIA"), Joint Audit Committee ("JAC"), National Futures Association ("NFA"), Managed Funds Association ("MFA"), and Katten Muchin Rosenman LLP ("Katten"), which are discussed below. In light of the comments received, the Commission has determined to re-propose the amendments to Regulations 1.20, 1.26, and 30.7, with several changes made in response to the comments. In addition, the Commission is proposing standard template acknowledgment letters that would be required to be used. These are proposed for inclusion in a new Appendix A to each of Regulations 1.20, 1.26, and 30.7. The Commission invites public comment on all aspects of the proposed regulations and the proposed letters.

II. Comments Received

FIA generally supported the proposed regulations but requested that the effective date of the final rule be extended beyond the proposed date of 180 days from the date of publication in the **Federal Register** to allow FCMs, DCOs, and Depositories sufficient time to negotiate and put in place acknowledgment letters satisfying the proposed Commission regulations and also to allow them an opportunity to work together to develop a standard template acknowledgment letter that would satisfy the proposed regulations. In addition, FIA expressed interest in having its member Depositories work with the Commission on a standardized notice, authentication, and instruction protocol and encouraged the Commission to develop a system for electronic filing of the new acknowledgment letters.

The JAC supported the proposed regulations but requested guidance regarding the circumstances that would necessitate updating acknowledgment letters (e.g., name change of FCM or depository, merger of FCM or depository, addition or deletion of account number) as well as acceptable timeframes for such updating. In addition, the JAC questioned the benefit of requiring submission of acknowledgment letters to the Commission without also requiring documentation necessary for verification. Finally, the JAC requested that the Commission amend Regulation 30.7 to provide relief, similar to that provided under Regulations 1.20 and 1.26, that would exempt DCOs from having to provide acknowledgment

[1] *See* 17 CFR 1.3(gg) (defining the term "customer funds").

[2] Regulation 1.20(a) does not require a written acknowledgment to be obtained from "a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers."

[3] 7 U.S.C. 1 *et seq.*

[4] 17 CFR parts 1–199.

[5] *See* 17 CFR 1.3(rr) (defining the term "foreign futures or foreign options secured amount").

[6] 74 FR 7838 (February 20, 2009).

letters if they follow the requirements of the CEA.

NFA supported the proposed regulations but recommended that the Commission require that acknowledgment letters be filed with NFA as well as the Commission when NFA is the firm's designated self-regulatory organization ("DSRO"), so that NFA has ready access to the same information that the Commission does. NFA also asked that the Commission clarify when acknowledgment letters should be amended for changes made after the effective date of the proposed regulations.

Katten supported the purpose of the proposed regulations but suggested several revisions. First, Katten recommended that the Commission require an FCM, in opening an account with a Depository, to include in the account opening agreement an obligation on the Depository to release customer funds "immediately upon proper notice and instruction" from the FCM or the Commission (the same language that would be required in the acknowledgment letter under the proposed regulations). Katten expressed concern that a Depository would be exposed to potential liability to the FCM if the Depository were to honor an instruction from the Commission without the FCM's express consent. Second, Katten noted that the proposed regulations set no guidelines to be followed or conditions to be met before the Commission could issue an instruction to release customer funds. Third, Katten recommended that the Commission establish a reasonable means for a Depository to authenticate an instruction from the Commission. Fourth, Katten asked the Commission to confirm that, in the event that an FCM files for bankruptcy, a Depository will have no obligation to release customer funds except upon instruction from the bankruptcy trustee or pursuant to a court order. Fifth, Katten requested that the Commission provide additional guidance on a Depository's obligation to release customer funds "immediately" upon instruction from the Commission and suggested the use of the term "promptly" instead. Finally, Katten noted that Depositories frequently contract with an FCM depositor to advance monies to the FCM intraday, with the understanding that the FCM will deposit in the customer segregated account prior to the end of the business day (or by the start of the next business day), sums sufficient to repay the advance. Katten requested that the Commission confirm that, in the event that the FCM fails to repay the advance in a timely manner, or in the event of the FCM's bankruptcy, a Depository is entitled to recourse against the customer funds account for the amount of such funds advanced.

MFA commended the Commission for the proposed rulemaking and stated that it believes the proposed rules would provide customers with greater clarity with respect to their deposited funds.

The Commission's response to the comments received is discussed below.

III. Discussion of the Proposed Regulations

A. Regulation 1.20

In its original proposal, the Commission set out specific representations that Depositories would have to include in the acknowledgment letter required under Regulation 1.20. The proposed changes to Regulation 1.20 would have required the Depository to acknowledge in the letter that: (1) The FCM or DCO has established the account for the purpose of depositing customer funds; (2) the customer funds deposited therein are those of commodity or option customers of the FCM, or clearing members of the DCO, and that those funds are to be segregated in accordance with the provisions of the Act and Part 1 of the CFTC regulations; (3) the customer funds shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM or DCO; (4) the Depository must treat the customer funds in accordance with the Act and CFTC regulations; and (5) the Depository must immediately release the customer funds upon proper notice and instruction from the FCM or DCO or from the Commission.

As noted above, FIA recommended the development of a standard template acknowledgment letter that would satisfy the proposed regulations. The Commission agrees with this recommendation, and the specific representations that the Commission originally proposed for the letter have been incorporated into a standard template acknowledgment letter that would be adopted as Appendix A to Regulation 1.20. An FCM or DCO would be required to use this letter to satisfy the requirements of Regulation 1.20.

The Commission also has accepted the recommendation to develop a system for electronic filing of the acknowledgment letters. As initially proposed, paragraphs (d)(2) and (e)(2) of Regulation 1.20 would have required that a copy of the acknowledgment letter be filed with the regional office of the Commission with jurisdiction over the state in which the FCM or DCO's principal place of business is located; to reflect the change to electronic filing, paragraphs (d)(2) and (e)(2) now require that a copy of the letter be filed "with the Commission in the manner specified by the Commission." The Commission will offer guidance on electronic filing procedures for the acknowledgment letters before a final rule takes effect but expects that filing will be done through "WinJammer™," an application currently used by FCMs to file their financial reports with the Commission. The use of WinJammer™ will ensure that only those individuals authorized by an FCM to submit an acknowledgment letter on its behalf will be able to do so, and it also will allow NFA and other DSROs to have access to the acknowledgment letters.

Regulation 1.20 currently does not address the circumstances under which an FCM or a DCO must amend an existing acknowledgment letter or the amount of time allowed for doing so. Proposed paragraphs (d)(3) and (e)(3) require the acknowledgment letter to be amended within 60 days of any changes in the following: the name of the FCM or DCO depositing the customer funds; the name of the bank, trust company, DCO or FCM receiving the customer funds; or the account number(s) under which the customer funds are held.

The proposed standard template acknowledgment letter includes language that requires the Depository to acknowledge that it must "immediately" release customer funds upon "proper notice and instruction" from the FCM or DCO or from the Commission. The Commission recognizes that the release of customer funds may be delayed by practical considerations (e.g., Fedwire is unavailable), but the Depository must make every effort to execute the transfer as soon as possible. The transfer of customer funds from a segregated account cannot be delayed due to concerns about the financial status of the FCM or DCO that deposited the funds.

The Commission is not proposing specific standards for what constitutes "proper notice" from the Commission to the Depository. This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. However, the Commission would confirm the instruction in writing as soon as practicable.

As noted above, the Commission received a comment letter expressing concern that a Depository would be exposed to potential liability to the FCM

if the Depository were to honor an instruction from the Commission without the FCM's express consent. The Commission believes that the acknowledgment letter and Regulation 1.20, as proposed, would provide sufficient legal basis for the Depository to act on any such instruction from the Commission. The letter, which must be agreed to and signed by both the FCM (or DCO) and the Depository, states: "We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC." The Commission would issue such an instruction only when, in the judgment of the Commission, it is necessary to do so for the protection of customer funds. For example, the prospective insolvency of the FCM could prompt an instruction from the Commission to release the customer funds. However, the standard template acknowledgment letter does include language confirming that, in the event that the FCM becomes subject to a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, the Depository will have no obligation to release the customer funds except upon instruction from the bankruptcy trustee or pursuant to a court order.

One of the comment letters also noted that Depositories frequently contract with an FCM depositor to advance monies to the FCM intraday, with the understanding that the FCM will deposit in the customer segregated account prior to the end of the business day (or by the start of the next business day), sums sufficient to repay the advance. The Commission was asked to confirm that, in the event that the FCM fails to repay the advance in a timely manner, or in the event of the FCM's bankruptcy, a Depository is entitled to recourse against the customer funds account for the amount of such funds advanced. The Commission believes that Section 4d of the Act[7] does not permit such an arrangement because the advance is made to the FCM account holder and Section 4d expressly prohibits "any person, including* * *any depository, that has received any money, securities, or property for deposit in a [customer segregated account], to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant."[8]

B. Regulation 1.26

The proposed changes to Regulation 1.26 would affirm that the written acknowledgment required for instruments in which customer funds are invested is identical to the written acknowledgment required under Regulation 1.20 and therefore must meet the requirements set out in Regulation 1.20. The Commission also is proposing a standard template acknowledgment letter to be used when customer funds are invested in money market mutual funds, which would be adopted as Appendix A to Regulation 1.26.[9]

C. Regulation 30.7

In its original proposal, the Commission proposed to amend Regulation 30.7 to set out specific representations that Depositories holding secured amount funds would have to include in the acknowledgment letter required by the regulation.[10] The proposed changes to Regulation 30.7 would have required the Depository to acknowledge in the letter that: (1) It meets the requirement set out in Regulation 30.7(c)(1), which lists the types of depositories that may accept secured amount funds; (2) the FCM has established the account for the purpose of depositing money, securities, or property for or on behalf of customers that include, but are not limited to, foreign futures and foreign options customers; (3) the money, securities, or property deposited therein are held on behalf of foreign futures and foreign options customers of the FCM and may not be commingled with the FCM's own funds or any other funds that the Depository may hold, in accordance with the provisions of the Act and Part 30 of the CFTC regulations; (4) the money, securities, or property shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM; (5) the Depository must treat the money, securities, or property in accordance with the provisions of the Act and CFTC regulations; and (6) the Depository must release immediately, subject to requirements of applicable foreign law, the money, securities, or property upon proper notice and instruction from the FCM or the Commission.

As noted above, the Commission now is proposing a standard template acknowledgment letter under Regulations 1.20 and 1.26, and the Commission is doing the same for Regulation 30.7. The specific representations that the Commission originally proposed for the letter required under Regulation 30.7 have been incorporated into a standard template acknowledgment letter that would be adopted as Appendix A to Regulation 30.7.

Also as noted above, the Commission has decided to develop a system for electronic filing of the acknowledgment letters. As initially proposed, paragraph (c)(2)(iii) of Regulation 30.7 would have required the FCM to file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the FCM's principal place of business is located; to reflect the change to electronic filing, paragraph (c)(2)(ii) now requires that a copy of the letter be filed "with the Commission in the manner specified by the Commission." The Commission will offer guidance on electronic filing procedures for the acknowledgment letters before a final rule takes effect but expects that filing will be done through "WinJammer™," an application currently used by FCMs to file their financial reports with the Commission. The use of WinJammer™ will ensure that only those individuals authorized by an FCM to submit an acknowledgment letter on its behalf will be able to do so, and it also will allow NFA and other DSROs to have access to the acknowledgment letters.

Regulation 30.7 currently does not address the circumstances under which an FCM must amend an existing

[7] 7 U.S.C. 6d.

[8] *See* Section 4d(b) of the Act, 7 U.S.C. 6d(b). The arrangement outlined in the comment letter is distinguishable from other arrangements involving segregated funds that the Commission has previously allowed. For example, CFTC Interpretative Letter No. 86–9 confirmed that, when there is sufficient aggregate value in the form of cash and securities, but insufficient cash, in the customer segregated account to meet a customer margin or variation call, a bank may allow an overdraft in the account in order to meet the call and may settle the overdraft by offsetting securities held in the customer segregated account. The letter allowed such offsetting only to meet the obligations of customers, not obligations of the FCM. Similarly, CFTC No-Action Letter No. 04–26 confirmed that an FCM that holds excess funds in segregation and has a residual interest in such funds may pay account service charges directly out of a customer segregated account as a reduction of such residual interest, subject to additional conditions set forth in the letter. Although the letter allowed the charges to be paid from the customer segregated account, the funds being used had to belong to the FCM and not to its customers.

[9] Regulation 1.25(c) sets forth the requirements for investment of customer funds in money market mutual funds. Among them is the requirement that if the FCM or DCO "holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgement letter required by § 1.26." *See* 17 CFR 1.25(c)(3).

[10] The Commission has issued an interpretative statement with respect to the secured amount requirement set forth in Regulation 30.7. *See* 17 CFR part 30, App. B.

acknowledgment letter or the amount of time allowed for doing so. Proposed paragraph (c)(2)(iii) requires the acknowledgment letter to be amended within 60 days of any changes in the following: the name of the FCM; the name of the Depository; [11] or the account number(s) under which the secured amount funds are held.

The proposed standard template acknowledgment letter includes language that requires the Depository to acknowledge that it must "immediately" release, subject to the requirements of U.S. or non-U.S. law as applicable,[12] secured amount funds upon "proper notice and instruction" from the FCM or from the Commission. The Commission recognizes that the release of secured amount funds may be delayed by practical considerations (e.g., Fedwire is unavailable), but the Depository must make every effort to execute the transfer as soon as possible. The transfer cannot be delayed due to concerns about the financial status of the FCM that deposited the funds.

The Commission is not proposing specific standards for what constitutes "proper notice" from the Commission to the Depository. This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. However, the Commission would confirm the instruction in writing as soon as practicable.

D. Technical Amendments

Regulation 1.20(a) imposes upon "[e]ach registrant" the requirement to obtain and retain a written acknowledgment when customer funds are deposited with "any bank, trust company, clearing organization, or another futures commission merchant." Regulation 1.20(a) applies to FCMs, as distinguished from Regulation 1.20(b), which applies to DCOs. Therefore, the Commission proposes to substitute the term "futures commission merchant" for the term "registrant" to more accurately reflect the intent and meaning of Regulation 1.20(a). In connection with this, the Commission further proposes to insert the word "other" before the term "futures commission merchant" that appears subsequently in the same sentence, to distinguish between the FCM holding the funds of its own customers and an FCM holding customer funds of another FCM.

Regulations 1.20, 1.26, and 30.7 currently require that acknowledgment letters be retained for the period specified in Regulation 1.31, which applies to all recordkeeping required by the Act and CFTC regulations. Regulation 1.31 requires records to be kept for five years and to be readily accessible for the first two years of that five-year period. The proposed revisions would make clear that an acknowledgment letter is to be kept readily accessible for as long as the account remains open and that the retention requirements that would otherwise apply under Regulation 1.31 would only take effect once the account has been closed. For example, if the account remains open for ten years, the letter must be kept readily accessible for twelve years (the ten years during which the account is open plus the two years required by Regulation 1.31) and then for an additional three years, also as required by Regulation 1.31.

Regulations 1.20 and 1.26 use the term "clearing organization" to describe an entity that performs clearing functions. The Act, as amended by the Commodity Futures Modernization Act of 2000,[13] now provides that a clearing organization for a contract market must register as a "derivatives clearing organization." [14] To be consistent with the Act and other CFTC regulations, the Commission proposes to replace the term "clearing organization," wherever it appears in Regulations 1.20 and 1.26, with the term "derivatives clearing organization."

Finally, the Commission also is proposing technical amendments to Regulation 140.91 to explicitly delegate to the Director of the Division of Clearing and Intermediary Oversight the authority to perform certain functions that are reserved to the Commission under the proposed changes to Regulations 1.20, 1.26, and 30.7. Thus, for example, the Director of the Division of Clearing and Intermediary Oversight would have delegated authority to instruct a Depository to release customer funds or secured amount funds.

E. Proposed Effective Date

FCMs and DCOs will need to obtain new acknowledgment letters that comply with the proposed regulations before the final regulations take effect. The Commission recognizes the need for time to obtain the letters. However, the adoption of a standard template acknowledgment letter would eliminate the need for FCMs and Depositories to negotiate new acknowledgment letters that satisfy the proposed regulations. Therefore, the proposed effective date of the amendments to Regulations 1.20, 1.26, and 30.7 is 90 days from the date of publication of the final regulations in the **Federal Register**.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [15] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The amendments adopted herein will affect FCMs and DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[16] The Commission has previously determined that FCMs [17] and DCOs [18] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") [19] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The regulations to be amended under this proposal are part of an approved collection of information (OMB Control No. 3038–0024). The proposed amendments would not result

[11] Regulation 30.7(c)(1) (17 CFR 30.7(c)(1)) sets out certain requirements that an entity must meet to qualify as a depository that may accept from an FCM the money, securities, and property representing the foreign futures or foreign options secured amount.

[12] The Commission notes that under the laws of some foreign countries, immediate release of customer funds may not always be possible. Regulation 30.6(a) (17 CFR 30.6(a)) requires FCMs to furnish customers with a separate written disclosure statement containing the language set forth in Regulation 1.55(b) (17 CFR 1.55(b)). Regulation 1.55(b)(7) states in relevant part:

No domestic organization regulates the activities of a foreign exchange * * * and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. * * * [F]unds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges.

[13] Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[14] *See* Section 5b of the Act, 7 U.S.C. 7a–1. *See also* Section 1a(9) of the Act, 7 U.S.C. 1a(9) (defining the term "derivatives clearing organization").

[15] 5 U.S.C. 601 *et seq.*

[16] 47 FR 18618 (Apr. 30, 1982).

[17] *Id.* at 18619.

[18] 66 FR 45604, 45609 (Aug. 29, 2001).

[19] 44 U.S.C. 3501 *et seq.*

in any material modification to this approved collection. Accordingly, for purposes of the PRA, the Commission certifies that these proposed amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the proposed regulations in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed regulations would benefit FCMs and DCOs, as well as customers of the futures and options markets, by reaffirming the legal obligation of Depositories holding customer funds or secured amount funds to treat those funds in accordance with the requirements of the Act and CFTC regulations.

2. *Efficiency and competition.* The proposed regulations are not expected to have an effect on efficiency or competition.

3. *Financial integrity of futures markets and price discovery.* The proposed regulations would enhance and strengthen the protection of customer funds and secured amount funds, thus contributing to the financial integrity of the futures and options markets as a whole. This, in turn, would further support the price discovery and risk transfer functions of such markets.

4. *Sound risk management practices.* The proposed regulations would reinforce the sound risk management practices already required of FCMs and DCOs holding customer funds or secured amount funds.

5. *Other public considerations.* Requiring specific representations in a Depository's written acknowledgment would reduce the likelihood that the Depository would misinterpret its obligations in connection with the safekeeping and administration of customer funds and secured amount funds. The Commission recognizes that there are certain administrative costs associated with obtaining new acknowledgment letters. However, the Commission believes those costs are minimal and are outweighed by the benefits. For example, because a template letter is required, FCMs and DCOs will not have to expend resources to negotiate new letters with their Depositories.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

List of Subjects in 17 CFR Parts 1, 30, and 140

Commodity futures, Consumer protection.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 1, 30, and 140 as follows:

PART 1—GENERAL REGULATIONS

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise § 1.20 to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, derivatives clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each futures commission merchant shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization, or other futures commission merchant, in accordance with the requirements of paragraph (d) of this section: *Provided, however,* that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a derivatives clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any derivatives clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a derivatives clearing organization from a member of the derivatives clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's commodity or option customers and all money accruing to such commodity or option customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such commodity or option customers, and a derivatives clearing organization shall not hold, use or dispose of such customer funds except as belonging to such commodity or option customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the commodity or option customers of clearing members, segregated as required by the Act and these regulations. The derivatives clearing organization shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and

thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of this section.

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a derivatives clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the derivatives clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in § 1.25.

(d)(1) The written acknowledgment required by paragraph (a) of this section is set out in Appendix A to this section.

(2) The futures commission merchant shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(3) The written acknowledgment shall be amended within 60 days of any changes in the following:

(i) The name of the futures commission merchant depositing customer funds;

(ii) The name of the bank, trust company, derivatives clearing organization or futures commission merchant receiving customer funds; or

(iii) The account number(s) under which customer funds are held.

(e)(1) The language set forth in the written acknowledgment required under paragraph (b) of this section shall be as set out in Appendix A to this section.

(2) The derivatives clearing organization shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(3) The written acknowledgment shall be amended within 60 days of any changes in the following:

(i) The name of the derivatives clearing organization depositing customer funds;

(ii) The name of the bank or trust company receiving customer funds; or

(iii) The account number(s) under which customer funds are held.

Appendix § 1.20—Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant or Derivatives Clearing Organization] ("we" or "our") have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] ("you" or "your") entitled:

[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.20 Customer Segregated Account

Account Number(s):

(collectively, the "Account(s)").

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the "Funds") of our customers who trade commodities, options, cleared OTC derivatives products and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own Funds and all other accounts maintained by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating assets held in the Account(s) for purposes of variation settlement or posting original margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation

even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto. This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]
By:
Name:
Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]
By:
Name:
Title:
DATE:

3. Revise § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, derivatives clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization or other futures commission merchant, in accordance with the requirements of paragraph (d) of § 1.20: *Provided, however,* that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such bank, trust company, derivatives clearing organization or other futures commission merchant shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

(b) Each derivatives clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each derivatives clearing organization upon opening such an account shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of § 1.20. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

(c) Each futures commission merchant or derivatives clearing organization which invests customer funds in money market mutual funds, as permitted by § 1.25, shall separately account for such funds and segregate such funds as belonging to such commodity or option customers. Such funds shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant or derivatives clearing organization, upon opening such an account, shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from the money market mutual fund as set out in Appendix A to this section.

Appendix A § 1.26—Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant or Derivatives Clearing Organization] ("we" or "our") on behalf of our commodity futures and options customers in shares of [Name of Money Market Mutual Fund] ("you" or "your") under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account
Account Number(s):
(collectively, the "Account(s)").

You acknowledge and agree that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively the "Funds"), for the benefit of our customers who trade commodities, options, cleared OTC derivatives products and other products ("Commodity Customers"), as required by Commodity Futures Trading Commission ("CFTC") Regulation 1.26, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own funds and from any other funds held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in

Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of setoff against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated. We are permitted to invest our Commodity Customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and

(3) The agreement under which we invest our Commodity Customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares to a third party permitted to receive the shares under the rules of the SEC.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]
By:
Name:
Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]
By:
Name:
Title:

DATE:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

4. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

5. Revise paragraph (c)(2) of § 30.7 to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(c) * * *

(2)(i) Each futures commission merchant must obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such depository as set out in Appendix E to this part.

(ii) The futures commission merchant shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(iii) The written acknowledgment shall be amended within 60 days of any changes in the following:

(A) The name of the futures commission merchant;

(B) The name of the depository; or

(C) The account number(s) under which money, securities, and property representing the foreign futures or foreign options secured amount are held.

* * * * *

6. Add appendix E to read as follows:

Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Account

[Date]

[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] ("we" or "our") have opened or will open with [Name of Depository] ("you" or "your") entitled:

[Name of Futures Commission Merchant]
CFTC Regulation 30.7 Customer Secured Account
Account Number(s):
(collectively, the "Account(s)").

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively "Funds") for or on behalf of our customers who trade commodities, options, cleared OTC derivatives products and other products, that include, but are not limited to, customers who are entering into foreign futures and/or foreign options transactions (as such terms are defined in U.S. Commodity Futures Trading Commission ("CFTC") Regulation 30.1, as amended). The Funds deposited in the Account(s) or accruing to the credit of the Accounts will be kept separate and apart and separately accounted for on your books from our own funds in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and Part 30 of the CFTC's regulations, as amended, and may not be commingled with our own Funds in any proprietary account we maintain with you and the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you, and that you understand the nature of the Funds held or hereafter deposited in the Account(s) and that you will treat and maintain such Funds in accordance with the provisions of the Act and CFTC regulations. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating assets held in the Account(s) for purposes of variation settlement or posting original margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that you meet the requirements detailed for depositories in CFTC Regulation 30.7, as amended. You further acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of US or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court. Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant]

By:
Name:
Title:

ACKNOWLEDGED AND AGREED:
[Name of Depository]

By:
Name:
Title:
DATE:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

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

Authority: 7 U.S.C. 2 and 12a.

7. In § 140.91, redesignate paragraphs (a)(7) and (a)(8) as paragraphs (a)(8) and (a)(11) respectively; add new paragraphs (a)(7), (a)(9), and (a)(10); and revise newly designated paragraph (a)(11) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(7) All functions reserved to the Commission in § 1.20 of this chapter.

* * * * *

(9) All functions reserved to the Commission in § 1.26 of this chapter.

(10) All functions reserved to the Commission in § 30.7 of this chapter.

(11) All functions reserved to the Commission in § 41.41 of this chapter. Any action taken pursuant to the delegation of authority under this paragraph (a)(11) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.

* * * * *

Issued in Washington, DC, on August 3, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–19553 Filed 8–6–10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2010–0412; FRL–9186–1]

Determination of Nonattainment and Reclassification of the Dallas/Fort Worth 1997 8-hour Ozone Nonattainment Area; TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Dallas/Fort Worth (DFW) moderate 8-hour ozone nonattainment area did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2010, the attainment deadline set forth in the Clean Air Act (CAA or Act) and Code of Federal Regulations (CFR) for moderate nonattainment areas. This proposal is based on EPA's review of complete, quality assured and certified ambient air quality monitoring data for the 2007–2009 monitoring period that are available in the EPA Air Quality System (AQS) database. If EPA finalizes this determination, the DFW area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour standard. The serious area attainment date for the DFW area would be as expeditiously as practicable, but not later than June 15, 2013. Once reclassified, Texas must submit State Implementation Plan (SIP) revisions for the DFW area that meet the 1997 8-hour ozone nonattainment requirements for serious areas as required by the Act. In this action, EPA is also proposing that Texas submit the required SIP revisions for the serious area attainment demonstration, reasonable further progress (RFP), reasonably available control technology (RACT), contingency measures, and for all other serious area measures required under CAA section 182(c) to EPA no later than one year after the effective date of the final rulemaking for this reclassification; except that we propose that Texas submit the required SIP revision for the Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, pursuant to section 182(b)(3)(A) of the Act.

DATES: Comments must be received on or before September 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2010–0412, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–6762.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such

deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2010–0412, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page to make photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6521; fax number 214–665–6762; e-mail address *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the Background for this proposed action?

A. What are the national ambient air quality standards?

Section 109 of the Act requires EPA to establish a NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare" and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is ozone and what is the 1997 8-hour ozone standard?

Ozone is a gas composed of three oxygen atoms. It is not usually emitted directly into the air, but at ground level is created by a chemical reaction between volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the presence of sunlight. On July 18, 1997, EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855) that was established by EPA in 1979. We revoked the 1-hour ozone standard effective June 15, 2005. *See* 40 CFR 50.9(b) and 69 FR 23858 (April 30, 2004). Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (*i.e.,* 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004).[1] Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states: "The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.084 ppm becomes 84 ppb.

0.085 ppm is the smallest value that is greater than 0.08 ppm." [2]

C. What is a SIP and how does it relate to the 1997 8-hour ozone standard?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. The SIPs may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

EPA published a first phase rule governing implementation of the 1997 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addressed, among other matters, classifications for Part D subpart 2 areas under the 1997 8-hour standard. The Phase 1 rule was challenged and certain portions of it were vacated by the DC Circuit in *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), clarified on rehearing, 489 F.3d 1245 (DC Cir. 2007), cert. denied, 128 S.Ct. 1065 (2008). The provisions of the Phase 1 rule that are directly relevant to this proposed rule—classifications for subpart 2 and the related 8-hour ozone standard attainment deadlines—are not among those that were successfully challenged, and they remain effective.

EPA also published a rule governing implementation of the 1997 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 rule addresses SIP obligations for the 1997 8-hour ozone NAAQS, including the SIP elements associated with RACT, reasonably available control measures (RACM), RFP, modeling and attainment demonstrations, new source review (NSR), vehicle inspection and maintenance programs (I/M), and contingency measures for failure to meet RFP and the attainment date.

For ozone nonattainment areas, requirements for SIPs are contained in part D, subparts 1 and 2 of the Act. Under subpart 2, the applicable control requirements become increasingly more stringent according to an area's classification as marginal, moderate, serious, severe or extreme.

D. What is the DFW nonattainment area, and what is its current 1997 8-hour ozone nonattainment classification?

The current DFW nonattainment area includes nine counties: Collin, Dallas, Denton, Tarrant (the core counties) and Ellis, Johnson, Kaufman, Parker, and Rockwall (the remaining counties). Under the 1-hour ozone standard, the DFW nonattainment area was classified as a "serious" nonattainment area and included only the four core counties. *See* 63 FR 8128 (February 18, 1998). The remaining counties maintained their initial designation of unclassifiable/attainment for the 1-hour ozone standard. *See* 56 FR 56694 (November 6, 1991).[3] On October 16, 2008, we determined that the DFW 1-hour ozone nonattainment area was attaining the 1-hour ozone standard based upon complete, quality-assured and certified ambient air monitoring data that showed the area had monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period (73 FR 61357). That determination allowed certain SIP planning measures to be suspended for so long as the area continues to monitor attainment of the 1-hour ozone standard. Today's proposed rulemaking addresses the area's attainment and reclassification only with respect to the 1997 8-hour ozone standard.

With regard to the 8-hour standard, on April 30, 2004, EPA published the 8-hour ozone designations in conjunction with its Phase I implementation rule (69 FR 23858 and 69 FR 23951, respectively). For areas subject to subpart 2 of the Act, such as the DFW nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 1997 8-hour ozone NAAQS and corresponds to the same length of time provided in Table 1 of section 181(a) of the Act: Marginal—3 years; Moderate—6 years; Serious—9 years, Severe—15 or 17 years; and Extreme—20 years.

The DFW area, consisting of all nine counties, was designated nonattainment for the 1997 8-hour ozone standard and classified as "moderate" based on a design value of 0.100 ppm, with an attainment date of June 15, 2010 (69 FR 23858). The design value (DV) of an area characterizes the severity of the air quality concern and is represented by the highest DV measured at any ozone monitor in the area. The calculation for the DV is the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration measured at a monitor. In response to the designation, on May 30, 2007, the State of Texas submitted an attainment plan designed to attain the 1997 8-hour ozone standard. The state submitted a supplement to this plan on April 23, 2008. On July 14, 2008, we proposed to conditionally approve the 1997 8-hour ozone attainment demonstration SIP revision for the DFW moderate 8-hour ozone nonattainment area. *See* 73 FR 40203. We finalized this approval on January 14, 2009. *See* 74 FR 1903. The DFW area met all of the current requirements for its moderate area classification.

E. What are the CAA provisions regarding determinations of nonattainment and reclassifications?

Section 181(b)(2) of the Act prescribes the process for making determinations upon failure of an ozone nonattainment area to meet the standard by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether or not the area attained the ozone standard by that date. For marginal, moderate, and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified by operation of law to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification.

II. What is EPA's evaluation of the DFW area's 8–hour ozone data?

EPA is proposing to make its determination of whether the DFW attained the 8-hour ozone standard by its attainment deadline based on quality-assured, quality-controlled ambient air monitoring data for the years 2007–2009. These data, from sites in the DFW area have been certified by TCEQ, and are presented in Table 1. These data show that the DFW area was

[2] EPA notes that today's proposed action deals with the classifications and SIP obligations associated with the 1997 8-hour ozone NAAQS. On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA anticipates that in 2010 it will have completed reconsideration of the standard and thereafter will proceed with designations. EPA's actions with respect to this new standard do not affect EPA's action here.

[3] Designations for Texas begin at 56 FR 56835.

violating the 1997 8-hour ozone standard at the time of its June 15, 2010 attainment deadline. As noted above, the highest design value at any regulatory monitor in the area is considered the design value for the area (40 CFR 58.1). The Keller and Eagle Mountain Lake monitoring sites recorded the highest 2007–2009 design values, and thus at the time of its attainment deadline, the area had a design value of 0.086 ppm. Thus, pursuant to section 181(b)(2) of the Act, EPA is proposing to determine that the DFW nonattainment area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2010, deadline for moderate nonattainment areas.

TABLE 1—DFW AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM)*

Site name and No.	4th Highest daily max			Design value (2007–2009)
	2007	2008	2009	
Fort Worth Northwest, 48–439–1002	0.081	0.073	0.083	0.079
Keller, 48–439–2003	0.084	0.085	0.090	0.086
Frisco, 48–085–0005	0.080	0.079	0.079	0.079
Midlothian OFW, 48–139–0016	0.076	0.072	0.072	0.073
Denton Airport South, 48–121–0034	0.089	0.084	0.082	0.085
Arlington Municipal Airport, 48–439–3011	0.075	0.078	0.080	0.077
Dallas North No. 2, 48–113–0075	0.079	0.076	0.088	0.081
Rockwall Heath, 48–397–0001	0.074	0.073	0.078	0.075
Grapevine Fairway, 48–439–3009	0.089	0.077	0.086	0.084
Kaufman, 48–257–0005	0.074	0.069	0.068	0.070
Granbury, 48–221–0001	0.081	0.073	0.077	0.077
Eagle Mountain Lake, 48–439–0075	0.084	0.085	0.091	0.086
Parker County, 48–367–0081	0.088	0.077	0.080	0.081
Cleburne Airport, 48–251–0003	0.087	0.083	0.080	0.083
Dallas Hinton St., 48–113–0069	0.076	0.064	0.062	0.067
Dallas Executive Airport, 48–113–0087	0.080	0.077	0.079	0.078
Greenville, 48–231–1006	0.069	0.063	0.067	0.066
Pilot Point, 48–121–1032	0.075	0.080	0.078	0.077

*Design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

Under section 181(a)(5) of the Act, and 40 CFR 51.907, an area can qualify for up to 2 one-year extensions of its attainment date if it meets the conditions set forth in 40 CFR 51.907. For the 1997 8-hour standard, if an area's fourth highest daily maximum 8-hour average value in the attainment year is 0.084 ppm or less (40 CFR 51.907), the area is eligible for the first one-year extension to the attainment date. The attainment year is the year immediately preceding the attainment date. The DFW area's attainment year is 2009. In 2009, the area's fourth-highest daily 8-hour average from the monitor with the highest average of the area's monitors was 0.091 ppm. 40 CFR 51.907(a), (c). Therefore, the DFW area does not qualify for a 1-year extension of its moderate area attainment deadline.

Section 181(b)(2)(A) of the Act provides that, should an area fail to attain by the applicable date, the area is reclassified by operation of law to the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B), whichever is higher. Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the DFW area's ozone design value at the time of today's notice is "marginal" because the area's 2009 calculated design value, based on quality-assured ozone monitoring data from 2007–2009, is 0.086 ppm. By contrast, the next higher classification for the DFW area is "serious." Because "serious" is a higher nonattainment classification than "marginal" under the statutory scheme in the Act, upon the effective date of a final rulemaking determining that the DFW has failed to attain the 1997 8-hour ozone standard by the applicable attainment date of June 15, 2010, the DFW area will be reclassified by operation of law as "serious."

III. What actions is EPA proposing?

A. Determination of Nonattainment, Reclassification of the DFW Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2) of the Act, EPA is proposing to determine that the DFW area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2010, attainment deadline prescribed under the Act for moderate ozone nonattainment areas. If EPA takes final action on this determination as proposed, the DFW area will be reclassified by operation of law from moderate to serious nonattainment. Serious areas are required to attain the standard "as expeditiously as practicable" but no later than 9 years after designation, or June 15, 2013. The "as expeditiously as practicable" attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 1997 8-hour ozone standard. EPA is proposing a schedule by which Texas will submit the SIP revisions necessary pursuant to reclassification to serious nonattainment of the 1997 8-hour ozone standard.

B. Proposed Date for Submitting a Revised SIP for the DFW Area

EPA is also addressing here the schedule by which Texas would be required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2012 (40 CFR 51.900(g)). The ozone season is the

ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the DFW area, March 1st is the beginning of the ozone monitoring season. Therefore, we propose that Texas submit the required SIP revisions, including the attainment demonstration, RFP, RACT, contingency measures, and other applicable serious area requirements to EPA as expeditiously as practicable, but not later than one year after the effective date of the final rulemaking for this reclassification. In addition, all applicable controls shall be implemented no later than March 1, 2012, the start of the ozone season for the attainment year.

Pursuant to section 182(c) of the Act and as further referenced below, the requirements for serious ozone nonattainment areas include, but are not limited to: (1) Attainment and reasonable further progress demonstrations (CAA section 182(c)(2), 40 CFR 51.908 and 40 CFR 51.910); (2) an enhanced monitoring program (CAA section 182(c)(1) and 40 CFR 58.10); (3) an enhanced vehicle inspection and maintenance program (CAA section 182(c)(3) and 40 CFR 51.350); (4) clean fuel vehicle programs (CAA section 182(c)(4)); (5) transportation control (CAA section 182(c)(5)); (6) a 50 ton-per-year major source threshold (CAA section182(c) and 40 CFR 51.165); (7) more stringent new source review requirements (CAA section 182(c)(6) and 40 CFR 51.165); (8) special rules for modification of sources (CAA sections 182(c)(7) and 182(c)(8), and 40 CFR 51.165); (9) contingency provisions (CAA section 182(c)(9)); and (10) increased offsets (CAA section 182(c)(10) and 40 CFR 51.165). *See* also the requirements for serious ozone nonattainment areas set forth in section 182(c) of the Act.

In addition, the requirements of section 182(b)(3) relating to Stage II gasoline vapor recovery shall apply, provided EPA has not yet found that onboard vapor recovery (ORVR) is in widespread use in the motor vehicle fleet and waived the section 182(b)(3) requirement.[4] Pursuant to section 182(b)(3)(B), we propose that Texas submit the SIP revision relating to Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, since that corresponds to the period that moderate and worse nonattainment areas were first required to submit Stage II SIPs following enactment of the 1990 CAA Amendments. Section 182(b)(3) requires implementation of Stage II controls within 6 months to two years after the date of adoption by the state of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles, depending on the age and throughput of the facility.[5]

The DFW 1-hour ozone nonattainment area was reclassified as serious for that standard on February 18, 1998 (63 FR 8128), so the 1-hour ozone standard requirements applicable to the area are those that apply to nonattainment areas classified as serious. Under the 1-hour ozone standard, Collin, Dallas, Denton and Tarrant counties were all classified as serious. As such, many of the requirements listed above are already being implemented in those areas, as specified in Table 2 below. However, some of these requirements will be new to the five remaining counties that were not included in the 1-hour ozone nonattainment area for DFW; these are also provided in Table 2 below. EPA also notes that there may be sources in the five remaining counties that will be newly subject to Title V and will have one year from the effective date of the final rulemaking for this reclassification to provide TCEQ with a Title V permit application.[6] A list of the requirements already in place and those yet to be implemented in the DFW area is provided in Table 2 below:

TABLE 2—STATUS OF REQUIREMENTS FOR THE PROPOSED DFW 1997 8-HOUR OZONE SERIOUS NONATTAINMENT AREA

Requirement	Status	Action needed or date approved by EPA
Attainment Demonstration 182(c)(2)(A)	Due 1 year from the effective date of the final rulemaking for this action.	Must be submitted to EPA for approval.
RFP Demonstration 182(c)(2)(B)	Due 1 year from the effective date of the final rulemaking for this action.	Must be submitted to EPA for approval.
Enhanced monitoring 182(c)(1)	Due 1 year from the effective date of the final rulemaking for this action.	Must be submitted to EPA for approval.
Enhanced I/M program	Implemented in all 9 counties	November 14, 2001 (66 FR 57261).
Clean-fuel vehicle programs 182(c)(4)	Equivalency program due 1 year from the effective date of the final rulemaking for this action[7].	Must be submitted to EPA for approval.

[4] Section 182(b)(3) imposes the Stage II requirement on moderate and worse ozone nonattainment areas, but pursuant to section 202(a)(6), section 182(b)(3) applied only in serious and worse areas after EPA promulgated rules for ORVR in 1994. Section 202(a)(6) additionally allows EPA to revise or waive the section 182(b)(3) requirement for all ozone nonattainment areas after EPA determines that ORVR is in widespread use throughout the motor vehicle fleet. If EPA finds that ORVR is in widespread use and waives the section 182(b)(3) requirement in advance of the date by which new serious areas would otherwise be required to implement Stage II controls, such areas would no longer be subject to the section 182(b)(3) requirement. Further, for any areas that already implement Stage II, to remove Stage II controls following an EPA widespread use and waiver decision, any EPA SIP approval would be subject to the CAA section 110(l) requirement that the revision does not interfere with any applicable requirement of the CAA.

[5] Pursuant to section 182(b)(3)(B), the compliance date shall be (i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after the date of the enactment of the Clean Air Act Amendments of 1990; (ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or (iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities. Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

[6] As stated earlier in this notice, in regards to requirements for SIPs regarding review of new or modified major stationary sources ("new source review"), the reclassification proposed herein would not lower the "major source" thresholds required in the four core counties because the statutory thresholds that applied by virtue of the area's classification under the 1-hour ozone standard continue to apply as anti-backsliding measures for the 1997 8-hour ozone standard (*see South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3rd 882 (DC 2006) rehearing denied 489 F.3d 1245, clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). In EPA's Phase 1 rule, EPA made NSR applicability thresholds dependent upon the status and classification of an area under the 1997 8-hour standard. The effect of the ruling in the *South Coast* case is to restore NSR applicability thresholds pursuant to the classifications previously in effect for areas designated nonattainment for the 1-hour standard. *See* EPA memorandum from Robert J. Meyers, "New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia Circuit on the Phase 1 Rule to Implement the 8–Hour Ozone National Ambient Air Quality Standards (NAAQS)," dated October 2, 2007. As provided in CAA sections 501 and 502(a) and 40 CFR 70.2, 70.3(a), 71.2 and 71.3(a), the thresholds at which a source is required to apply for and operate a Title V operating permit are linked to the NSR "major source" applicability threshold.

TABLE 2—STATUS OF REQUIREMENTS FOR THE PROPOSED DFW 1997 8-HOUR OZONE SERIOUS NONATTAINMENT AREA—Continued

Requirement	Status	Action needed or date approved by EPA
Transportation control 182(c)(5)	Transportation controls in place under the 1997 8-hr ozone moderate nonattainment area SIP.	Adopt transportation controls as needed in the serious nonattainment area and submit to EPA for approval.
50 tpy threshold for VOCs 182(c)	Implemented in all 9 counties	July 17, 2008 (73 FR 40972).
50 tpy threshold for NO_X	Implemented in all 9 counties	December 3, 2008 (73 FR 73562).
De minimis rule 182(c)(6)	Implemented in core counties	Must be expanded to all 9 counties.
Special rule for modifications of sources emitting less than 100 tons. 182(c)(7).	Implemented in core counties	Must be expanded to all 9 counties.
Special rule for modifications of sources emitting 100 tons or more. 182(c)(8).	Implemented in core counties	Must be expanded to all 9 counties.
Contingency provisions 182(c)(9)	Due 1 year from the effective date of the final rulemaking for this action.	Must be submitted to EPA for approval.
Offsets of 1.2 to 1 182(c)(10)	Implemented in core counties	Must be expanded to all 9 counties.
Stage II vapor recovery	Implemented in core counties	Submit evidence of widespread use or expand Stage II SIP to all 9 counties.[4]

IV. Proposed Action

Pursuant to section 181(b)(2) of the Act, EPA is proposing to determine, based on certified, quality-assured monitoring data for 2007–2009, that the DFW area did not attain the 1997 8-hour ozone standard by the applicable June 15, 2010 attainment deadline. If EPA finalizes this determination, upon the effective date of the final determination DFW will be reclassified by operation of law as a serious 1997 8-hour ozone nonattainment area. Pursuant to section 182(i) of the Act, EPA is also proposing the schedule for submittal of the SIP revisions required for serious areas once the DFW area is reclassified. We propose that Texas submit the required SIP revisions for the serious attainment demonstration, RFP, RACT, contingency measures, and for all other serious area measures required under CAA section 182(c) to EPA no later than one year after the effective date of the final rulemaking for this reclassification; except that we propose that Texas submit the required SIP revision for the Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, pursuant to section 182(b)(3)(A) of the Act.

V. Statutory and Executive Order Reviews

Under section 181(b)(2) of the CAA, a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification must occur by operation of law. A determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law under section 181(b)(2) does not in and of itself create any new requirements, but rather applies the requirements contained in the Clean Air Act. For these reasons, 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.*);
- 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 Clean Air Act; 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 rule 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 81

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

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

Dated: July 28, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–19574 Filed 8–6–10; 8:45 am]

BILLING CODE 6560–50–P

[4] In 2005, the Texas Legislature repealed the Texas Clean Fuel Fleet substitute program. As a result, Texas must submit an equivalency demonstration. *See* 75 FR 27514, beginning on page 27524 (May 17, 2010).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1060]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On July 2, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in

lieu of the information published at 74 FR 31656. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Cumberland County, Maine (All Jurisdictions). Specifically, it addresses the following flooding sources: Atlantic Ocean, Bonny Eagle Pond, Casco Bay, Crescent Lake, Dock Brook, Elkins Brook, Fore River, Highland Lake, Jackson Brook, Presumpscot River, and Saco Bay.

DATES: Comments are to be submitted on or before November 8, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1060, to Kevin C. Long, Acting Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820 or (e-mail) *kevin.long@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820 or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 74 FR 31656, in the July 2, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Cumberland County, Maine, and Incorporated Areas" addressed the following flooding sources: Atlantic Ocean, Casco Bay, Crescent Lake, Fore River, Jackson Brook, Presumpscot River, and Saco Bay. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In addition, it did not include the following flooding sources: Bonny Eagle Pond, Dock Brook, Elkins Brook, and Highland Lake. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	
Cumberland County, Maine (All Jurisdictions)				
Atlantic Ocean	Along the shoreline at the intersection of Hannaford Cove Road, Cunner Lane, and Rocky Point Lane.	+8	+12	Town of Cape Elizabeth.
	Along the shoreline, approximately 1,050 feet east of the intersection of Shore Road and Dyer Pond Road.	None	+42	
Bonny Eagle Pond	Entire shoreline within the Town of Standish	None	+268	Town of Standish.
Casco Bay	Along the shoreline, approximately 625 feet south of the intersection of Tondreau Point Road and Birch Run.	+8	+10	City of Portland, City of South Portland, Town of Cape Elizabeth, Town of Cumberland, Town of Harpswell.
	Along the shoreline, approximately 100 feet east of the intersection of Bluff Road and Cloyster Road.	None	+41	
Crescent Lake	Along the shoreline at Edwards Road	None	+278	Town of Casco.
Dock Brook	Just upstream of the confluence with Kezar Pond	None	+384	Town of Bridgton.
	Approximately 1.1 mile northwest of the intersection of White Mountain Way and Davids View, at the Town of Bridgton corporate limits.	None	+384	
Elkins Brook	Just upstream of the confluence with Kezar Pond	None	+384	Town of Bridgton.
	Approximately 1,400 feet northeast of High Street, at the Town of Bridgton corporate limits.	None	+384	
Fore River	Along the shoreline, at the terminus of Holyoke Wharf	+9	+10	City of Portland, City of South Portland.
	Along the shoreline, at the terminus of Portland Street.	None	+13	
Highland Lake	Entire shoreline within the Town of Windham	None	+192	Town of Windham.
Jackson Brook	Approximately 1,500 feet south of the intersection of Thomas Drive and County Road.	None	+45	City of Portland.
Presumpscot River	Approximately 1,250 feet west of the intersection of Cardinal Lane and River Road.	None	+225	Town of Standish.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities Affected
		Effective	Modified	
Saco Bay	Along the shoreline, approximately 1,200 feet west of the intersection of Ferry Road and Black Point Road.	None	+12	Town of Scarborough.
	Along the shoreline at the intersection of Black Point Road and Whittier Lane.	+8	+24	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Portland
Maps are available for inspection at City Hall, 389 Congress Street, Portland, ME 04101.

City of South Portland
Maps are available for inspection at City Hall, 25 Cottage Road, South Portland, ME 04106.

Town of Bridgton
Maps are available for inspection at 3 Chase Street, Bridgton, ME 04009.

Town of Cape Elizabeth
Maps are available for inspection at the Town Hall, 320 Ocean House Road, Cape Elizabeth, ME 04107.

Town of Casco
Maps are available for inspection at the Town Hall, 635 Meadow Road, Casco, ME 04015.

Town of Cumberland
Maps are available for inspection at the Town Hall, 290 Tuttle Road, Cumberland, ME 04021.

Town of Harpswell
Maps are available for inspection at the Town Hall, 263 Mountain Road, Harpswell, ME 04079.

Town of Scarborough
Maps are available for inspection at the Town Hall, 259 U.S. Route 1, Scarborough, ME 04074.

Town of Standish
Maps are available for inspection at the Town Office, 175 Northeast Road, Standish, ME 04084.

Town of Windham
Maps are available for inspection at 8 School Road, Windham, ME 04062.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 29, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–19550 Filed 8–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27, 37, and 38

[Docket No. OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of Public Meeting and Extension of Comment period.

SUMMARY: The Department of Transportation is holding a public meeting on August 20, 2010, concerning the Department's pending rulemaking to amend its Americans with Disabilities Act (ADA) rules. In connection with the meeting, the comment period on this will be reopened briefly, from August 19–25, 2010.

DATES: The public meeting will be held on August 20, 2010. The reopened comment period on the rulemaking will extend from August 19 through August 25, 2010.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number OST–2006–23985) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between

9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202–493–2251

Instructions: You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2006–23985) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided, and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov*. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue, SE., Room W94–302, Washington, DC 20590; (202) 366–9310 (voice); (202) 366–7687 (TDD); *bob.ashby@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On February 27, 2006, the Department of Transportation (DOT or Department) issued a notice of proposed rulemaking (NPRM) that proposed to amend the Department's Americans with Disabilities Act (ADA) rule and related regulations (71 FR 9761). The proposed amendments concerned a variety of subjects, including integrated access for persons with disabilities to trains serving new or altered intercity and commuter rail station platforms and reasonable modifications to transit provider policies and practices. The NPRM also sought comment on several upcoming issues of interest concerning surface transportation accessibility. The extended comment period for this rulemaking ended June 16, 2006.

The Department is continuing to work towards a final rule based on this NPRM.

Recently, the Department received a request from the American Public Transit Association (APTA), one of the commenters on the NPRM, for a meeting concerning the portion of the rulemaking relating to reasonable modification. In light of the period of time that has elapsed since the original comment period and of a meeting held between representatives of disability community organizations and Federal Railroad Administration officials concerning the rail system accessibility portion of the rulemaking (a memorandum on the meeting has been placed in the docket), the Department has decided to grant APTA's request.

Consequently, the Department will hold a public meeting from 10 a.m.–1 p.m. on August 20, 2010, in the Department's conference center in its headquarters building at 1200 New Jersey Avenue, SE., Washington DC. Not only APTA, but also any other party wanting to discuss issues raised in the NPRM with Department of Transportation officials and staff, is invited to attend. A memorandum concerning the discussion at the meeting will be placed in the docket. To enable participants in the meeting or others to have responses to comments made at the meeting, or other comments they may wish to make, entered into the docket, we will briefly reopen the docket from August 19–25, 2010.

To facilitate the Department's administration of the meeting, we request that individuals planning to attend the meeting or call in to the meeting please contact the Office of the Assistant General Counsel for Regulation and Enforcement to indicate their interest. You may call 202–366–4723 for this purpose or e-mail *laura.reeves@dot.gov*. We thank participants for cooperation with this request.

Dated: Issued in Washington, DC this 27th day of July 2010.

Robert S. Rivkin,

General Counsel.

[FR Doc. 2010–19673 Filed 8–5–10; 11:15 am]

BILLING CODE 4910–9X–P

Notices

Federal Register
Vol. 75, No. 152
Monday, August 9, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, South Dakota, Pactola Project Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to use multiple vegetation treatments focused on reducing the threat to ecosystem components including forest resources from an existing insect and disease epidemic (mountain pine beetle), creating a landscape condition more adapted to fire and that reduces potential for high severity wildfire near at-risk communities and in the wildland-urban interface. The proposal is being planned for the 26,017 acre Pactola Project Area that includes about 24,863 acres of National Forest System land and about 1,154 acres of interspersed private land. The project area lies west of Pactola Lake and approximately 10 miles west of Rapid City, SD. This project will be conducted as an authorized project under Section 102 of the Healthy Forests Restoration Act of 2003 (HFRA). Actions proposed for the Pactola Project Area include the following:

- Thin and harvest approximately 8,566 acres of pine stands using a variety of methods to treat mountain pine beetle (MPB) infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial harvest and non-commercial thinning will be used to reduce the stand density, and associated fuel hazard conditions and susceptibility to mountain pine beetle infestations.
- Reduce the amount of fuels that currently exists and that created by vegetation treatment activities. Treatment could include lopping, chipping, crushing, piling and burning, and creating fuel breaks along roads and adjacent to private property, particularly those properties with houses and subdivisions. Prescribed broadcast and pile burning of up to 5,037 acres is also planned to disrupt the continuity of surface and canopy fuels, and to increase the quantity and quality of forage for big game and other wildlife resources.
- Remove conifers from hardwood stands such as aspen and birch, and restore meadows on approximately 1,562 acres to provide habitat diversity and additional wildfire protection by enhancing natural fuel breaks.
- Use of existing road templates with less than two miles of new construction.

DATES: Comments concerning the scope of the analysis would be most useful if received by 30 days following the date of this notice. The draft environmental impact statement is expected to be available for public review by November 2010 and the final environmental impact statement is expected to be completed by March 2011.

ADDRESSES: Send written comments to Robert J. Thompson, District Ranger, Black Hills National Forest, Mystic Ranger District, Pactola Project Area, 8221 South Highway 16, Rapid City, South Dakota 57702. Telephone Number: (605) 343–1567. E-mail: *comments-rocky-mountain-black-hills-mystic@fs.fed.us* with "Pactola" as the subject. Electronic comments must be readable in Word, Rich Text or PDF formats.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information, please contact Katie Van Alstyne, Team Leader or Robert J. Thompson, District Ranger, at the Mystic Ranger District office in Rapid City at (605) 343–1567.

SUPPLEMENTARY INFORMATION: The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The site specific actions are designed, based on Forest Plan Standards and Guidelines, to move existing resource conditions in the Pactola Project Area toward meeting Forest Plan Goals and Objectives. The project area lies west of Pactola Lake and approximately 10 miles west of Rapid City, SD. Anticipated issues include: reducing MPB infestation and risk; protecting local communities, private and public lands, infrastructure and access from severe wildfire; associated fire and fuels hazard reduction needs in the wildland-urban interface; support or opposition to forest thinning using commercial timber harvest; impacts of vegetation treatment and multiple forest uses on wildlife habitat. The range of alternatives analyzed in the EIS is expected to be consistent with Sec. 104 of HFRA.

Purpose and Need for Action

The purpose of the Pactola Project is to:

- Move toward achieving desired land and resource conditions, as provided by the Forest Plan.
- Reduce the threat to ecosystem components including forest resources, from the existing insect and disease (mountain pine beetle) epidemic.
- Restore resource conditions to a healthy, resilient fire-adapted ecosystem.
- Help protect local communities and resources from catastrophic wildfire.

This project is focused on implementing management actions that move toward achieving:

- Desired conditions and objectives embodied in Goals 2, 3, 7, and 10 of the Forest Plan (as amended).
- Goals and objectives applicable to Forest Plan Management Area (MA) 2.2—Research Natural Areas (~548 acres); MA 3.7—Late Successional Forest Landscape (~1,268 acres); MA 5.1 Resource Production Emphasis (~5,755 acres); MA 5.3A; MA 5.4—Big Game Winter Range Emphasis (~12,201 acres); and MA 8.2 Developed Recreation Complexes (~5,071 acres), that lie within Pactola Project Area, described in Chapter III of the Forest Plan (Phase II Amendment).
- Goals of the Healthy Forest Restoration Act (HFRA) of 2003 (HR 1904) and other National level initiatives and policy that provide procedural tools to hasten processes focused on reducing insects or disease on public and adjacent private lands, and reducing the probability and occurrence of severe wildfire in the fire adapted ecosystems, especially near at risk communities and in the wildland-urban interface. Moreover, it is appropriate that proposed actions be

designed in consideration of the fuels hazard reduction management recommendations and guidelines provided by the Pennington County Community Wildfire Protection Plan of 2007.

Proposed Action

Proposed actions include the following:

• Thin and harvest approximately 8,556 acres of pine stands using a variety of methods to treat MPB infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial and non-commercial sized trees would be removed utilizing multiple contracts including stewardship, timber sale, and service contracts.

• Disrupt the continuity of surface and canopy fuels to help reduce the potential for large-scale, intense wildfire spread. Treatment could include thinning, lopping, chipping, crushing, piling, and burning; restoring natural fuel breaks by removing conifers that have encroached upon meadows and hardwood stands on approximately 1,562 acres; creating fuel breaks along roads and adjacent to private property—particularly those properties with houses and subdivisions. Prescribed broadcast and pile burning of up to 5,037 acres is also planned to reduce the natural, as well as the management-caused accumulation of fuels and to benefit big game and other wildife resources.

• Use of existing road templates with less than two miles of new construction.

Responsible Official

Robert J. Thompson, District Ranger, Mystic Ranger District, Black Hills National Forest, 8221 South Highway 16, Rapid City, South Dakota 57702

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or possible alternative at this time.

Scoping Process

Comments and input regarding the proposal will be received via direct mailing from the public, other groups, and agencies during the initial public comment period in August 2010. If you would like to be more involved, a public meeting is scheduled for Tuesday, August 24, 2010, from 7 p.m. to 9 p.m. at the Silver City Community Hall, Silver City, South Dakota. Comments submitted based on this NOI will be most useful if received within 30 days from the date of this notice. Response to the draft EIS will be sought from the interested public beginning in November 2010.

Comment Requested

This notice of intent provides information that the agency will prepare an environmental impact statement in response to public comment and feedback during the August 2010, scoping period. Comments received will assist the planning team to develop the mailing list for the draft EIS and help identify key issues and opportunities used to refine the proposal or possible alternative and mitigation measures. Comments on the DEIS will be requested during the 45 day comment period following the Notice of Availability, expected to be published in the **Federal Register** in November 2010 (See discussion below).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 27, 2010.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.

[FR Doc. 2010–19532 Filed 8–6–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels for the Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the availability of $15.5 million in Fiscal Year 2010 for competitive grants to assist communities with extremely high energy costs. This grant program is authorized under section 19 of the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 918a) and program regulations at 7 CFR Part 1709. The grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving communities in which the average residential expenditure for home energy exceeds 275 percent of the national average. Eligible applicants include persons, States, political subdivisions of States, and other entities organized under State law. Federally-recognized Indian Tribes and Tribal entities are eligible applicants. This notice describes the eligibility and application requirements, the criteria that will be used by the Agency to award funding, and information on how to obtain application materials. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 10.859. You may obtain the Application Guide and materials for the Assistance to High Energy Cost Rural Communities Grant Program via the Internet at the following Web site: *http://www.usda.gov/rus/electric/hecgp/index.htm.* You may also request the Application Guide and materials from RUS by contacting the individual listed

in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: You may submit completed grant applications on paper or electronically according to the following deadlines:

• Paper applications must be postmarked and mailed, shipped, or sent overnight, *no later* than September 8, 2010, or hand delivered to RUS by this deadline, to be eligible under this NOFA. Late or incomplete applications will not be eligible for FY 2010 grant funding.

• Electronic applications must be submitted through Grants.gov *no later* than September 8, 2010 to be eligible under this NOFA for FY 2010 grant funding. Late or incomplete electronic applications will not be eligible. Applications will not be accepted by electronic mail. Applications will be accepted on publication of this notice.

ADDRESSES: You may submit completed applications for grants on paper or electronically to the following addresses:

• Paper applications are to be submitted to the Rural Utilities Service, Electric Programs, United States Department of Agriculture 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Applications should be marked "Attention: High Energy Cost Grant Program."

• Applications may be submitted electronically through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site (*http://www.Grants.gov*). Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without pre-registration.

Application Guides and materials may be obtained electronically through: *http://www.usda.gov/rus/electric/hecgp/index.htm.* Call the RUS Electric Programs at (202) 720–9545 to request paper copies of Application Guides and other materials.

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *energy.grants@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview Information

Federal Agency Name: United States Department of Agriculture, Rural Utilities Service, Assistant Administrator, Electric Programs.

Funding Opportunity Title: Assistance to High Energy Cost Rural Communities.

Announcement Type: Initial announcement.

Funding Opportunity Number: RD–RUS–HECG10.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.859. The CFDA title for this program is "Assistance to High Energy Cost Rural Communities."

Dates: Applications must be postmarked and mailed or shipped, or hand delivered to the RUS, or filed with Grants.gov by September 8, 2010.

I. Funding Opportunity Description

The Rural Utilities Service (RUS) is making available $15.5 million in competitive grants under section 19 of the Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 918a). Under section 19, the RUS Administrator is authorized to make grants to "acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities" serving extremely high energy cost communities. Eligible communities are those in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy under one or more of the benchmarks published in this notice. Program regulations are codified at 7 CFR part 1709.

The purpose of this grant program is provide financial assistance for a broad range of energy facilities, equipment and related activities to offset the impacts of extremely high residential energy costs on eligible communities. Grant funds may be used to purchase, construct, extend, repair, upgrade and otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. Eligible facilities include on-grid and off-grid renewable energy systems and implementation of cost-effective demand side management and energy conservation programs that benefit eligible communities. Grant funds may not be used to pay utility bills or to purchase fuel. Grant projects under this program must provide community benefits and not be for the sole benefit of an individual applicant, household, or business.

Eligible applicants include for-profit and non-profit businesses, cooperatives, and associations, States, political subdivisions of States, and other entities organized under the laws of States, Indian Tribes, Tribal entities, and individuals. Eligible applicants also include entities located in U.S. Territories and other areas authorized by law to participate in the Agency's programs or programs under the RE Act.

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, the RUS will consider other financial resources available to the applicant and any voluntary commitment of matching funds or other contributions in assessing the applicant's capacity to carry out the grant program successfully. The RUS will award additional evaluation points to any proposals that include such contributions.

As a further condition of each grant, section 19(b)(2) of the RE Act requires that planning and administrative expenses of the grantee not directly related to the project may not exceed 4 percent of the grant funds.

This NOFA provides an overview of the grant program, and the eligibility and application requirements, and selection criteria for grant proposals. This NOFA includes changes to eligibility benchmarks and to scoring criteria. Applicants are encouraged to review the notice carefully. RUS is also making available an Application Guide with more detailed information on application requirements and copies of all required forms and certifications. The Application Guide is available on the Internet from the Agency Web site at: *http://www.usda.gov/rus/electric/hecgp/index.htm.* The Application Guide may also be requested from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. For additional information, applicants should consult the program regulations at 7 CFR part 1709.

Definitions

Consult the program regulations at 7 CFR part 1709 and the Application Guide for additional definitions used in this program. As used in this NOFA:

Agency means the Rural Utilities Service (RUS) of the United States Department of Agriculture.

Application Guide means the Application Guide prepared by the Agency for the High Energy Cost Grant program containing detailed instructions for determining eligibility and preparing grant applications, and copies of required forms, questionnaires, and model certifications.

Extremely high energy costs means community average residential energy costs that meet or exceed one or more home energy cost benchmarks

established by the Administrator at 275 percent of the national average residential energy expenditures as reported by the Energy Information Administration (EIA) of the United States Department of Energy.

Home energy means any energy source or fuel used by a household for purposes other than transportation, including electricity, natural gas, fuel oil, kerosene, liquefied petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind, and solar energy. Fuels used for subsistence activities in remote rural areas are also included.

High energy cost benchmarks means the criteria established by the Administrator for eligibility as an extremely high energy cost community. Home energy cost benchmarks are calculated for total annual household energy expenditures; total annual expenditures for individual fuels; annual average per unit energy costs for primary home energy sources and are set at 275 percent of the relevant national average household energy expenditures.

Indian Tribe means a Federally recognized Tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include "* * * any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 *et seq.*], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Person means any natural person, firm, corporation, association, or other legal entity, and includes Indian Tribes and Tribal entities.

Primary home energy source means the energy source that is used for space heating or cooling, water heating, cooking, and lighting. A household or community may have more than one primary home energy source.

State rural development initiative means a rural economic development program funded by or carried out in cooperation with a State agency or Indian Tribe.

Target area means the geographic area to be served by the grant.

Target community means the unit or units of local government in which the target area is located.

Tribal entity means a legal entity that is owned, controlled, sanctioned, or chartered by the recognized governing body of an Indian Tribe.

II. Award Information

The total amount of funds available for grants in Fiscal Year 2010 under this notice is $15.5 million. The maximum amount of grant assistance that will be considered for funding in a grant application under this notice is $5,000,000. The minimum amount of assistance for a grant application under this program is $75,000. The number of grants awarded under this NOFA will depend on the number of applications submitted, the amount of grant funds requested, the quality and competitiveness of applications submitted, and the availability of funds.

The funding instrument available under this NOFA will be a grant agreement. Grants awarded under this notice must comply with all applicable USDA and Federal regulations concerning financial assistance, with the terms of this notice, and with the requirements of section 19 of the RE Act. Grants made under this NOFA will be administered under the Agency program regulations at 7 CFR part 1709 and USDA financial assistance regulations at 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052, as applicable. The award period will generally be for 36 months, however, longer periods may be approved depending on the project involved. Grantees may request project extensions.

A new applicant must provide a narrative grant proposal prepared according to the instructions in this NOFA along with all required forms and information in order to submit a complete application.

Any prior applicant that submitted a project proposal in response to the NOFA published on January 28, 2008 (73 FR 4,778) may request reconsideration of the earlier application if the applicant was notified in writing by the RUS that the application was accepted as complete and timely, but was not selected for funding. The RUS has retained these original applications. These 2008 eligible applicants may submit additional information for consideration of their 2008 applications as described later in this notice. Applicants under the 2008 NOFA that were rejected as incomplete or ineligible may submit new or revised applications that meet the requirements of this NOFA.

All timely submitted and complete applications will be reviewed for eligibility and rated according to the criteria described in this NOFA. Applications will be ranked in order of their numerical scores on the rating criteria and forwarded to the RUS Administrator. The Administrator will review the rankings and the recommendations of the rating panel. The Administrator will then fund grant applications in rank order. The Agency reserves the right in its sole discretion to make additional awards to applications submitted under this announcement through reprogramming available program funds.

The RUS reserves the right not to award any or all the funds made available under this notice, if in the sole opinion of the Administrator, the grant proposals submitted are not deemed feasible under program requirements. The RUS also reserves the right to partially fund grants if grant applications exceed the available funds. The RUS will advise applicants if it cannot fully fund a grant request.

III. Eligibility Information

1. Eligible Applicants

Under Section 19 eligible applicants include "Persons, States, political subdivisions of States, and other entities organized under the laws of States" (7 U.S.C. 918a). Under section 13 of the RE Act, the term "Person" means "any natural person, firm, corporation, or association" (7 U.S.C. 913). Examples of eligible business applicants include: for-profit and non-profit business entities, including but not limited to corporations, associations, partnerships, limited liability partnerships (LLPs), cooperatives, trusts, and sole proprietorships. Eligible government applicants include State and local governments, counties, cities, towns, boroughs, or other agencies or units of State or local governments; and other agencies and instrumentalities of States and local governments. Indian Tribes, other Tribal entities and Alaska Native Corporations are also eligible applicants.

An individual is an eligible applicant under this program; however, the proposed grant project must provide community benefits and not be for the sole benefit of an individual applicant or an individual household or business.

All applicants must demonstrate the legal capacity to enter into a binding grant agreement with the Federal Government at the time of the award and to carry out the proposed grant funded project according to its terms.

The Office of Management and Budget requires that all applicants for Federal grants with the exception of individuals other than sole proprietorships must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number with their applications. Consistent with this Federal policy

directive, any organization or sole proprietorship that applies for a high energy cost grant must use its DUNS number on the application and in the field provided on the revised Standard Form 424 (SF 424) "Application for Federal Assistance" to be eligible to apply. DUNS numbers are available for free to Federal Grant applicants on line at *http://fedgov.dnb.com/webform* or may be obtained through a short phone call to D&B. Please *see* the "Get Registered" section on Grants.gov for more information on how to obtain a DUNS number or how to verify if your organization already has a DUNS number. If you already have obtained a DUNS number in connection with the Federal acquisition process or requested or had one assigned to you for another purpose, you should use that number on all of your applications. It is not necessary to request another DUNS number from D&B.

2. Cost Sharing and Matching

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, the RUS will consider other financial resources available to the grant applicant and any voluntary pledge of matching funds or other contributions in assessing the applicant's commitment and capacity to carry out the grant program successfully and will award additional evaluation points to proposals that include such contributions. If a successful applicant proposes to use matching funds or other cost contributions in its project to obtain additional evaluation points, the grant agreement will include conditions requiring documentation of the availability of the matching funds and actual expenditure of matching funds or cost contributions. The Agency may require the applicant to provide additional documentation confirming the availability of any matching contribution offered prior to approval of project selection. If an applicant fails to provide timely documentation of the availability of matching contributions, the RUS may, in its sole discretion, disallow any points awarded for matching contributions and rescore the project, or decline to award the project if uncertainties over availability of the match render the project financially infeasible; and/or impose additional conditions.

3. Other Eligibility Requirements

A. Eligible Projects

Grantees must use grant funds for eligible grant purposes. Grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. All energy generation, transmission, and distribution facilities and equipment, used to provide electricity, natural gas, home heating fuels, and other energy service to eligible communities are eligible. Projects providing or improving energy services to eligible communities through on-grid and off-grid renewable energy projects, energy efficiency, and energy conservation projects are eligible. A grant project is eligible if it improves, or maintains energy services, or reduces the costs of providing energy services to eligible communities. Grant funds may not be used to pay utility bills or to purchase fuels.

Grants may cover up to the full costs of any eligible projects subject to the statutory condition that no more than 4 percent of grant funds may be used for the planning and administrative expenses of the grantee. The program regulations at 7 CFR part 1709 provide more detail on allowable uses of grant funds, limitations on grant funds, and ineligible grant purposes.

The project must serve communities that meet the extremely high energy cost eligibility requirements described in this NOFA. The applicant must demonstrate that the proposed project will benefit the eligible communities. Projects that primarily benefit a single household or business are not eligible. Additional information and examples of eligible project activities are contained in the Application Guide.

Grant funds cannot be used for: Preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Each grant applicant must demonstrate the economic and technical feasibility of its proposed project. Activities or equipment that would commonly be considered as research and development activities, or commercial demonstration projects for new energy technologies will not be considered as technologically feasible projects and would, thus, be ineligible grant purposes. However, grant funds may be used for projects that involve the innovative use or adaptation of energy-related technologies that have been commercially proven.

B. Eligible Communities

The grant project must benefit communities with extremely high energy costs. The RE Act defines an extremely high energy cost community as one in which "the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy" 7 U.S.C. 918a. The benchmarks are set based on the latest available information from the Energy Information Administration (EIA) residential energy surveys.

The statutory requirement that community residential expenditures for home energy exceed 275 percent of national average establishes a very high threshold for eligibility under this program. The Agency has calculated high energy cost benchmarks based on the most recent EIA national average home energy expenditure data. The current benchmarks are shown in Table 1. These benchmarks have been revised since publication of the 2008 NOFA. New applicants must demonstrate that proposed target communities must meet one or more high energy cost benchmarks to qualify as an eligible beneficiary of a grant under this program. All applications submitted after publication of this announcement must meet these current eligibility benchmarks. Eligible applications submitted under the January 28, 2008 and requesting reconsideration will retain eligibility established under the prior benchmarks. Based on available published information on residential energy costs, the Agency anticipates that only those communities with the highest energy costs across the country will qualify under this congressionally-mandated standard.

The EIA's Residential Energy Consumption and Expenditure Surveys (RECS) and reports provide the baseline national average household energy costs that were used for establishing extremely high energy cost community eligibility criteria for this grant program. The RECS data base and reports provide national and regional information on residential energy use, expenditures, and housing characteristics. EIA published its latest available RECS home energy expenditure survey results in 2009. These estimates of home energy usage and expenditures are based on national surveys conducted in 2005 survey data and are shown in Table 1 as follows:

TABLE 1—NATIONAL AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND EXTREMELY HIGH ENERGY COST ELIGIBILITY BENCHMARKS EFFECTIVE FOR APPLICATIONS SUBMITTED ON OR AFTER AUGUST 9, 2010

Fuel	EIA 2005 national annual average household expenditure $ per year	RUS extremely high energy cost benchmark 275% of national average $ per year
Average Annual Household Expenditure		
Electricity	$1,123	$3,010
Natural Gas	754	1,988
Fuel Oil	1,518	3,921
LPG/Propane	875	2,256
Total Household Energy Use	1,810	4,860
Fuel (units)	EIA 2005 national average unit cost $ per unit	RUS extremely high energy cost benchmark 275% of national average $ per unit
Annual Average per Unit Residential Energy Costs		
Electricity (kilowatt hours)	$0.10	$0.264
Natural Gas (thousand cubic feet)	11.24	30.30
Fuel Oil (gallons)	2.04	5.54
LPG/Propane (gallons)	1.92	5.10
Total Household Energy (million Btus)	19.07	51.62

Sources: Energy Information Administration, United States Department of Energy, *2005 Residential Energy Consumption Survey—Detailed Tables,* available at: *http://www.eia.doe.gov/emeu/recs/recs2005/c&e/detailed_tables2005c&e.html.* The RUS benchmarks calculations include adjustments to reflect the uncertainties inherent in EIA's statistical methodology for estimating home energy costs. The benchmarks are set based on the EIA's lower range estimates using the specified EIA methods.

Extremely high energy costs in rural and remote communities typically result from a combination of factors including high energy consumption, high per unit energy costs, limited availability of energy sources, extreme climate conditions, and housing characteristics. The relative impacts of these conditions exhibit regional and seasonal diversity. Market factors have created an additional complication in recent years as the prices of the major commercial residential energy sources—electricity, fuel oil, natural gas, and LPG/propane—have fluctuated dramatically in some areas.

The applicant must demonstrate that each community in the grant project's proposed target area exceeds one or more of these high energy cost benchmarks to be eligible for assistance under this program.

i. High Energy Cost Benchmarks

The benchmarks measure extremely high energy costs for residential consumers. These benchmarks were calculated using EIA's estimates of national average residential energy expenditures per household and by primary home energy source. The benchmarks recognize the diverse factors that contribute to extremely high home energy costs in rural communities. The benchmarks allow extremely high energy cost communities several alternatives for demonstrating eligibility. Communities may qualify based on: Total annual household energy expenditures; Total annual expenditures for commercially-supplied primary home energy sources, *i.e.,* electricity, natural gas, oil, or propane; or average annual per unit home energy costs. By providing alternative measures for demonstrating eligibility, the benchmarks reduce the burden on potential applicants created by the limited public availability of comprehensive data on local community energy consumption and expenditures.

A target community or target area will qualify as an extremely high cost energy community if it meets one or more of the energy cost eligibility benchmarks described below.

a. *Extremely High Average Annual Household Expenditure for Home Energy.* The target area or community exceeds one or more of the following:

- Average annual residential electricity expenditure of $3,010 per household;
- Average annual residential natural gas expenditure of $1,988 per household;
- Average annual residential expenditure on fuel oil of $3,921 per household;
- Average annual residential expenditure on propane or liquefied petroleum gas (LPG) as a primary home energy source of $2,256 per household; or
- Average annual residential energy expenditure (for all non-transportation uses) of $4,860 per household.

b. *Extremely High Average per unit energy costs.* The average residential per unit cost for major commercial energy sources in the target area or community exceeds one or more of the following:

- Annual average revenues per kilowatt hour for residential electricity customers of $0.264 per kilowatt hour (kWh);
- Annual average residential natural gas price of $30.30 per thousand cubic feet;
- Annual average residential fuel oil price of $5.54 per gallon;
- Annual average residential price of propane or LPG as a primary home energy source of $5.10 per gallon; or
- Total annual average residential energy cost on a Btu basis of $51.62 per million Btu.[1]

[1] **Note:** Btu is the abbreviation for British thermal unit, a standard energy measure. A Btu is the quantity of heat needed to raise the temperature of one pound of water 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit. In estimating average household per unit energy cost on a Btu basis, the costs of different home energy sources are

ii. Supporting Energy Cost Data

The applicant must include information that demonstrates its eligibility under the Agency's high energy cost benchmarks for the target communities and the target areas. The applicant must supply documentation or references for its sources for actual or estimated home energy expenditures or equivalent measures to support eligibility. Generally, the applicant will be expected to use historical residential energy cost or expenditure information for the local energy provider serving the target community or target area to determine eligibility. Other potential sources of home energy related information include Federal and State agencies, local community energy providers such as electric and natural gas utilities and fuel dealers, and commercial publications. The Application Guide includes a list of EIA resources on residential energy consumption and costs that may be of assistance.

The grant applicant must establish eligibility for each community in the project's target area. To determine eligibility, the applicant must identify each community included in whole or in part within the target areas and provide supporting actual or estimated energy expenditure data for each community. The smallest area that may be designated as a target area is a 2000 Census block. This minimum size is necessary to enable a determination of population size.

Potential applicants can compare the benchmark criteria to available information about local energy use and costs to determine their eligibility. Applicants should demonstrate their eligibility using historical energy use and cost information. Where such information is unavailable or does not adequately reflect the actual costs of supporting average home energy use in a local community, the Agency will consider estimated commercial energy costs. The Application Guide includes examples of circumstances where estimated energy costs are used.

EIA does not collect or maintain data on home energy expenditures in sufficient detail to identify specific rural localities as extremely high energy cost communities. Therefore, grant applicants will have to provide information on local community energy costs from other sources to support their applications.

converted to a standard Btu basis. The Application Guide contains additional information on calculating per unit costs on a Btu basis for major home energy sources.

In many instances, historical community energy cost information can be obtained from a variety of public sources or from local utilities and other energy providers. For example, EIA publishes monthly and annual reports of residential prices by State and by service area for electric utilities and larger natural gas distribution companies. Average residential fuel oil and propane prices are reported regionally and for major cities by government and private publications. Many State agencies also compile and publish information on residential energy costs to support State programs.

iii. Use of Estimated Home Energy Costs

Where historical community energy cost data are incomplete or lacking or where community-wide data do not accurately reflect the costs of providing home energy services in the target area, the applicant may substitute estimates based on engineering standards. The estimates should use available community, local, or regional data on energy expenditures, consumption, housing characteristics and population. Estimates are also appropriate where the target area does not presently have centralized commercial energy services at a level that is comparable to other residential customers in the State or region. For example, local commercial energy cost information may not be available where the target area is without local electric service because of the high costs of connection. Engineering cost estimates reflecting the incremental costs of extending service could reasonably be used to establish eligibility for areas without grid-connected electric service. Estimates also may be appropriate where historical energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure to maintain or extend service that would raise costs above one or more of benchmarks.

Information to support high energy cost eligibility is subject to independent review by the Agency. Applications that contain information that is not reasonably based on credible sources of information and sound estimates will be rejected. Where appropriate, the Agency may consult standard sources to confirm the reasonableness of information and estimates provided by applicants in determining eligibility, technical feasibility, and adequacy of proposed budget estimates.

C. Coordination With State Rural Development Initiatives

USDA encourages the coordination of grant projects under this program with State development initiatives. There is no requirement that the grant proposal receive the concurrence or approval of State officials as a condition of eligibility under this program. The Agency will, however, award additional points to proposals that are coordinated with and support rural development initiatives within a State. The applicant should describe how the proposed project will support State rural development initiatives and provide documentation evidencing any project relationship to State initiatives.

If an applicant is an entity directly involved in rural development efforts, such as a State, local, or Tribal rural development agency, the applicant may qualify for additional points by describing how its proposed project supports its efforts.

D. Limitations on Grant Awards

a. Statutory Limitation on Planning and Administrative Expenses

Section 19 of the RE Act provides that no more than 4 percent of the grant funds for any project may be used for the planning and administrative expenses of the grantee that are not directly related to the grant project.

ii. Ineligible Grant Purposes

Grant funds cannot be used for: Preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Consistent with USDA policy and program regulations, grant funds awarded under this program generally cannot be used to replace other USDA assistance or to refinance or repay outstanding loans under the RE Act. Grant funds may, however, be used in combination with other USDA assistance programs including electric loans. Grants may be applied toward grantee contributions under other USDA programs depending on the terms of those programs. For example, an applicant may propose to use grant funds to offset the costs of electric system improvements in extremely high cost areas by increasing the utility's contribution for line extensions or system expansions to its distribution system financed in whole or part by an electric loan under the RE Act. An

applicant may propose to finance a portion of an energy project for an extremely high energy cost community through this grant program and secure the remaining project costs through a loan or loan guarantee or grant from the Agency or other sources.

iii. Maximum and Minimum Awards

The maximum amount of grant assistance that will be considered for funding per grant application under this notice is $5,000,000. The minimum amount of assistance for a competitive grant application under this program is $75,000.

IV. Application and Submission Information

All applications must be prepared and submitted in compliance with this NOFA and the Application Guide. The Application Guide contains additional information on the grant program, sources of information for use in preparing applications, examples of eligible projects, and copies of the required application forms.

1. Address To Request an Application Package

Applications materials and the Application Guide are available for download through *http://www.Grants.gov* (under CFDA No. 10.859) and on the Electric Programs Web site at: *http://www.usda.gov/rus/electric/hecgp/index.htm.*

Application packages, including required forms, may be also be requested from: Karen Larsen, Management Analyst, United States Department of Agriculture, Rural Development Utilities Programs, Electric Program, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *energy.grants@wdc.usda.gov.*

2. Content and Form of Application Submission

There are different application requirements for first-time applicants and for prior applicants requesting reconsideration. First-time applicants are those that did not submit a timely and complete application or request for reconsideration in response to the January 28, 2008 (73 FR 4778) NOFA. First-time applicants should follow the directions in this notice and the Application Guide in preparing their applications and narrative proposals. The completed application package should be assembled in the order specified with all pages numbered sequentially or by section. If you submitted an application in 2003, 2004, 2005, or 2007, but did not submit a request for reconsideration in 2008, you must submit a complete new application package meeting current eligibility and content requirements. Prior 2008 applicants should follow the special instructions for reconsideration of their applications and submit a revised Standard Form 424 (SF–424), a letter requesting reconsideration, and any supplemental material by the deadline.

A. Application Contents for New Applications

First-time applicants must submit the following information for the application to be complete and considered for funding:

i. Part A. A Completed SF 424, "*Application for Federal Assistance.*" This form must be signed by a person authorized to submit the proposal on behalf of the applicant. Note: SF 424 has recently been revised to include new required data elements, including a DUNS number. You must submit the revised form. Copies of this form are available in the application package available on line through the Agency Web site or through Grants.gov, or by request from the Agency contact listed above.

ii. Part B. Grant Proposal. The grant proposal is a narrative description prepared by the applicant that establishes the applicant's eligibility, identifies the eligible extremely high energy cost communities to be served by the grant, and describes the proposed grant project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

1. Executive Summary. The Executive Summary is a one to two page narrative summary that: (a) Identifies the applicant, project title, and the key contact person with telephone and fax numbers, mailing address and e-mail address; (b) specifies the amount of grant funds requested; (c) provides a brief description of the proposed project including the eligible rural communities and residents to be served, activities and facilities to be financed, and how the grant project will offset or reduce the target community's extremely high energy costs; and (d) identifies the associated State rural development initiative, if any, that the project supports. The Executive Summary should also indicate whether the applicant is claiming additional points under any of the criteria designated as USDA priorities under this NOFA.

2. Table of Contents. The application package must include a table of contents immediately after the Executive Summary with page numbers for all required sections, forms, and appendices.

3. Applicant Eligibility. This section includes a narrative statement that identifies the applicant and supporting evidence establishing that the applicant has or will have the legal authority to enter into a financial assistance relationship with the Federal Government. Examples of supporting evidence of applicant's legal existence and eligibility include: A reference to or copy of the relevant statute, regulation, executive order, or legal opinion authorizing a State, local, or Tribal government program, articles of incorporation or certificates of incorporation for corporate applicants, partnership or trust agreements, board resolutions. Applicants must also be free of any debarment or other restriction on their ability to contract with the Federal Government.

4. Community Eligibility. This section provides a narrative description of the community or communities to be served by the grant and supporting information to establish eligibility. The narrative must show that the proposed grant project's target area or areas are located in one or more communities where the average residential energy costs exceed one or more of the benchmark criteria for extremely high energy costs as described in this NOFA. The narrative should clearly identify the location and population of the areas to be aided by the grant project and their energy costs and the population of the local government division in which they are located. Local energy providers and sources of high energy cost data and estimates should be clearly identified. Neither the applicant nor the project must be physically located in the extremely high energy cost community, but the funded project must serve an eligible community.

The population estimates should be based on the results of the 2000 Census available from the U.S. Census Bureau. Additional information and exhibits supporting eligibility may include maps, summary tables, and references to statistical information from the U.S. Census, the Energy Information Administration, other Federal and State agencies, or private sources. The Application Guide includes additional information and sources that the applicant may find useful in establishing community eligibility.

5. Coordination with State Rural Development Initiatives. In this section the applicant must describe how the

proposed grant is coordinated with and supports any rural development efforts. The applicant should provide supporting references or documentation of any relationship or contribution to State rural development initiatives.

6. Project Overview. This section includes the applicant's narrative overview of its proposed project. The narrative must address the following:

a. Project Design: This section must provide a narrative description of the project including a proposed scope of work identifying major tasks and proposed schedules for task completion, a detailed description of the equipment, facilities and associated activities to be financed with grant funds, the location of the eligible extremely high energy cost communities to be served, and an estimate of the overall duration of the project. The Project Design description should be sufficiently detailed to support a finding of technical feasibility. Proposed projects involving construction, repair, replacement, or improvement of electric generation, transmission, and distribution facilities must generally be consistent with the standards and requirements for projects financed with loans and loan guarantees under the RE Act as set forth in the Agency's Electric Programs Regulations and Bulletins and may reference these requirements.

b. Project Management: This section must provide a narrative describing the applicant's capabilities and project management plans. The description should address the applicant's organizational structure, method of funding, legal authority, key personnel, project management experience, financial management systems, staff resources, the goals and objectives of the program or business, and any related services provided to the project beneficiaries. A current financial statement and other supporting documentation may be referenced here and included under the Supplementary Material section. If the applicant proposes to use affiliated entities, contractors, or subcontractors to provide services funded under the grant, the applicant must describe the identities, relationship, qualifications, and experience of these affiliated entities. The experience and capabilities of these entities will be reviewed by the rating panel. If the applicant proposes to secure equipment, design, construction, or other services from non-affiliated entities, the applicant must briefly describe how it plans to procure and/or contract for such equipment or services. The applicant should provide information that will support a finding that the combination of management team's experience, financial management capabilities, resources and project structure will enable successful completion of the project. Applicants are encouraged to review the financial management requirements for Federal grantees in 7 CFR part 1709 and USDA financial assistance regulations at 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052, as applicable, and to address their ability to comply with these requirements in their applications.

c. Regulatory and other approvals: The applicant must identify any other regulatory or other approvals required by other Federal, State, local, or Tribal agencies, or by private entities as a condition of financing that are necessary to carry out the proposed grant project and its estimated schedule for obtaining the necessary approvals.

d. Benefits of the proposed project. The applicant should describe how the proposed project would benefit the target area and eligible communities. The description must specifically address how the project will improve energy generation, transmission, or distribution facilities serving the target area. The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success such as, for example, expected reductions in household or community energy costs, avoided cost increases, enhanced reliability, or economic or social benefits from improvements in energy services available to the target community. The applicant should include quantitative estimates of cost or energy savings and other benefits. The applicant should provide documentation or references to support its statements about cost-effectiveness savings and improved services. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

7. Proposed Project Budget. The applicant must submit a proposed budget for the grant program on SF 424A, "Budget Information—Non-Construction Programs" or SF–424C, "Standard Form for Budget Information-Construction Programs," as applicable. All applicants that submit applications through Grants.gov must use SF–424A. The applicant should supplement the budget summary form with more detailed information describing the basis for cost estimates. The detailed budget estimate should itemize and explain major proposed project cost components such as, but not limited to, the expected costs of design and engineering and other professional services, personnel costs (salaries/wages and fringe benefits), equipment, materials, property acquisition, travel (if any), and other direct costs, and indirect costs, if any. The budget must document that planned administrative and other expenses of the project sponsor that are not directly related to performance of the grant will not total more than 4 percent of grant funds. The applicant must also identify the source and amount of any other Federal or non-Federal contributions of funds or services that will be used to support the proposed project. This program does not require supplemental or matching funds for eligibility; however, the Agency will award additional rating points for programs that include a match of other funds or like-kind contributions to support the project.

8. Supplementary Material. The applicant may append any additional information relevant to the proposal or which may qualify the application for extra points under the evaluation criteria described in this NOFA.

iii. Part C. Additional Required Forms and Certifications. In order to establish compliance with other Federal requirements for financial assistance, the applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, "Assurances—Non-Construction Programs" or SF 424D, "Assurances—Construction Programs" (as applicable). All applicants applying through Grants.gov must use form SF 424B.
- SF LLL, "Disclosure of Lobbying Activities."
- "Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions" as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian Tribes, partnerships.
- Environmental Profile. The Agency environmental profile template included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The profile will be used by the Agency's environmental staff to identify selected projects that may require additional environmental reviews, assessments, or environmental impact statements before a final grant award may be approved. A copy of the environmental profile and instructions for completion are included in the Application Guide and may be downloaded from the Agency Web site or Grants.gov.

B. Special Requirements for Applicants Requesting Reconsideration of an Application Submitted in 2008

Applicants that submitted applications in response to the NOFA published on January 28, 2008 (73 FR 4,778) and that later received a letter from the RUS with their scores and advising them that the application was determined to be eligible and complete, may request reconsideration of their 2008 applications in this round of competitive funding. To request reconsideration, the applicant must submit a new original Standard Form SF 424, including mandatory data elements (DUNS number, fax number, and e-mail address) along with a brief signed letter requesting reconsideration and identifying any additional information that they wish to be considered by the rating panel in reviewing their application along with supporting documentation. Community eligibility for these prior applications was determined under the eligibility benchmarks for the 2008 NOFA. These accepted and complete applications will be grandfathered under this NOFA.

The required application package for reconsideration will consist of the original signed SF 424, the request for reconsideration, and any additional supporting documents, plus the original application package submitted to the RUS in 2008. The Agency has maintained these prior applications on file and will add the newly submitted material to the existing application package for review by the rating panel. You do not need to send a copy of the 2008 application package. Because this abbreviated application package differs from the general application package for first time applicants available through Grants.gov, applicants requesting reconsideration should submit their requests directly to the RUS by the application deadline and not through Grants.gov. Applicants that submitted an application in 2008 also have the option of submitting an entirely new complete application package for their project under the requirements of this NOFA.

3. Additional Information Requests

In addition to the information required to be submitted in the application package, the RUS may request that successful grant applicants provide additional information, analyses, forms and certifications as a condition of pre-award clearance, including any environmental reviews or other reviews or certifications required under USDA and Government-wide assistance regulations. The RUS will advise the applicant in writing of any additional information required.

4. Submitting the Application

Applicants that are submitting paper application packages must submit one original application package that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8 ½ by 11 inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed paper application package must contain all required parts in the order indicated in the above section on "Content and Form of Application Submission." The application package should be paginated either sequentially or by section. Applicants are requested to provide the application package in single-sided format for ease of copying.

Applicants that are submitting application packages electronically through the Federal grants portal Grants.gov (*http://www.Grants.gov*) must follow the application requirements and procedures and submit all the forms in the application package provided there. The Grants.gov Web site contains full instructions on all required registration, passwords, credentialing and software required to submit applications electronically. Grants.gov has streamlined the registration and credentialing process and now requires separate application processes for individuals and organizations. Individual applicants, including individuals applying on behalf of an organization, should follow the special directions for individuals on the Grants.gov Web site. Organizational applicants and sole proprietorships should follow the instructions for organizations.

Organizational applicants are advised that completion of the requirements for registration with Grants.gov, with the Central Contractor Registry, and e-Authentication required under Grants.gov may take a week or more and may be delayed. Accordingly, the Agency strongly recommends that you complete your organization's registration with Grants.gov well in advance of the deadline for submitting applications.

USDA encourages both individual and organizational applicants who wish to apply through Grants.gov to submit their applications well in advance of the deadlines. Early submittal will give you time to resolve any system problems or technical difficulties with an electronic application through the customer support resources available at the Grants.gov Web site while preserving the option of submitting a timely paper application if any difficulties cannot be resolved.

5. Disclosure of Information

All material submitted by the applicant may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and USDA's implementing regulations at 7 CFR part 1.

6. Submission Dates and Times

Applications must be postmarked or hand delivered to the RUS or posted to Grants.gov by September 8, 2010. The Agency will begin accepting applications on the date of publication of this NOFA. The Agency will accept for review all applications postmarked or delivered to us by this deadline. Late applications will not be considered and will be returned to the applicant.

For the purposes of determining the timeliness of an application the RUS will accept the following as a valid postmarks: the date stamped by the United States Postal Service on the outside of the package containing the application delivered by U.S. Mail; the date the package was received by a commercial delivery service as evidenced by the delivery label; the date received via hand delivery to the RUS headquarters; and the date an electronic application was posted for submission to Grants.gov.

7. Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

8. Funding Restrictions

Section 19 of the RE Act provides that no more than 4 percent of the grant funds may be used for the planning and administrative expenses of the grantee not directly related to the grant project.

9. Other Submission Requirements

Applicants that are submitting paper applications must submit one original application package that includes original signatures on all required forms and certifications and two copies. Applications should be single-sided and submitted on 8½ by 11-inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed application for first-time applicants must contain all required parts in the order indicated in the above section on "Content and Form of Application Submission." The

application package should be paginated either sequentially or by section. Applicants seeking reconsideration should follow the special instructions above.

The completed paper application package and two copies must be delivered to the RUS headquarters in Washington, DC using United States Mail, overnight delivery service, or by hand to the following address: Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Applications should be marked "Attention: High Energy Cost Community Grant Program."

Applicants are advised that regular mail deliveries to Federal Agencies, especially of oversized packages and envelopes, continue to be delayed because of increased security screening requirements. Applicants may wish to consider using Express Mail or a commercial overnight delivery service instead of regular mail. Applicants wishing to hand deliver or use courier services for delivery should contact the Agency representative in advance to arrange for building access. The RUS advises applicants that because of intensified security procedures at government facilities that any electronic media included in an application package may be damaged during security screening. If an applicant wishes to submit such materials, they should contact the agency representative for additional information.

The RUS will accept electronic applications through the Federal Web portal at *http://www.Grants.gov*. Applicants wishing to submit electronic applications through Grants.gov must follow the application procedures and submission requirements detailed on that Web site at *http://www.Grants.gov*. Applicants that file through Grants.gov should receive electronic confirmation from Grants.gov that their applications have been received within 48 hours of submitting the application. Grants.gov will send a second electronic message that the application has either been successfully accepted by the system for transmission to the grantor agency OR has been rejected due to errors. After the grant application deadline has passed, USDA will send an electronic confirmation acknowledging that the application has been received by the RUS from Grants.gov. Grants.gov will not accept applications for filing after the deadline has passed. The Agency will not accept applications directly over the Internet, by e-mail, or fax.

Applicants should be aware that Grants.gov requires that applicants complete several preliminary registrations and e-authentication requirements before being allowed to submit applications electronically. Applicants should consult the Grants.gov Web site and allow ample time to complete the steps required for registration before submitting their applications. Applicants may download application materials and complete forms online through Grants.gov without completing the registration requirements. Application materials prepared online may be printed and submitted in paper to the Agency as detailed above.

10. Multiple Applications

Eligible applicants may submit only one application per project. Multiple tasks and localities may be included in a single proposed grant project. No more than $5 million in grant funds will be awarded per project application. Applicants may, however, submit applications for more than one project.

V. Application Review Information

All applications for grants must be delivered to the Agency at the address listed above or postmarked no later than September 8, 2010 to be eligible. After the deadline has passed, the Agency will review each timely submitted application to determine whether it is complete and meets all of the eligibility requirements described in this NOFA.

After the application closing date, the Agency will not consider any unsolicited information from the applicant. The RUS may contact the applicant for additional information or to clarify statements in the application required to establish applicant or community eligibility and completeness. Only applications that are complete and meet the eligibility criteria will be considered. The RUS will not accept or solicit any additional information relating to the technical merits and/or economic feasibility of the grant proposal after the application closing date.

If the RUS determines that an application package was not delivered to the Agency, or postmarked on or before the deadline of September 8, 2010, the application will be rejected as untimely and returned to the applicant.

After review, the RUS will reject any application package that it determines is incomplete or that does not demonstrate that the applicant, community or project is eligible under the requirements of this NOFA and program regulations. The Assistant Administrator, Electric Programs will notify the applicant of the rejection in writing and provide a brief explanation of the reasons for rejection.

Applicants may appeal the rejection pursuant to program regulations on appeals at 7 CFR 1709.6. The appeal must be made in writing to the Agency Administrator within 10 days after the applicant is notified of the determination to reject the application. The appeal must state the basis for the appeal. Under 7 CFR 1709.6, appeals must be directed to the Administrator, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., STOP 1500, Washington, DC 20250–1500. The Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination by the Assistant Administrator. The Administrator's decision shall be final. A written copy of the Administrator's decision will be furnished promptly to the applicant.

The RUS may establish one or more rating panels to review and rate the eligible grant applications. These panels may include persons not currently employed by USDA.

The panel will evaluate and rate all complete applications that meet the eligibility requirements using the selection criteria and weights described in this NOFA. As part of the proposal review and ranking process, panel members may make comments and recommendations for appropriate conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements. The decision to include panel recommendations on grant conditions in any grant award will be at the sole discretion of the RUS Administrator.

All applications will be scored and ranked according to the evaluation criteria and weightings described in this Notice. The evaluation criteria and weights in this NOFA differ from those used in prior NOFAs. For this reason, the ratings panel will review and revise scores of any prior applications that are being reconsidered according to the new criteria. The rating panel may revise the score upward based on any updated information submitted by the applicant. The RUS will use the ratings and recommendations of the panel to rank applicants against other applicants. All applicants will be ranked according to their scores in this round. The rankings and recommendations will then be forwarded to the Administrator for final review and selection.

Decisions on grant awards will be made by the RUS Administrator based on the application, and the rankings and recommendations of the rating panel.

The Administrator will fund grant requests in rank order to the extent of available funds. If sufficient funds are not available to fund the next ranked project, the Administrator may, in his sole discretion, offer a partial award to the next project, or skip over that project to the next ranking project that can be supported with available funding. The Administrator may in his sole discretion, make additional awards to unfunded applications submitted under this NOFA in rank order.

1. Criteria

The RUS will use the selection criteria described in this NOFA to evaluate and rate applications and will award points up to the maximum number indicated under each criterion. Applicants should carefully read the information on the rating criteria in this NOFA and the Application Guide and address all criteria. The maximum number of points that can be awarded is 100 points. The RUS will award up to 65 points for project design and technical merit criteria and up to 35 points based on priority criteria for project or community characteristics that support USDA Rural Development and RUS program priorities.

A. Project Design and Technical Merit Criteria

Reviewers will consider the soundness of the applicant's approach, the technical feasibility of the project, the adequacy of financial and other resources, the competence and experience of the applicant and its team, the project goals and objectives, and community needs and benefits. A total of 65 points may be awarded under these criteria.

1. Comprehensiveness and feasibility of approach. (Up to 30 points) Raters will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the extremely high energy cost community. The panel will review the proposed design, construction, equipment, and materials for the community energy facilities in establishing technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed and how the applicant proposes to manage available resources such as other grants, program income, and any other financing sources to maintain and operate a financially viable project once the grant period has ended. Reviewers may give higher scores to projects that are substantially ready to proceed with construction or implementation than to those that are early in the project development process.

2. Demonstrated experience. (Up to 10 points) Reviewers will consider whether the applicant and its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the grant application. The RUS supports and encourages emerging organizations that desire to develop the internal capacity to improve energy services in rural communities. In evaluating the capabilities of entities without extensive experience in carrying out such projects, the Agency will consider the experience of the project team and the effectiveness of the program design in compensating for lack of extensive experience.

3. Community Needs. (Up to 15 points) Reviewers will consider the applicant's identification and documentation of eligible communities, their populations, and assessment of community energy needs to be addressed by the grant project. Information on the severity of physical and economic challenges affecting eligible communities will be considered. Reviewers will weigh: (1) the applicant's analysis of community energy challenges and (2) why the applicant's proposal presents a greater need for Federal assistance than other competing applications. In assessing the applicant's demonstration of community needs, the rating panel will consider information in the narrative proposal addressing:

(a) the burden placed on the community and individual households by extremely high energy costs as evidenced by such quantitative measures as, for example, total energy expenditures, per unit energy costs, energy cost intensity for occupied space, or energy costs as a share of average household income, and persistence of extremely high energy costs compared to national or statewide averages.

(b) the hardships created by limited access to reliable and affordable energy services;

(c) the availability of other resources to support or supplement the proposed grant funding: and

(d) indications of community support for this solution to their energy challenges.

4. Project Evaluation Methods. (Up to 5 points) Reviewers will consider the applicant's plan to evaluate and report on the success and cost-effectiveness of financed activities and whether the results obtained will contribute to program improvements for the applicant or for other entities interested in similar programs.

5. Coordination with State Rural Development Initiatives. (Up to 5 points) Raters will assess how effectively the proposed project is coordinated with State rural development initiatives, if any, and is consistent with and supports these efforts. [Note: The term "State rural development initiatives" refers to State or Tribal programs and not to USDA Rural Development programs.] The RUS will consider the documentation submitted for coordination efforts, community support, and State or local government recommendations. Applicants should identify the extent to which the project is dependent on or tied to other rural development initiatives, funding, and approvals. Applicants are advised that they should address this criterion explicitly even if only to report that the project is not coordinated with or supporting a State rural development initiative. Failure to address this criterion will result in zero points awarded.

B. Priority Criteria

In addition to the points awarded for project design and technical merit, all proposals will be reviewed and awarded additional points based on certain characteristics of the project or the target community. USDA Rural Development Mission Area policies generally encourage agencies to give priority in their programs to rural areas of greatest need and to support other Federal policy initiatives. In furtherance of these policies, the RUS will award additional points for the priorities identified in this notice. The priority criteria and point scores used in this NOFA are consistent with the program regulations in 7 CFR part 1709. The Agency will give priority consideration to smaller rural and remote communities, areas suffering significant economic hardship, areas with inadequate community energy services, and areas where the condition of community energy facilities (or absence thereof) presents an imminent hazard to public health or safety. Priority points will also be awarded for proposals that include cost sharing. A maximum of 35 total points may be awarded under these priority criteria.

1. Economic Hardship. (Up to 15 points) The community experiences one or more economic hardship conditions that impair the ability of the community and/or its residents to provide basic energy services or to reduce or limit the costs of these services. Economic hardship will be assessed using either the objective measure of county median income under Option A below or subjectively under Option B based on the applicant's description of the community's economic hardships and

supporting materials. Applicants may elect either measure, but not both.

a. Option A. Economically Distressed Communities (up to 15 points). The target community is an economically distressed county or Indian reservation where the median household income is significantly below the State average. Points will be awarded based on the county percentage of State median household income (or reservation percentage of State median household income in the case of Federally recognized Indian reservations) according to the following:

(1) Less than 70 percent of the State median household income, 15 points;

(2) 70 to 80 percent of the State median household income, 12 points;

(3) 80 to 90 percent of the State median household income, 10 points;

(4) 90 to 95 percent of the State median household income, 5 points; or

(5) Over 95 percent of the State median household income, 0 points

Information on State and county median income is available online from the USDA Economic Research Service at *http://www.ers.usda.gov/data/unemployment/*. Information on Indian reservations is available through the U.S. Census at *http://www.census.gov*.

Note on Alternative Economic Data for Eligible Insular Areas: RUS recognizes that comparable economic and household income information may not be available for eligible areas that are not States. Applicants from these areas should provide any public information that is readily available on territorial or national median household income and local community economic characteristics and other indication of economic challenge posed by extremely high energy costs. Applications from these areas will be scored under Option B "Other Economic Hardship."

b. Option B. Other Economic Hardship (up to 15 points). The community suffers from other conditions creating a severe economic hardship that is adequately described and documented by the applicant. Examples include but are not limited to natural disasters, financially distressed local industry, and loss of major local employer, persistent poverty, outmigration, or other conditions adversely affecting the local economy, or contributing to unserved or underserved energy infrastructure needs that affect the economic health of the community. Applications from eligible areas that are not States will be scored under this alternative using information provided in the Application. The rating panel may assign points under this criterion, in lieu of awarding points based on the percentage of median household income

2. Rurality. (Up to 14 points) Consistent with the USDA Rural Development policy to target resources to rural communities with significant needs and recognizing that smaller and remote communities are often comparatively disadvantaged in seeking assistance, reviewers will award additional points based on the rurality (as measured by population) of the target communities to be served with grant funds under one of two options below.

a. Option A. Applications from the Fifty States, Puerto Rico, and the Virgin Islands. Applications from any one of the fifty States, Puerto Rico, or the U.S. Virgin Islands will be scored based on the population of the largest incorporated cities, towns, or villages, or census designated places included within the grant's proposed target area. Points will be awarded on the population of the largest target community within the proposed target area as follows:

(A) 2,500 or less, 14 points;

(B) Between 2,501 and 5,000, inclusive, 12 points;

(C) Between 5,001 and 10,000, inclusive, 8 points;

(D) Between 10,001 and 15,000, inclusive, 5 points;

(E) Between 15, 001 and 20,000, inclusive, 2 points; and

(F) Above 20,000, 0 points.

Applicants must use the latest available population figures from Census 2000 available at *http://www.census.gov/main/www/cen2000.html* for every incorporated city, town, or village, or Census designated place included in the target area.

b. Option B. Alternative Rurality Scoring for Applications from Pacific Insular Areas. The priority scoring criteria are intended to carry out Rural Development policy to give priority to areas most challenged by extremely high energy costs and those without access to substantial alternative economic and institutional resources to address these challenges, particularly rural, remote, and substantially-underserved areas. The original priority scoring criteria were established using Census data for population and economic characteristics as proxy measures for rurality, remoteness, and economic challenges. As the program has been implemented, it became evident that comparable U.S. Census population information is often not easily available or unavailable for communities in Pacific insular areas. Moreover, reliance on population as proxy for remoteness and the difficulties in addressing energy challenges did not adequately capture the impacts of vast distances of open ocean separating these insular areas. After consideration, the RUS has decided to adopt an alternative for scoring eligible applications from Pacific insular areas. Accordingly, effective with this NOFA, the RUS will assign a rurality score of "14" to applications from eligible insular areas in the Pacific. This policy will place these applications on an equal footing with competing applications from other rural and remote areas.

3. Unserved Energy Needs (2 points) Consistent with the purposes of the RE Act, projects that meet unserved or underserved energy needs will be eligible for 2 points. Examples of proposals that may qualify under this priority include projects that extend or improve electric or other energy services to communities and customers that do not have reliable centralized or commercial service or where many homes remain without such service because the costs are unaffordable.

4. Imminent hazard (2 points) If the grant proposal involves a project to correct a condition posing an imminent hazard to public safety, welfare, the environment, or to a critical community or residential energy facility, raters may award 2 points. Examples include community energy facilities in immediate danger of failure because of deteriorated condition, capacity limitations, damage from natural disasters or accidents, or other conditions where impending failure of existing facilities or absence of energy facilities creates a substantial threat to public health or safety, or to the environment.

5. Cost Sharing (2 points) This grant program does not require any cost contribution. In addition to their assessment of the economic feasibility and sustainability of the project under the project evaluation factors above, raters may award 2 points for cost sharing. These points will be awarded when the proposal documents supplemental contributions of funds, property, equipment, services, or other in kind contributions for the project evidencing the applicant's and/or community's commitment to the project that taken together exceed 10 percent of the total project costs. The applicant must be able to supply written confirmation of the availability of the offered cost share on Agency request or the points will be disallowed. The applicant must specifically request additional points for cost sharing.

2. Review and Selection Process

A. Scoring and Ranking of Applications

Following the evaluation and rating of individual applications under the above criteria, the rating panel will rank the applications in numerical order according to their total scores. The scored and ranked applications and the raters' comments will then be forwarded to the Administrator for review and selection of grant awards.

B. Selection of Grant Awards and Notification of Applicants

The RUS Administrator will review the rankings and recommendations of the applications provided by the rating panel for consistency with the requirements of this NOFA. The Administrator may return any application to the rating panel with written instruction for reconsideration if, in his sole discretion, he finds that the scoring of an application is inconsistent with this NOFA and the directions provided to the rating panel.

Following any adjustments to the project rankings as a result of reconsideration, the Administrator will select projects for funding in rank order. If funds remain after funding the highest ranking application, the Agency may fund all or part of the next highest ranking application. The RUS will advise an applicant if it cannot fully fund a grant request and ask whether the applicant will accept a reduced award.

The Administrator may decide based on the recommendations of the rating panel or in his sole discretion that a grant award may be made fully or partially contingent upon the applicant satisfying certain conditions or providing additional information and analyses. For example, the Agency may defer approving a final award to a selected project—such as projects requiring more extensive environmental review and mitigation, preparation of detailed site specific engineering studies and designs, or requiring local permitting, or availability of supplemental financing—until any additional conditions are satisfied. In the event that a selected applicant fails to comply with the additional conditions within the time set by the Agency, the selection will be vacated and the next ranking project will be considered.

If a selected applicant turns down a grant award offer, or fails to conclude a grant agreement acceptable to the RUS, or to provide required information requested by the Agency within the time period established in the notification of selection for grant award, the Administrator may select for funding the next highest ranking application submitted in response to this NOFA. If sufficient funds are not available to fund the next ranked project, the Administrator may in his sole discretion, offer a partial award to the next project, or skip over that project to the next ranking project that can be supported with available funding. The Administrator may in his sole discretion, make additional awards to unfunded applications submitted under this NOFA in rank order as provided above.

The RUS will notify each applicant in writing whether or not it has been selected for an award. The RUS written notice to a successful applicant of the amount of the grant award based on the approved application will constitute the Agency's preliminary acceptance of a project for an award, subject to compliance with all post-selection requirements including but not limited to completion of any environmental reviews and negotiation and execution of a grant agreement satisfactory to the RUS. This preliminary acceptance does not bind the Government to making a final grant award. Only a final grant award and agreement executed by the Administrator will constitute a binding obligation and commitment of Federal funds. Funds will not be awarded or disbursed until all requirements have been satisfied and are contingent on the continued availability of funds at the time of the award. The RUS will advise selected applicants of additional requirements or conditions.

C. Adjustments to Funding

The RUS reserves the right to fund less than the full amount requested in a grant application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. The Agency will not fund any portion of a grant request that is not eligible for funding under Federal statutory or regulatory requirements, that does not meet the requirements of this NOFA, or that may duplicate other RUS-funded activities, including electric loans. Only the eligible portions of a successful grant application will be funded.

Grant assistance cannot exceed the lower of:

(a) The qualifying percentage of eligible project costs requested by the applicant; or

(b) The minimum amount sufficient to provide for the economic feasibility of the project as determined by the RUS.

VI. Award Administration Information

1. Award Notices

The RUS will notify all applicants in writing whether they have been selected for an award. Successful applicants will be advised in writing of their selection as award finalists. Successful applicants will be required to negotiate a grant agreement acceptable to the Agency and complete additional grant forms and certifications required by USDA as part of the pre-award process.

Depending on the nature of the activities proposed by the application, the grantee may be asked to provide information and certifications necessary for compliance with the RUS environmental policy regulations and procedures for Electric Programs at 7 CFR part 1794. Following completion of the environmental review, selected applicants will receive a letter of conditions establishing any project-specific conditions to be included in the grant agreement and asked to execute a letter of intent to meet the grant conditions or to detail why such conditions can't be met and to propose alternatives. Grant funds will not be advanced unless and until the applicant has executed a grant agreement acceptable to the RUS.

The RUS will require each successful applicant to agree to the specific terms of each grant agreement, a project budget, and other program requirements. In cases where the Agency cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide requested information within the time specified, an award will not be made to that applicant. The selection will be revoked and the Agency may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant, subject to the availability of funds.

2. Administrative and National Policy Requirements

A. Environmental Review and Restriction on Certain Activities

Grant awards are required to comply with 7 CFR part 1794, which sets forth RUS regulations implementing the National Environmental Policy Act (NEPA). Grantees must also agree to comply with any other Federal or State environmental laws and regulations applicable to the grant project.

If the proposed grant project involves physical development activities or property acquisition, the applicant is generally prohibited from acquiring, rehabilitating, converting, leasing,

repairing or constructing property or facilities, or committing or expending Agency or non-Agency funds for proposed grant activities until the RUS has completed any environmental review in accordance with 7 CFR part 1794 or determined that no environmental review is required. Successful applicants will be advised whether additional environmental review and requirements apply to their proposals.

B. Other Federal Requirements

Other Federal statutes and regulations apply to grant applications and to grant awards. These include, but are not limited to, requirements under 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

Certain Office of Management and Budget (OMB) circulars also apply to USDA grant programs and must be followed by a grantee under this program. The policies, guidance, and requirements of the following, or their successors, may apply to the award, acceptance and use of assistance under this program and to the remedies for noncompliance, except when inconsistent with the provisions of the Agriculture, Rural Development and Related Agencies Appropriations Acts, other Federal statutes or the provisions of this NOFA:

- OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);
- OMB Circular A–21 (Cost Principles for Education Institutions);
- OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);
- OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);
- 7 CFR part 3015 (Uniform Federal Assistance Regulations);
- 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian Tribal governments);
- 7 CFR part 3017 (Government-wide debarment and suspension (non-procurement) and
- Government-wide requirements for drug-free workplace (grants));
- 7 CFR part 3018 (New restrictions on Lobbying);
- 7 CFR part 3019 (Uniform administrative requirements for grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and
- 7 CFR part 3052 (Audits of States, local governments, and non-profit organizations).

Compliance with additional OMB Circulars or government-wide regulations may be specified in the grant agreement.

3. Reporting

The grantee will be required to provide periodic financial and performance reports under USDA grant regulations and program rules and to submit a final project performance report. The nature and frequency of required reports are established in USDA grant regulations and the project-specific grant agreements.

VII. Agency Contact

The Agency Contact for this grant announcement is Karen Larsen, Management Analyst, Rural Utilities Service, Electric Programs, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *Karen.Larsen@wdc.usda.gov.*

Dated: July 12, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–19509 Filed 8–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0050]

Animal Traceability; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is a notice to inform the public of upcoming meetings in Madison, WI, Atlanta, GA, and Pasco, WA, to provide an opportunity for stakeholders to offer their input on the new framework being developed for animal disease traceability. The meetings are being organized by the Animal and Plant Health Inspection Service.

DATES: The meetings will be held on August 18, 2010, from 10 a.m. to 4 p.m., and August 20, and 24, 2010, from 8 a.m. to 4 p.m. each day.

ADDRESSES: The public meeting on August 18, 2010, will be held at the Crowne Plaza Madison, 4402 East Washington Avenue, Madison, WI 53704. The public meeting on August 20, 2010, will be held at the Doubletree Hotel Atlanta Airport, 3400 Norman Berry Drive, Atlanta, GA 30344. The public meeting on August 24, 2010, will be held at the Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737-1231; (301) 734-5571.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is currently developing a new, flexible framework for animal disease traceability in the United States. In keeping with its commitment to partnering with States, Tribal Nations, and industry to address many of the details of the infrastructure of this program, including possible regulations, the USDA took the initial step of hosting a State/Tribal forum on animal disease traceability in Kansas City, MO, on March 18 and 19, 2010. Information on the proceedings of the State/Tribal forum is available to the public for review and comment at (*http://www.aphis.usda.gov/traceability/forum/index.shtml*). In addition, we hosted several public meetings to discuss animal disease traceability. The meetings took place in Kansas City, MO, Riverdale, MD, Denver, CO, Salt Lake City, UT, and Fort Worth, TX, on May 11, May 13, May 17, June 24, and July 1, 2010, respectively. We are now planning to host three additional public meetings, which will take place in Madison, WI, on August 18, 2010, Atlanta, GA, on August 20, 2010, and Pasco, WA, on August 24, 2010 (see **ADDRESSES**).

Tentative topics to be discussed at the upcoming meetings include:

1. The framework for a proposed animal disease traceability rule.

2. Specific details that would help form the animal disease traceability rule.

Written statements on meeting topics, as well as on the proceedings of the March 2010 State/Tribal forum, may be filed with the USDA through August 30, 2010, via the Federal eRulemaking Portal at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0050*) or by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS-2010-0050 when submitting your statements.

Done in Washington, DC, this 3rd day of August 2010.

Gregory Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–19565 Filed 8–6–10: 8:45 am]

BILLING CODE: 3410–34–S

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

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 a meeting of the Tennessee Advisory Committee (Committee) will convene on Monday, August 30, 2010. The meeting will convene at 10 a.m. (Central Time) and adjourn at approximately noon. The meeting will be held at the Embassy Suites Hotel, 1811 Broadway, Nashville, Tennessee, 37203. The purpose of the meeting is to review the Committee's draft report on school discipline.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 30, 2010. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 16T126, Atlanta, GA, 30303. They may also be faxed to the Commission at (404) 562–7005, or e-mailed to the Commission at *klee@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, 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 Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 4, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–19531 Filed 8–6–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Pacific Whiting Shoreside Fishery Monitoring and Catch Accounting Program.

OMB Control Number: 0648–0563.

Form Number(s): NA .

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 53.

Average Hours Per Response: Initial application and summary report, 10 hours each; inseason data report, 1 hour; electronic fish tickets, 10 minutes in Washington and California, 2 minutes in Oregon; electronic monitoring systems (EMS): installation, 6 hours; data downloads, 4 hours and EMS removal, 2 hours.

Burden Hours: 600.

Needs and Uses: This is an extension of a currently approved information collection.

As part of its fishery management responsibilities, NOAA's *National Marine Fisheries Service* collects information to determine the amount and type of groundfish caught by fishing vessels. This collection supports exempted fishing permit requirements for Pacific whiting shoreside vessels to have and use electronic monitoring to verify full retention of catch and for Pacific whiting shoreside processors to send electronic catch data used to manage the catch allocations and limits. The respondents are principally groundfish fishermen and shoreside processors which are companies/partnerships. Other respondents include state fisheries agencies who seek an exempted fishing permit.

Affected Public: Business or other for-profit organizations.

Frequency: Daily, weekly and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 4, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–19529 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

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 (USPTO).

Title: Secrecy and License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,538 hours annually.

Number of Respondents: 1,794 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public between 30 minutes (0.5 hours) and 4 hours, depending upon the complexity of the situation, to gather the necessary information, prepare, and submit the requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 181–188 and administered by the USPTO through 37 CFR 5.1–5.33 and 1.17. This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions regarding secrecy orders and foreign filing licenses. Response to this information collection is necessary to obtain a permit to disclose, modify or rescind a secrecy order; to obtain general or group

permits; to obtain foreign filing and retroactive licenses; or to change the scope of a license.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail: Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

• *E-mail: InformationCollection@uspto.gov.* Include "0651–0034 copy request" in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, 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 September 8, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–19612 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5403.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2010, the Department of Commerce ("Department") published a notice of initiation of antidumping duty new shipper reviews for certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2009, through February 15, 2010. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 75 FR 15416, (March 29, 2010). The preliminary results are currently due on September 19, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results in an administrative review of an antidumping duty order 180 days after the date on which the new shipper review was initiated. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

The Department determines that these new shipper reviews involve extraordinarily complicated methodological issues. The Department is extending the deadline because it intends to provide parties additional time to submit surrogate value data and thus will require additional time to analyze these data. Furthermore, the Department will also need additional time to consider integrated farming operations. The Department concludes that these new shipper reviews are extraordinarily complicated. We are therefore extending the time for the completion of the preliminary results of this review by 120 days to January 17, 2010.

This notice is published in accordance with section 751(a)(2)(B)(iv) and 777(i) of the Act

Dated: August 3, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–19576 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 9, 2009, the Department of Commerce (the "Department") published in the **Federal Register** the preliminary results of the fourth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam").[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review ("POR"), February 1, 2008, through January 31, 2009.

DATES: *Effective Date:* August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4031, or (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2009, the Department initiated an administrative review of 198 producers/exporters of subject merchandise from Vietnam.[2] Of the 198 companies/groups upon which we initiated an administrative review, 23 companies submitted separate-rate certifications, nine companies submitted separate-rate applications, and two companies stated that they did not export subject merchandise to the United States during the POR. On June

[1] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review,* 75 FR 12206 (Mar. 15, 2010) ("*Preliminary Results*").

[2] *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 74 FR 13178 (March 26, 2009) ("*Initiation Notice*").

11, 2009, the Department selected Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai"), Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively the "Minh Phu Group") and Nha Trang Seaproduct Company ("Nha Trang Seafoods") for individual examination (hereinafter "mandatory respondents") because they were the largest exporters, by volume, of subject merchandise during the POR.[3]

On October 27, 2009, the Department extended the deadline for the *Preliminary Results* until March 1, 2010.[4] As noted above, on March 15, 2010, the Department published the *Preliminary Results* of this administrative review.[5] In the *Preliminary Results* the Department determined that Amanda Foods (Vietnam) Limited ("Amanda Foods") would be included in the Vietnam-wide entity for the purposes of this review because the Department received an untimely filing of Amanda Foods' Separate Rate Certification ("SRC").

On April 9, 2010, the Department received publicly available information to value factors of production ("FOP") for the final results from the Ad Hoc Shrimp Trade Action Committee and its members ("Petitioner"), ASPA and LSA ("Processors"). Certain Vietnamese Respondents (*i.e.,* the Minh Phu Group, Nha Trang Seafoods, Camau Frozen Seafood Processing Import and Export Corporation ("Camimex"), and Grobest & I–Mei Industrial (Vietnam) Co., Ltd. ("Grobest") submitted additional surrogate value information. On April 16, 2010, the Department received rebuttal surrogate values from certain Vietnamese Respondents (*i.e.,* the Minh Phu Group, Nha Trang Seafoods, Camimex, and Grobest).

In response to requests by interested parties, on March 30, 2010, we extended the deadline for parties to submit case briefs and rebuttal briefs until April 21, 2010, and April 26, 2010, respectively. On April 14, 2010, the Department received a case brief from Amanda Foods. On April 21, 2010, the Department received case briefs from Petitioner, Processors, Contessa Premium Foods, Inc. ("Contessa"), Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd. ("Fish One"), and certain Vietnamese Respondents.[6] On April 26, 2010, the Department received rebuttal briefs from Petitioner, Processors, Contessa, and certain Vietnamese Respondents (*i.e.,* the Minh Phu Group, Nha Trang Seafoods, Camimex, and Grobest).

On June 16, 2010, the Department released data related to the surrogate wage rate to parties and allowed for comment. On June 22, 2010, the Department released additional data related to surrogate wage rate calculation to parties and allowed for comment. On June 25, 2010, the Department received comments on the aforementioned wage rate memorandums from Contessa, *et al.,* Petitioner, Processors, and Vietnamese Respondents. On July 15, 2010, the Department released additional data related to surrogate wage rate calculation to parties and allowed for comment. On July 20, 2010, the Department received comments on the July 15, 2010, wage rate memorandum from Processors, Petitioner, and Vietnamese Respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of 2008—2009 Administrative Review," which is dated concurrently with this notice ("I&D Memo"). A list of the issues which parties raised and to which we respond in the I&D Memo is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1117, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to the Minh Phu Group and Nha Trang Seafoods' margin calculations for the final results. For all changes to the Minh Phu Group and Nha Trang Seafoods' calculations, *see* I&D Memo and the company specific analysis memoranda. We have updated the name changes accordingly for these final results. Pursuant to a recent decision by the Court of Appeals for the Federal Circuit,[7] we have calculated a revised hourly wage rate to use in valuing the Minh Phu Group and Nha Trang's reported labor input by averaging earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.[8]

Scope of the Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, "Tails" in this context means the tail fan, which includes the telson and the uropods, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*),

[3] *See* Memorandum to John Andersen, Acting Deputy Assistant Secretary, through James Doyle, Office Director, from Scot T. Fullerton, Program Manager, and Bobby Wong, Senior International Trade Analyst, regarding Selection of Respondents for the 2008–2009 Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated June 11, 2009.

[4] See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Reviews,* 74 FR 55192 (October 27, 2009).

[5] *See Preliminary Results.*

[6] "Certain Vietnamese Respondents" for the April 21, 2010, rebuttal case brief includes the following companies: The Minh Phu Group, Nha Trang Seafoods, Camimex, Grobest, Bac Lieu Fisheries Joint Stock Company, C.P. Vietnam Livestock Corporation, Ca Mau Seafood Joint Stock Company, Cafatex Fishery Joint Stock Company, Can Tho Agricultural and Animal Products Import Export Company, Cuu Long Seaproducts Company, Danang Seaproducts Import Export Corporation, Investment Commerce Fisheries corporation, Minh Hai Export Frozen Seafood Processing Joint Stock Company, Cadovimex Seafood Import-Export and Processing Joint Stock Company, Ngoc Sinh Private Enterprise, Nha Trang Fisheries Joint Stock Company, Phuong Nam Co., Ltd., Sao Ta Foods Joint Stock Company, Soc Trang Seafood Joint Stock Company, Thuan Phuoc Seafoods and Trading Corporation, UTXI Aquatic Products Processing Corporation, Vinh Loi Import Export Company, and Viet Foods Co., Ltd.

[7] *See Dorbest Ltd. et al.* v. *United States,* 2009–1257 at 20 (CAFC 2010).

[8] *See* I&D Memo at Comment 9.

southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010, and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Duty Absorption

In the *Preliminary Results* we determined that antidumping duties have not been absorbed by the Minh Phu Group or Nha Trang Seafoods on U.S. sales made through its affiliated importer. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering whether duties have not been absorbed by the Minh Phu Group through its affiliated importer or by Nha Trang Seafoods through an affiliated importer. Therefore, for the final results, in accordance with section 751(a)(4) of the Act, we continue to find that duties have not been absorbed by the Minh Phu Group or Nha Trang.

Rescission of Administrative Review

In the *Preliminary Results* we preliminarily rescinded the review with respect to Vinh Hoan Corporation ("Vinh Hoan") and Binh Anh Seafood ("Binh Anh"), because they stated that they did not export subject merchandise to the United States during the POR. In addition, CBP has not provided any information that contradicts these companies' claims. Moreover, we have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering rescinding the review with respect to these two companies. Therefore, for the final results, in accordance with section 351.213(d)(3) of the Department's regulations, we have rescinded the review with respect to Vinh Hoan and Binh Anh.

Separate Rates

In our *Preliminary Results,* we treated the following companies as separate rate companies: Minh Phu Group; Nha Trang Seafoods; Fish One; Phuong Nam Co., Ltd., and Western Seafood Processing and Exporting Factory (collectively "Phuong Nam"); Cam Ranh Seafoods Processing Enterprise PTE ("Camranh Seafoods"); Danang Seaproducts Import Export Corporation ("Seaprodex Danang"); Minh Hai Jostoco; Cuu Long Seaproducts Company ("Cuu Long Seapro"); Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX–VIETNAM"); Can Tho Import Export Fishery Limited Company ("CAFISH"); Thuan Phuoc Seafoods and Trading Corporation; Viet Foods Co., Ltd.; Coastal Fisheries Development Corporation ("COFIDEC"); Sao Ta Foods Joint Stock Company ("FIMEX VN"); Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX"); Investment Commerce Fisheries Corporation ("INCOMFISH"); Cafatex Fishery Joint Stock Corporation ("Cafatex Corporation"); Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai"); Can Tho Agricultural and Animal Product Import Export Company ("CATACO"); Ca Mau Seafood Joint Stock Company ("Seaprimexco Vietnam"); Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco"); Bac Lieu Fisheries Joint Stock Company (formerly known as Bac Lieu Fisheries Limited Company) ("Bac Lieu"); Grobest, Gallant Ocean (Vietnam) Co., Ltd. ("Gallant Ocean Vietnam"); UTXI Aquatic Products Processing Corporation ("UTXI"); Soc Trang Aquatic Products and General Import Export Company ("STAPIMEX"); C.P. Vietnam Livestock Company Limited (Currently C.P. Vietnam Livestock Corporation) ("C. Vietnam"); Kim Anh Company Limited ("Kim Anh"); Vinh Loi Import Export Company ("VIMEX"); Ngoc Sinh Private Enterprise ("Ngoc Sinh"); and, Phu Cuong Seafood Processing and Import-Export Co., Ltd. as separate rate companies. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this treatment. Therefore, the Department continues to find that the above-named companies meet the criteria for a separate rate.

In our *Preliminary Results,* we determined that the Department received an untimely filing of Amanda Foods' separate rate application ("SRC").[9] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of this determination. Therefore, the Department continues to find that Amanda Seafoods will remain part of the Vietnam-wide entity for the purposes of this review, as the Department did not conduct a review of its separate rate eligibility.

Vietnam-Wide Entity

In the *Preliminary Results* we treated certain Vietnamese exporters/producers as part of the Vietnam-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Results.* Because we begin with the presumption that all companies within a NME country are subject to government control, and because only the companies listed under the "Final Results of Review" section below have overcome that presumption, we are applying a single antidumping rate, *i.e.,* the Vietnam-wide entity rate, to all

[9] *See also* I&D Memo at Comment 11.

other exporters of subject merchandise from Vietnam. Such companies, including Amanda Seafoods, did not demonstrate entitlement to a separate rate.[10] The Vietnam-wide rate applies to all entries of the merchandise under consideration, except for those companies which have received a separate rate.

Revocation

In the *Preliminary Results* we noted that eighteen companies requested revocation, however, thirteen of those companies withdrew their revocation requests prior to respondent selection. Also, in the *Preliminary Results* we declined to revoke the order with respect to the five companies (Minh Phu Group, CAMIMEX, Grobest, Fish One and Seaprodex Minh Hai) with outstanding revocation requests. For the final results we have continued to deny these companies revocation requests. For a discussion of this issue, *see* the I&D Memo at Comment 4.

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (percent)
Minh Phu Group:	
Minh Phat Seafood Co., Ltd., aka	2.96
Minh Phat Seafood aka.	
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka.	
Minh Phu Seafood Corp. aka.	
Minh Phu Seafood Corporation aka.	
Minh Qui Seafood aka.	
Minh Qui Seafood Co., Ltd.	
Nha Trang Seaproduct Company ("Nha Trang Seafoods")[11] aka	5.58
Nha Trang Seafoods aka.	
Nha Trang Seaproduct Company Nha Trang Seafoods.	
Bac Lieu Fisheries Company Limited, aka	4.27
Bac Lieu Fisheries Company Limited ("Bac Lieu") aka.	
Bac Lieu Fisheries Joint Stock Company aka.	
Bac Lieu Fisheries Limited Company aka.	
Bac Lieu Fisheries Company Limited[12].	
C.P. Vietnam Livestock Company Limited ("C.P. Vietnam") aka	4.27
C.P. Vietnam Livestock Company Limited aka.	
C.P. Vietnam Livestock Corporation ("C.P. Vietnam").	
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX–VIETNAM") aka	4.27
Cai Doi Vam Seafood Import-Export Company ("Cadovimex") aka.	
Cai Doi Vam Seafood aka.	
Cai Doi Vam Seafood Im-Ex Company (Cadovimex) aka.	
Cai Doi Vam Seafood Processing Factory aka.	
Caidoivam Seafood Company (Cadovimex) aka.	
Caidoivam Seafood Im-Ex Co.	
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka	4.27
Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka.	
Cafatex, aka.	
Cafatex Vietnam, aka.	
Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho, aka.	
Cas, aka.	
Cas Branch, aka.	
Cafatex Saigon, aka.	
Cafatex Fishery Joint Stock Corporation, aka.	
Cafatex Corporation, aka.	
Taydo Seafood Enterprise.	
Cafatex Corp.	
Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods") aka	4.27
Camranh Seafoods.	
Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX")[13] aka	4.27
Camimex aka.	
Camau Seafood Factory No. 4 aka.	
Camau Seafood Factory No. 5 aka.	
Camau Frozen Seafood Processing Import & Export aka.	
Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25) aka.	
Frozen Factory No. 4.	
Can Tho Agricultural and Animal Products Import Export Company ("CATACO") aka	4.27
Can Tho Agricultural Products aka.	
CATACO aka.	
Can Tho Agricultural and Animal Products Imex Company.	
Can Tho Import Export Fishery Limited Company ("CAFISH")	4.27
Coastal Fishery Development aka	4.27
Coastal Fisheries Development Corporation ("Cofidec") aka.	

[10] *See, e.g., Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000).

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM—Continued

Manufacturer/exporter	Weighted-average margin (percent)
COFIDEC aka. Coastal Fisheries Development Corporation aka. Coastal Fisheries Development Co., aka. Coastal Fisheries Development Corp. Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (“Cuulong Seapro”) aka. Cuulong Seapro aka. Cuulong Seaproducts Company (“Cuulong Seapro”) aka. Cuu Long Seaproducts Company (“Cuu Long Seapro”) aka. Cuu Long Seaproducts Company aka. Cuu Long Seapro aka. Cuulong Seaproducts Company (“Cuu Long Seapro”) aka. Cuu Long Seaproducts Limited (Cuulong Seapro) aka. Cuulong Seapro aka. Cuulong Seaproduct Company.	4.27
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) aka Danang Seaproducts Import Export Corporation aka. Danang Seaproduct Import-Export Corporation aka. Danang Seaproducts Import Export aka. Tho Quang Seafood Processing & Export Company aka. Seaprodex Danang aka. Tho Quang Seafood Processing and Export Company aka. Tho Quang, aka. Tho Quang Co.[14].	4.27
Gallant Ocean (Vietnam) Co., Ltd. (“Gallant Ocean Vietnam”)	4.27
Grobest & I-Mei Industrial Vietnam, aka Grobest, aka. Grobest & I-Mei Industrial (Vietnam) Co., Ltd..	4.27
Investment Commerce Fisheries Corporation (“Incomfish”) aka Incomfish aka. Investment Commerce Fisheries Corp., aka. Incomfish Corp., aka. Incomfish Corporation aka. Investment Commerce Fisheries aka. Investment Commerce Fisheries Corporation.	4.27
Kim Anh Company Limited (“Kim Anh”)	4.27
Minh Hai Export Frozen Seafood Processing Joint Stock Company aka Minh Hai Jostoco aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”) aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Company aka. Minh Hai Joint Stock Seafood Processing Joint-Stock Company aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka. Minh-Hai Export Frozen Seafood Processing Joint-Stock Company.	4.27
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) aka Sea Minh Hai aka. Minh Hai Joint-Stock Seafoods Processing Company aka. Seaprodex Minh Hai aka. Seaprodex Min Hai aka. Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.) aka. Seaprodex Minh Hai Factory aka. Seaprodex Minh Hai Factory No. 69 aka. Seaprodex Minh Hai Workshop 1 aka. Seaprodex Minh Hai-Factory No. 78 aka. Workshop I Seaprodex Minh Hai.	4.27
Minh Hai Sea Products Import Export Company (“Seaprimex Co”), aka Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”) aka. Seaprimexco Vietnam, aka. Seaprimexco. Ca Mau Seafood Joint Stock Company (“Seaprimexco”). Minh Hai Seaproducts Import Export Corporation. Seaprimexco. Minh Hai Seaproducts Co Ltd. (Seaprimexco).	4.27
Ngoc Sinh Private Enterprise aka Ngoc Sinh Seafoods aka. Ngoc Sinh Seafoods Processing and Trading Enterprise aka. Ngoc Sinh Fisheries aka. Ngoc Sinh Private Enterprises aka. Ngoc Sinh Seafoods Processing and Trading Enterprises aka. Ngoc Sinh aka. Ngoc Sinh Seafood Processing Company aka.	4.27

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Ngoc Sinh Seafoods (Private Enterprise).	
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") aka	4.27
Nha Trang Fisheries Joint Stock Company aka.	
Nhatrang Fisheries Joint Stock Company aka.	
Nha Trang Fisco aka.	
Nhatrang Fisco aka.	
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") aka.	
Nha Trang Fisheries, Joint Stock.	
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	4.27
Phuong Nam Co., Ltd. ("Phuong Nam") aka	4.27
Western Seafood Processing and Exporting Factory ("Western Seafood").	
Sao Ta Foods Joint Stock Company ("Fimex VN") aka	4.27
Sao Ta Foods Joint Stock Company aka.	
Fimex VN aka.	
Sao Ta Seafood Factory aka.	
Saota Seafood Factory.	
Soc Trang Aquatic Products and General Import Export Company ("Stapimex") aka	4.27
Soc Trang Seafood Joint Stock Company ("Stapimex") aka.	
Soc Trang Aquatic Products and General Import Export Company aka.	
Stapimex aka.	
Soc Trang Aquatic Products and General Import Export Company-(Stapimex) aka.	
Stapimex Soc Trans Aquatic Products and General Import Export Company aka.	
Stapmex.	
Thuan Phuoc Seafoods and Trading Corporation aka	4.27
Frozen Seafoods Factory No. 32 aka.	
Seafoods and Foodstuff Factory aka.	
My Son Seafoods Factory.	
UTXI Aquatic Products Processing Company aka	4.27
UT XI Aquatic Products Processing Company aka.	
UT–XI Aquatic Products Processing Company aka.	
UTXI aka.	
UTXI Co. Ltd., aka.	
Khanh Loi Seafood Factory aka.	
Hoang Phuong Seafood Factory aka.	
UTXI Aquatic Products Processing Corporation ("UTXICO").	
Viet Foods Co., Ltd. aka	4.27
Nam Hai Foodstuff and Export Company Ltd.	
Viet Hai Seafood Co., Ltd. aka	4.27
Vietnam Fish One Co., Ltd. ("Fish One").	
Vinh Loi Import Export Company ("Vimexco"), aka	4.27
Vinh Loi Import Export Company ("VIMEX"), aka.	
VIMEXCO aka.	
VIMEX aka.	
Vinh Loi Import/Export Co., aka.	
Vinhloi Import Export Company aka.	
Vinh Loi Import-Export Company.	
Vietnam-Wide Entity Rate [15] [16]	25.76

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese

[11] *See* Vietnamese Respondents case brief at 44 for proprietary name used by importer.

[12] *See* Vietnamese Respondents case brief at 24 for proprietary name used by importer.

[13] *See* Vietnamese Respondents' case brief at 44 for proprietary names used by importers.

[14] *See* Vietnamese Respondents' case brief at 29 for proprietary names used by importers.

[15] *See* Appendix II for a list of these companies.

[16] The Vietnam-wide entity includes Amanda Foods.

exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide entity rate of 25.76 percent; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 3, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

I. Issues:

Comment 1: Shrimp Surrogate Value ("SV")
Comment 2: Surrogate Country
Comment 3: Surrogate Financial Ratios
A. Gemini's Loading/Unloading Expenses
B. Gemini's Sales Commissions
C. Use of the Apex Financial Statements
D. Use of the Beach, Gulf & Fine Foods Financial Statements
Comment 4: Revocation
Comment 5: Respondent Selection
Comment 6: Exclusion of Imports from Bangladesh in SV Calculations
Comment 7: Name Corrections for Certain Companies
Comment 8: Separate Rate Companies
A. Margins for Separate Rate Companies
B. Fish One Margin
Comment 9: SV for Labor
Comment 10: Zeroing
Comment 11: Amanda Foods Separate Rate Certification
Comment 12: Exclusion of Imports from Unspecified Countries in SV Calculations
Comment 13: Assessment Rate Calculation for the Minh Phu Group
Comment 14: Liquidation Instructions

Appendix II

AAAS Logistics
Agrimex
Amerasian Shipping Logistics Corp.; American Container Line
An Giang Fisheries Import and Export Joint Stock Company (Agifish)
An Xuyen
Angiang Agricultural Technology Service
Aquatic Products Trading Company
Bentre Aquaproduct Imports & Exports
Bentre Forestry and Aquaproduct Import-Export Company ("FAQUIMEX")
Bentre Frozen Aquaproduct Exports; Bentre Seafood Joint Stock and/or Beseaco
Beseaco; Binh Dinh Fishery Joint Stock
Ca Mau Seaproducts Exploitation and Service Corporation ("SES")
Camau Seafood Fty
Can Tho Seafood Exports
Cantho Imp & Exp Seafood Join, a.k.a. Caseamex; Cautre Enterprises
Cautre Export Goods Processing Joint Stock Company
Chun Cheng Da Nang Co., Ltd.
Co Hieu; Cong Ty D Hop Viet Cuong
D & N Foods Processing Danang
Da Van Manh
Dong Phuc Huynh
Dragon Waves Frozen Food Fty.
Duyen Hai Bac Lieu Company ("T.K. Co.")
Duyen Hai Foodstuffs Processing Factory ("COSEAFEX")
Four Season Food
Frozen Fty
Frozen Seafoods Factory No. 32 and/or Frozen Seafoods FTy
Frozen Seafoods Fty
General Imports & Exports
Hacota; Hai Ha Private Enterprise
Hai Thuan Export Seaproduct Processing Co., Ltd.
Hai Viet
Hai Viet Corporation ("HAVICO")
Hanoi Seaproducts Import Export Corporation ("Seaprodex Hanoi")
Hatrang Frozen Seaproduct Fty; Hoa Nam Marine Agricultural
Hoan An Fishery
Hoan Vu Marine Product Co., Ltd.
Hua Heong Food Ind Vietnam
Khanh Loi Trading
Kien Gang Sea Products Import-Export Company ("Kisimex")
Kien Gang Seaproduct Import and Export Company ("KISIMEX")
Kien Long Seafoods
Konoike Vinatrans Logistics
Lamson Import-Export Foodstuffs Corporation
Long An Food Processing Export Joint Stock Company ("LAFOOCO")
Lucky Shing
Nam Hai
Nha Trang Company Limited
Nha Trang Fisheries Co., Ltd.
Pataya Food Industry (Vietnam) Ltd.
Phat Loc Seafood
Phung Hung Private Business
Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd.
Saigon Orchide
Sea Product
Sea Products Imports & Exports
Seafood Company Zone II ("Thusaco2")
Seafood Processing Joint Stock Company No. 9 (previously Seafood Processing Imports Exports)
Seaprodex and/or Seaprodex Hanoi
Seaprodex Quang Tri; Sonacos
Song Huong ASC Import-Export Company Ltd.
Song Huong ASC Import-Export Company Ltd. and/or Song Huong ASC Joint Stock Company
Song Huong ASC Joint Stock Company
Special Aquatic Products Joint Stock Company ("Seaspimex")
SSC
T & T Co., Ltd.
Tacvan Frozen Seafoods Processing Export
Thami Shipping & Airfreight
Thang Long
Thanh Doan Seaproducts Import
Thanh Long
Thien Ma Seafood
Tourism Material and Equipment Company (Matourimex Hochiminh City Branch)
Truc An Company
Trung Duc Fisheries Private Enterprise
V N Seafoods; Vien Thang Private Enterprise
Viet Nhan Company
Vietfracht Can Tho
Vietnam Fish-One Co., Ltd.
Vietnam Northern Viking Technologie Co.
Vietnam Northern Viking Technology Co., Ltd.
Vietnam Tomec Co., Ltd.
Vilfood Co.
Western Seafood Processing and Exporting Factory.

[FR Doc. 2010–19577 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut–to–Length Carbon–Quality Steel Plate Products From Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 29, 2010, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products from Italy. The review covers one manufacturer/exporter, Evraz Palini Bertoli S.p.A. (Palini). The period of review is February 1, 2008, through January 31, 2009.

Based on our analysis of the comments received, we have made changes in the margin calculation for Palini. Therefore, the final results are different from the preliminary results. The final weighted–average dumping margin for Palini is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S.Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut–to–length carbon–quality steel plate products (CTL plate) from Italy. See *Certain Cut–to–Length Carbon–Quality Steel Plate Products From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 4779 (January 29, 2010) (*Preliminary Results*).

We invited interested parties to comment on the Preliminary Results. On March 9, 2010, we received a case brief from Palini. On March 16, 2010, we received a rebuttal brief from a domestic producer, Nucor Corporation (Nucor). No other parties submitted either a case brief or a rebuttal brief.

On May 28, 2010, we extended the due date for the final results of this administrative review to August 4, 2010. See *Certain Cut–to–Length Carbon–Quality Steel Plate Products From Italy: Extension of the Final Results of Antidumping Duty Administrative Review*, 75 FR 29976 (May 28, 2010).

We have conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut–to–length (not in coils) and without patterns in relief), of iron or non–alloy–quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to–length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross-section where such non–rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non–metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Analysis of the Comments Received

All issues raised in Palini's case brief and Nucor's rebuttal brief are addressed in the Issues and Decision Memorandum (Decision Memo) from Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations Edward C. Yang to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit of the main Department of Commerce building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of the Review

As a result of our review, we determine that a weighted–average dumping margin of 12.18 percent exists for Palini for the period February 1, 2008, through January 31, 2009.

Assessment Rates

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We have

calculated an importer/customer–specific assessment amount for subject merchandise. We divided the total dumping margins (calculated as the difference between normal value and the export price) for Palini's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise on each of that importer's or customer's entries during the period of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by Palini for which Palini did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of CTL plate from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for Palini will be 12.18 percent; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 7.64 percent, the all–others rate revised in *Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: July 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

List of Issues in the Issues and Decision Memorandum

1.Date of Sale
2. Conversion of U.S. Prices and U.S. Price Adjustments

[FR Doc. 2010–19578 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; File No. 14241

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institution, Woods Hole, MA has been issued a major amendment to Permit No. 14241 to conduct research on marine mammals.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 28, 2010, notice was published in the **Federal Register** (75 FR 29991) that a request for an amendment to the permit to conduct research on cetacean behavior, sound production, and responses to sound had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit has been amended to: (1) include authorization for collection of a skin and blubber biopsy sample from animals that are already authorized to be tagged; (2) add new species for existing projects involving tagging, playbacks, and behavioral observations; and (3) modify and clarify tagging and playback protocols and mitigation for when dependent calves are present. The new species for the Mediterranean Sea-based project are Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale (*Ziphius cavirostris*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala melas*), Risso's dolphin (Grampus griseus), and false killer whale (*Pseudorca crassidens*). The new species for the project based off Cape Hatteras, North Carolina are True's beaked whale (*M. mirus*), Gervais' beaked whale (M. europaeus), Blainville's beaked whale, bottlenose dolphin (*Tursiops truncatus*), Risso's dolphin, short-beaked common dolphin (*Delphinus delphis*), and Cuvier's beaked whale. The amendment is valid through the expiration date of the original permit, July 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: August 4, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–19556 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XY01

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Advisory Panel (AP) will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, August 25, 2010, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the panel's agenda are as follows:

1. Review and provide AP recommendations regarding catch monitoring alternatives under development in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP); AP discussion may address:

•quota monitoring and reporting;

•measures to confirm the accuracy of self-reporting;

•catch monitoring and control plans (CMCPs);

•maximized retention;

•measures to maximize sampling and address net slippage;

•observer coverage and portside sampling; and

•measures to require electronic monitoring.

2. Provide AP recommendations regarding measures to address river herring bycatch proposed in Amendment 5;

3. Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: August 4, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–19541 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from respondent, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2008, to June 30, 2009.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

DATES: *Effective Date:* August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico,* 64 FR 40560 (July 27, 1999) (*Order*). On July 11, 2008, the Department published a notice entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 31406 (July 1, 2009), covering, *inter alia,* S4 in coils from Mexico for the period of review (POR) (*i.e.,* July 1, 2008, through June 30, 2009).

On July 31, 2009, Mexinox requested that the Department conduct an administrative review of Mexinox for the period from July 1, 2008, through June 30, 2009. Also on July 31, 2009, in accordance with 19 CFR 351.213(b)(1), petitioners requested that the Department conduct an administrative review of Mexinox for the period July 1, 2008, through June 30, 2009. On August 25, 2009, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2008, through June 30,

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless.

2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 42873 (August 25, 2009). On September 16, 2009, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire (AQR) on October 21, 2009, and the Department received comments from petitioners regarding Mexinox's AQR on November 4, 2009. Mexinox submitted its response to sections B, C, D, and E of the Department's antidumping duty questionnaire (BQR, CQR, DQR, and EQR, respectively) on November 25, 2009. On December 17, 2009, Mexinox submitted factual information for the Department's consideration in the instant review. On December 29, 2009, the Department issued a supplemental questionnaire covering Mexinox's AQR, BQR, and CQR. The Department received comments from petitioners on January 11, 2010,[2] and January 19, 2010.[3] On January 20, 2010, the Department issued an additional supplemental questionnaire covering Mexinox's BQR and CQR. On January 25, 2010, the Department issued a supplemental questionnaire covering Mexinox's DQR. On February 2, 2010, the Department received Mexinox's response to both the Department's December 29, 2009, and January 20, 2010, supplemental questionnaires covering sections A through C (collectively, SQR). On March 9, 2010, the Department received Mexinox's response to the Department's January 25, 2010, supplemental questionnaire covering section D (SDQR). On April 1, 2010, the Department issued a second supplemental questionnaire covering Mexinox's DQR and SDQR.

Because it was not practicable to complete this review within the normal time frame, on April 1, 2010, the Department published in the **Federal Register** a notice extending the time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 17690 (April 7, 2010). This extension established the deadline for these preliminary results as August 2, 2010.

On April 19, 2010, the Department issued a supplemental questionnaire covering Mexinox's SQR. On April 30, 2010, Mexinox submitted its response to the Department's April 1, 2010, supplemental questionnaire covering Mexinox's DQR and SDQR (SSDQR). On May 14, 2010, Mexinox submitted its response to the Department's April 19, 2010, supplemental questionnaire (SSQR). On May 27, 2010, the Department issued a supplemental questionnaire covering Mexinox's SSDQR. On June 15, 2010, petitioners submitted comments for the Department's consideration for the preliminary analysis of the sales data submitted by Mexinox in the above-captioned administrative review. On June 18, 2010, the Department received Mexinox's response to the Department's May 27, 2010, supplemental questionnaire (SSSDQR). On July 7, 2010, the Department issued a supplemental questionnaire covering Mexinox's calculation of its indirect selling expense ratio. Mexinox submitted its response to the Department's July 7, 2010, questionnaire on July 21, 2010.

Period of Review

The POR is July 1, 2008, through June 30, 2009.

Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

[2] Comments pertained to Mexinox's BQR and CQR.

[3] Comments pertained to Mexinox's DQR.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[4]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1,390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1,000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[7] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[8]

Date of Sale

Mexinox reported the invoice date as the date of sale for certain sales made in all channels of distribution in both the home and U.S. markets. For a limited number of sales in both the home market and the United States, Mexinox reported the contract date as the date of its sales made pursuant to the binding contract. Specifically, Mexinox stated due to volatile metal prices in recent years, it entered into a binding contract fixing prices and quantities for specified sales of subject merchandise for certain customers. *See* Mexinox's AQR at pages A–48 through A–49, A–52 through A–53 and A–58. *See also* Mexinox's SQR at pages 35 through 42.

The Department normally uses invoice date as the date of sale, but may use a date other than the invoice date, if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i). For purposes of this review, we examined whether invoice date, contract date, or another date better represents the date on which the material terms of sale were established for all of Mexinox's sales to customers in the home and U.S. markets. The Department, in reviewing Mexinox's questionnaire responses, found that the material terms of sale for Mexinox' sales are set on the date on which the invoice is issued. *See* Mexinox's AQR at attachments A–5–B through A–5–D for sample sales documents in the U.S. and home market for each channel of distribution. *See also* Mexinox's SQR at Attachment A–21–B–1 for the relevant written sales contract and documentation (*i.e.,* list of base prices, analysis of quantities shipped under the contract, sample transaction(s)) between Mexinox and its customer(s) who are part of the fixed-price contract.

[4] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[5] "Gilphy 36" is a trademark of Imphy, S.A.

[6] "Durphynox 17" is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

[8] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

The sales order entered into Mexinox's system at the time of sale may include a provisional price term. However, the sales order acknowledgement sent to the customer after the order is placed does not contain a sales price. Instead, sales prices in both markets are subject to further negotiation up until the time of shipment and invoicing (with the final price included on the invoice). *See* Mexinox's SQR at page 58.

In its SQR at page A–58, Mexinox states that the price and quantity for its sales made pursuant to the binding, fixed contract are established under the contract with the customer, and do not change between the contract date and the invoicing of material to the customer. However, in reviewing the record, the Department preliminarily finds that the material terms of sale (*e.g.,* price and quantity) are subject to, and in some instances did, change between the contract date and when Mexinox issued invoices to its customers for sales subject to the allegedly binding contract. Specifically, we noted instances in which (1) the contract between Mexinox and its customers did not fix the price (*see* Mexinox's SQR at page 37, footnote 30 and its SSQR at attachment A–32) and (2) monthly quantities (as noted in the "analysis of quantities shipped under the contract" at Attachment A–21–B–1 of Mexinox's SQR) are not consistent with the terms set forth by the contract.

If an interested party wants the Department to use a different date than invoice date, it must submit information that supports the use of a different date. In the instant review, the Department, for purposes of these preliminary results, finds that Mexinox has not met its burden of proving that the material terms for any of its U.S. sales were set by the contract, and were not subject to change prior to the invoice date. For a detailed discussion of our date of sale analysis, *see* "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Mexico" from Patrick Edwards and Brian Davis, International Trade Compliance Analysts, to the File, dated August 2, 2010 (Preliminary Analysis Memorandum).

Based on all of the above, we preliminarily determine that invoice date is the appropriate date of sale for all of Mexinox's home market and U.S. sales in this administrative review because it represents the date upon which the material terms of sale are established. This is consistent with previous administrative reviews of this order. *See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part,* 74 FR 39622 (August 7, 2009) (*2007–2008 Preliminary Results*), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review,* 75 FR 17122 (April 5, 2010) (*2007–2008 Amended Final Results*); *see also Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 45708 (August 6, 2008) (2006–2007 Preliminary Results), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 74 FR 6365 (February 9, 2009) (*2006–2007 Final Results*), *Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review,* 73 FR 14215 (March 17, 2008) (*2005–2006 Amended Final Results*), and *Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 35618 (June 21, 2006) (*2004–2005 Preliminary Results*) unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review,* 71 FR 76978 (December 22, 2006) (*2004–2005 Final Results*).

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., which in turn is a subsidiary of ThyssenKrupp Stainless AG (TKAG) (*see* Mexinox's AQR at pages A–9 through A–14, A–16 through A–17, A–19 with respect to Mexinox USA and A–18 with respect to Mexinox S.A. and ThyssenKrupp Stainless AG), sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise to U.S. affiliate Ken-Mac Metals (Ken-Mac) [9] which is an operating division of ThyssenKrupp Materials NA, Inc. (*id.* at pages A–14 through A–15, A–17 through A–18, and A–28), which is itself a wholly-owned subsidiary of ThyssenKrupp USA, Inc. (*id.* at page A–28), the primary holding company for TKAG in the U.S. market (*id.*). For purposes of these preliminary results of review, we have included both Mexinox USA's and Ken-Mac's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation.

[9] Ken-Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to unaffiliated U.S. customers. *See* Mexinox's AQR at pages A–14 through A–15, A–17 through A–18, and A–28.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a subsidiary of Mexinox S.A., resold the foreign like product, as well as other merchandise, in the home market during the POR. *See* Mexinox's AQR at page A–20. Mexinox S.A.'s sales to Mexinox Trading represented a small portion of Mexinox S.A.'s total sales of the foreign like product in the home market and constituted less than five percent of all home market sales. *See, e.g.,* Mexinox's AQR at page A–3. Because sales to Mexinox Trading of the foreign like product were below the five percent threshold established under 19 CFR 351.403(d), we did not require Mexinox S.A. to report Mexinox Trading's downstream sales to its first unaffiliated customer. This is consistent with the most recently completed administrative reviews of S4 in coils from Mexico. *See, e.g., 2007–2008 Preliminary Results,*74 FR 39626, unchanged in *2007–2008 Amended Final Results; see also 2006–2007 Preliminary Results,* 74 FR 45711, unchanged in *2006–2007 Final Results; see also Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 43600, 43602 (August 6, 2007) (*2005–2006 Preliminary Results*), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 73 FR 7710 (February 11, 2008) (*2005–2006 Final Results*), and 2005–2006 *Amended Final Results; see also 2004–2005 Final Results,* 71 FR 35620 and accompanying Issues and Decision Memorandum at Comment 2.

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value (LTFV), we compared CEP sales made in the United States by both Mexinox USA and Ken-Mac to unaffiliated purchasers to NV as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared individual CEPs to monthly weighted-average NVs. As we

are using a quarterly costing approach as described in the "Normal Value" section below, we have not made price-to-price comparisons outside of a quarter in order to lessen the distortive effect of comparing non-contemporaneous sales prices during a period of significantly changing costs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Mexinox covered by the description in the "Scope of the Order" section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original September 16, 2009, questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is the level of the constructed sale from the exporter to the importer. *See Mittal Steel USA, Inc.* v. *United States,* 2007 Ct. Int'l Trade Lexis 138, at *25 (Ct. Int'l Trade, August 1, 2007).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is at a more advanced stage of distribution than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil,* 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

We obtained information from Mexinox regarding the marketing stages involved in making its reported home market and U.S. sales to both affiliated and unaffiliated customers. Mexinox provided a description of all selling activities performed, along with a flowchart and tables comparing the LOTs among each channel of distribution and customer category for both markets. *See* Mexinox's AQR at A–40 through A–41 and Attachments A–4–B and A–4–C; *see also* Mexinox's SQR at pages 19 through 20 for an explanation as to how Mexinox classified its claimed levels of activity; see also Mexinox's SQR at pages 20 through 27 for supporting documentation that demonstrates Mexinox provided claimed selling expenses at the stated level of frequency shown in Attachment A–4–C of its AQR.

Mexinox sold S4 in coils to end-users and retailers/distributors in the home market and to end-users and distributors/service centers in the United States. For the home market, Mexinox S.A. identified two channels of distribution described as follows: (1) Direct shipments (*i.e.,* products manufactured to order and shipped directly to customers); and (2) sales through inventory (*i.e.,* sales of products that are made out of inventory or from stock held at remote warehouses or at the customer's premises). For each of these two channels of distribution, Mexinox made sales to affiliated and unaffiliated distributors/retailers and end-users. *See* Mexinox's AQR at pages A–38 through A–40. We reviewed the intensity of all selling functions Mexinox S.A. claimed to perform for each channel of distribution and customer category. For certain functions, such as: (1) Pre-sale technical assistance; (2) analysis of samples provided by customers; (3) provision of prototypes and trial lots to customers; (4) continuous technical service; (5) price negotiation/customer communications; (6) process customer orders; (7) freight and delivery arrangements; (8) sales calls and visits; (9) international travel; (10) currency risks; (11) warranty services; (12) sales forecasting and market research; and (13) providing rebates, the level of performance for both direct shipments and sales from inventory was identical across all types of customers. Only a few functions exhibited differences, including: (1) inventory maintenance/just-in-time performance; (2) further processing; (3) credit and collection; (4) low volume orders; and (5) shipment of small packages. *See* Mexinox's AQR at Attachment A–4–C. While we find differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish distinct LOTs in Mexico. Based on our analysis of all of Mexinox S.A.'s home market selling functions, we preliminarily find all home market sales were made at the same LOT, the NV LOT.

We then compared the NV LOT, based on the selling functions associated with the transactions between Mexinox S.A. and its customers in the home market, to the CEP LOT,[10] which is based on the selling functions associated with the transaction between Mexinox S.A. and its affiliated importer, Mexinox USA. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions

[10] Mexinox claimed only one LOT for its U.S. sales, *i.e.,* the CEP LOT, which are those sales made by its U.S. affiliate to unaffiliated customers in the United States.

performed for Mexinox USA. *See* Mexinox's AQR at pages A–42 through A–47 and Attachments A–4–A through A–4–C. For example, in comparing Mexinox's selling functions, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.,* pre-sale technical assistance, analysis of samples provided by customer, provision of prototypes and trial lots to customer, continuous technical service, price negotiation/customer communications, inventory maintenance/just-in-time performance, sales calls and visits, international travel, credit and collection, currency risks, warranty services, sales forecasting and market research, and providing rebates). For selling functions performed for both home market sales and CEP sales (*e.g.,* processing customer orders, freight and delivery arrangements, further processing, low volume orders, and shipment of small packages), we find Mexinox S.A. actually performed each activity at a higher level of intensity in the home market. *See* Mexinox's AQR at Attachment A–4–C. Based on Mexinox's responses, we note that CEP sales from Mexinox S.A. to Mexinox USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. *See* Mexinox's AQR at page A–44 and at Attachment A–4–A. In contrast, sales in the home market (including sales to Mexinox Trading) occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. *See* Mexinox's AQR at pages A–45 and Attachments A–4–B and A–4–C. Based on the above-mentioned information, we preliminarily conclude the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have preliminarily made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Constructed Export Price

Mexinox stated it made CEP sales through its U.S. affiliate, Mexinox USA, in the following four channels of distribution: (1) Direct shipments to unaffiliated customers; (2) stock sales from the San Luis Potosi factory; (3) sales to unaffiliated customers through Mexinox USA's warehouse inventory; and (4) sales through Ken-Mac. See Mexinox's AQR at pages A–34 through A–36.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We preliminarily find Mexinox properly classified all of its U.S. sales of subject merchandise as CEP transactions because such sales were made in the United States through its U.S. affiliates, Mexinox USA or Ken-Mac, to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Mexinox USA or its affiliated reseller, Ken-Mac. We made adjustments for billing adjustments, discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage and handling, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* credit expenses, warranty expenses, and a certain expense of a proprietary nature (*see* Mexinox's CQR at pages C–49 through C–50)), inventory carrying costs, packing costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We used the expenses as reported by Mexinox made in connection with its U.S. sales, with the exception of the U.S. indirect selling expense ratio which we recalculated. *See* Preliminary Analysis Memorandum.

For sales in which the material was sent to an unaffiliated U.S. processor, we made an adjustment based on the transaction-specific further-processing expenses incurred by Mexinox USA. In addition, the U.S. affiliated reseller, Ken-Mac, performed some further manufacturing for its sales to unaffiliated U.S. customers. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon Ken-Mac's reported cost of further manufacturing materials, labor and overhead. We also included amounts for further manufacturing general and administrative expenses (G&A), as reported in Mexinox's cost database submitted in its SSSDQR.

Normal Value

A. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18; *see also Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes.

Under these circumstances, in determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department has evaluated the case specific record evidence using two primary factors: (1) The change in the cost of manufacturing (COM) experienced by the respondent during the POR must be significant; and, (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or constructed value (CV) during the same shorter averaging periods. *See Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review,* 73 FR 75398, 75399 (December 11, 2008)

(*SSPC from Belgium*) and *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010) (*2007–2008 Final Results*).

a. Significance of Cost Changes

Record evidence shows that Mexinox experienced significant changes in the total COM during the POR and that the changes in COM are attributable to the price volatility for hot rolled stainless steel band (hot band), the main input consumed in the production of the merchandise under consideration. The record shows that hot band prices changed dramatically throughout the POR. Specifically, the record data shows that even after adjusting reported COM to reflect market price for purchases from affiliates, the percentage difference between the high and low quarterly costs for S4 in coils exceeded 25 percent during the POR (*see* section D below for our discussion on adjustments made to hot band purchases from affiliates to reflect market price). As a result, we have determined that for these preliminary results the changes in COM for Mexinox are significant.

b. Linkage Between Cost and Sales Information

The Department also evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POR. Our definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes. In the instant case, we find that the quarterly cost and quarterly sales prices for Mexinox appear to be reasonably correlated during this period of significant cost changes.

In light of the two factors discussed above, we preliminarily find that it is appropriate to rely on a quarterly costing approach with respect to Mexinox. Thus, we used quarterly indexed annual average hot band costs and annual weighted-average fabrication costs in the COP and CV calculations. For our detailed analysis, see Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—ThyssenKrupp Mexinox S.A. de C.V. and Ken-Mac Metals dated August 2, 2010 (Cost Calculation Memorandum).

B. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mexinox's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See, e.g.,* Mexinox's SSQR at Attachment B–34 (home market sales database) and at Attachment C–33 (U.S. sales database).

C. Affiliated Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* section 773(f)(2) of the Act; *see also* 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, "the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length." *See China Steel Corp.* v. *United States,* 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69194 (November 15, 2002). In this review, however, we found that prices to affiliated parties were, on average, outside of the 98 to 102 percent of the price of identical or comparable subject merchandise sold to unaffiliated parties. Accordingly, we found both affiliated home market customers failed the arm's length test and, in accordance with the Department's practice, we excluded sales to these affiliates from our analysis.

D. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the COP in the most recently completed review of S4 in coils from Mexico (*see 2006–2007 Preliminary Results,* 73 FR 45714, unchanged in *2006–2007 Final Results*), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Mexinox.

In accordance with section 773(b)(3)(A) of the Act, we calculated COP based on the sum of Mexinox's cost of materials, fabrication or other processing employed in producing the foreign like product. In accordance with section 773(b)(3)(B) and (C) of the Act, we included amounts for SG&A expenses and packing costs. We relied on home market sales and COP information provided by Mexinox in its questionnaire responses, except as noted below:

For these preliminary results, we evaluated the transfer prices between Mexinox and its affiliated hot band coil suppliers on a grade-specific basis. For certain grades of hot band, all three elements of the major input analysis were available, for others only the affiliated supplier's cost of production was available. These grades of hot-rolled stainless steel coil (in which all three elements of the major input analysis were available) account for the majority of volume of hot-rolled stainless steel coil that Mexinox purchased from its foreign affiliates, ThyssenKrupp Nirosta North America, Inc. (TKNNA) and ThyssenKrupp Acciai Speciali Terni USA, Inc. (TKAST USA) during the POR. As necessary, we adjusted the reported costs to reflect the higher of transfer prices, COP, or market prices (where available) of hot-rolled stainless steel coil. *See* Cost Calculation Memorandum.

Additionally, we increased the G&A denominator for the major input adjustments noted above because we applied the revised G&A expense ratio to the revised total cost of manufacturing. *See* Cost Calculation Memorandum.

We revised TKAG's cost of goods sold (COGS), the denominator of the financial expense ratio, to exclude packing expenses. We estimated the packing costs by calculating the

percentage that Mexinox's packing costs represents of its COGS and applying the result to TKAG's COGS. Further, we increased this denominator for the major input adjustment. *See* Cost Calculation Memorandum.

Finally, we note that because we found that costs changed significantly, even after applying the major input adjustment during the POR, we have relied on Mexinox's quarterly cost and have applied the Department's alternative cost methodology of calculating quarterly average cost for the POR for the preliminary results. *See* Cost Calculation Memorandum at pages 2–3. In determining whether to disregard home market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made within an extended period of time and in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(1)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on a quarterly costing approach for these preliminary results. Similar to that used by the Department in cases of high-inflation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia,* 64 FR 73164 (December 29, 1999) at Comment 1), this methodology restates the quarterly costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this quarterly costing method meets the requirements of section 773(b)(2)(D) of the Act.

Where less than 20 percent of the respondent's home market sales of a given model are at prices below the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales are not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model are at prices less than the COP, we disregarded the below-cost sales; because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Mexinox revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Mexinox S.A. reported home market sales in Mexican pesos, but noted certain home market sales were invoiced in U.S. dollars during the POR. *See* Mexinox's BQR at pages B–27 and B–28. In our margin calculations, we used the currency of the sale invoice at issue and applied the relevant adjustments in the actual currency invoiced or incurred by Mexinox. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In particular, we made COS adjustments for imputed credit expenses and warranty expenses. As noted above in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

We used Mexinox's home market adjustments and deductions as reported, except for certain handling expenses and imputed credit expenses. We have recalculated the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading, and applied the revised ratio to those home market sales for which Mexinox reported a handling expense. We calculated imputed credit expenses based on the short-term borrowing rate associated with the currency of each home market sale transaction. *See* Preliminary Analysis Memorandum. Our methodology for calculating handling charges and imputed credit expenses is consistent with past administrative reviews of this case. *See, e.g., 2007–2008 Final Results* at 6629–6630, unchanged in *2007–2008 Amended Final Results; see also 2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 1; *see also 2005–2006 Preliminary Results,* 72 FR 43605, *2005–2006 Final Results,* and *2005–2006 Amended Final Results; see also 2004–2005 Preliminary Results,* 71 FR 35623 (unchanged in *2004–2005 Final Results*).

F. Price-to-CV Comparisons

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuters Business Interactive, LLC (trading as Factiva), in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find that the following weighted-average dumping margin exists for the period July 1, 2008, through June 30, 2009:

Manufacturer/Exporter	Weighted average margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V..	14.38 percent.

Public Comment

The Department intends to disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication or, if that date falls on a holiday or weekend, the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department intends to issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The total customs value is based on the entered value reported by Mexinox for all U.S. entries of subject merchandise initially entered for consumption to the United States made during the POR. *See* Preliminary Analysis Memorandum. In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 30.85 percent, which is the all-others rate established in the LTFV investigation. *See Order.* These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 2, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19579 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Aqualon Company, a division of Hercules Inc., (the petitioner) and respondents CP Kelco Oy and CP Kelco U.S., Inc. (collectively, CP Kelco), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Finland. The review covers exports of the subject merchandise to the United States produced by CP Kelco. The period of review (POR) is July 1, 2008, through June 30, 2009.

We preliminarily find that CP Kelco made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

EFFECTIVE DATE: August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from

Finland on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 11, 2009, the Department published the notice of opportunity to request an administrative review of CMC from Finland for the period July 1, 2008, through June 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406 (July 1, 2009).

On July 20, 2009, the petitioner requested a review of CP Kelco for the period July 1, 2008, through June 30, 2009. On July 29, 2009, CP Kelco requested an administrative review for the same period. On August 25, 2009, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 42873 (August 25, 2009).

On August 31, 2009, the Department issued its standard antidumping questionnaire (the Antidumping Questionnaire) to CP Kelco. CP Kelco submitted its response to section A of the Antidumping Questionnaire on October 2, 2009 (CP Kelco's Section A Response). CP Kelco submitted its responses to sections B and C of the Antidumping Questionnaire on October 30, 2009 (CP Kelco's Section B Response and CP Kelco's Section C Response, respectively). Because the Department disregarded sales at prices below the cost of production in the most recently completed administrative review as of the initiation of the instant review, we are conducting a sales–at-below–cost investigation in this review. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16180 (April 9, 2009) (*2009 Preliminary Result*s) (unchanged in *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review*, 74 FR 28886 (June 18, 2009). Accordingly, CP Kelco submitted its response to section D of the Antidumping Questionnaire on October 30, 2009 (CP Kelco's Section D Response).

On December 10, 2009, the Department issued a supplemental questionnaire to CP Kelco regarding its responses to section D of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's section D supplemental questionnaire on January 20, 2010 (CP Kelco's January 20, 2010, Response). On December 16, 2009, the Department issued a supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's sections A, B, and C supplemental questionnaire on January 28, 2010 (CP Kelco's January 28, 2010, Response). On December 29, 2009, the Department issued a second supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the antidumping questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on January 14, 2010 (CP Kelco's January 14, 2010, Response). On February 18, 2010, CP Kelco voluntarily submitted a section D cost comparison (CP Kelco's February 18, 2010, Submission). On March 16, 2010, the Department issued a third supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on March 30, 2010, (CP Kelco's March 30, 2010, Response). On July 15, 2010, the Department issued another supplemental questionnaire to CP Kelco regarding its responses to sections A, B, C, and D of the antidumping questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on July 20, 2010, (CP Kelco's July 20, 2010, Response).

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than normal value (NV), we compared U.S. price to NV, as described in the "Export Price" (EP), "Constructed Export Price" (CEP), and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Tariff Act), we calculated monthly weighted–average NVs and compared these to individual U.S. transactions. Because we determined that CP Kelco made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons. We used the invoice date, as recorded in CP Kelco's normal books and records, as the date of sale for CP Kelco's EP, CEP, and home market sales. *See* 19 CFR 351.401(i). For a more detailed discussion of these calculations, *see* Memorandum from Tyler Weinhold, to the File, "Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco) in the Preliminary Results of the 2008–2009 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland," dated August 2, 2010 (Preliminary Analysis Memorandum).

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by CP Kelco covered by the "scope of the order" section and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): 1) grade; 2) viscosity; 3) degree of substitution; 4) particle size; and 5) solution gel characteristics. *See* the Antidumping Questionnaire at Appendix 5. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. Because there were sales of identical or similar merchandise in the home market suitable for comparison to each U.S. sale, we did not compare any U.S. sales to constructed value (CV).

CP Kelco reported that it sold material which was suitable for pharmaceutical grade applications and for other regulated applications as well (*i.e.*, food,

cosmetic, personal care).[1] In its responses to section B, C, and D of our antidumping questionnaire, CP Kelco reported these sales as sales of grade "2" material, "regulated–other (food)." At our request, CP Kelco differentiated between (a) sales which were individually certified as pharmaceutical grade and (b) other sales of the same commercial product in its March 30, 2010, Response. We asked them to report sales for which there was a certification as grade "1" products, and to report sales for which there was no such certification as grade "2" products.

However, it has been the Department's practice to consider a product to be identified according to the strictest requirements of subject merchandise which has multiple specifications. All of the relevant commercial products were manufactured to be suitable both for the strictest specifications, that of regulated pharmaceutical grade CMC, and for a less–strict specification, that of regulated–other (food) grade CMC. In accordance with our practice, we, therefore, asked CP Kelco to report these sales as sales of products which meet the strictest specification to which the material was manufactured: regulated pharmaceutical grade material.[2] CP Kelco complied with this request. *See* CP Kelco's July 20, 2010, Response.

Export Price

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Tariff Act. In accordance with section 772(a) of the Tariff Act, we used EP for a number of CP Kelco's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and because our CEP methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for price or billing adjustments and discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate: foreign inland freight; international freight; marine insurance; U.S. brokerage and handling; and direct selling expenses (credit expenses).

CP Kelco incurred certain expenses as a result of factoring certain sales with an affiliated financial institution (*i.e.*, selling the accounts receivable associated with certain commercial sales in exchange for an immediate payment). *See* CP Kelco's Section B Response at B–22 to B–23; CP Kelco's Section C response at C–24 to C–25; and CP Kelco's January 28, 2010, Response, B–1 to B–4, and C–1 to C–3. In past segments of this proceeding we made adjustments to gross unit price based upon the difference between the face value of the accounts receivable factored and the immediate payment received upon the factoring of those accounts receivable (factoring discount).

The date of factoring represents the date upon which CP Kelco received the (discounted) payment from the factoring institution, as the full payment from the customer went to the factoring institution at a later date. *See* CP Kelco's Section B Response at B–16 to B–17, and B–28 to B–29; *see also* CP Kelco's Section C Response C–17 to C–18 and C–37 to C–39. Accordingly, in past segments of this proceeding, where we made an adjustment for factoring discount, we also calculated imputed credit according to the date on which the sales were factored, rather than the date of payment from the customer.

In past segments of this proceeding, we recognized that factoring expenses are actual direct selling expenses incurred by CP Kelco. However, in the most recently completed review of the concurrent proceeding of CMC from the Netherlands, to which CP Kelco U.S., Inc. and CP Kelco Oy's affiliate, CP Kelco BV are respondents, we stated our intent to re–examine the appropriateness of including the affiliated party factoring expenses. Subsequently, we have re–examined the appropriateness of including the factoring expenses in the administrative review of CMC from Finland as well. We have examined the arm's–length nature of these transactions and found that there is insufficient information available to continue to treat factoring expenses as expenses incurred during arm's–length transactions. Therefore, we have not made an adjustment for factoring expenses.[3] Accordingly, we have used CP Kelco's imputed credit expenses as calculated normally (according to the date of payment by the customer rather than the date of factoring of the accounts receivable associated with the invoice).

We reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco in reimbursement for CP Kelco arranging and initially paying for freight. *See* CP Kelco's Section B Response at B–25; CP Kelco's Section C Response at C–28; CP Kelco's January 28, 2010, Response, Section B, at 9 to 11, and Section C, at 11 to 14. We limited the amount of freight revenue deducted to no greater than the amount of movement expenses in the home market. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (Bags from the PRC) and the accompanying Issues and Decision Memorandum at Comment 6. As the Department explained in *Bags from the PRC*, section 772 (c)(1) of the Tariff Act provides that the Department shall increase the price used to establish either export price or constructed export price in only the following three instances: (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States; (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. In addition, section

[1] *See* CP Kelco's March 30, 2010, Response at page 18, referencing CP Kelco's brochures in CP Kelco's Section A Response at Exhibit A-33.

[2] *See, e.g., Rautaruukki Oy v. United States*, 23 C.I.T. 257 (CT. Int'l Trade 1998), in which the court found that the Department should have considered all steel plate products graded as "A" under different national classification standards to be identical merchandise in the absence of a showing of any significant physical distinction between the products. *See also, Certain Cut-to-Length Carbon Steel Plate From Finland; Notice of Amended Final Results of Administrative Review in Accordance With Final Court Decision*, 64 FR 68669 (December 8, 1999). Further, it is the Department's practice to consider the strictest requirements of subject merchandise which has multiple specifications (*i.e.*, the strictest specifications). *See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part*, 70 FR 7237 (February 11, 2005) and the accompanying Issues and Decision Memorandum at Comment 13, where the Department states: "To establish the most appropriate match for the triple-certified pipe in the comparison market, we looked for products that met most closely the strictest requirements of the subject merchandise with multiple specifications."

[3] *See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 24822, 24827 (May 26, 2009) unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 74 FR 52742 (October 14, 2009).

351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price which is net of any price adjustments that are reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) (38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post–sale adjustments, that are reflected in the purchaser's net outlay."

In past cases, we have declined to treat freight–related revenues as either an addition to U.S. price under section 772(c) of the Tariff Act or as price adjustments under 19 CFR 351.102(b). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise. *See, e.g., Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51414 (September 7, 2007) (*Steel Wire Rod Preliminary*) (unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 72 FR 12950 (March 1, 2008)). Our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realizes revenue for the same type of activity. *Steel Wire Rod Preliminary*, 72 FR 51415. According to CP Kelco's responses, freight revenues are revenues received from customers for invoice items covering transportation expenses and they arise not when freight is included in the selling price under the applicable terms of delivery, but rather when CP Kelco arranges and prepays freight for the customer. *See* CP Kelco's Section B Response at B–25; *see also* CP Kelco's Section C response at C–27. Therefore, we have limited the amount of the freight revenue used to offset CP Kelco's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise. *See* Preliminary Analysis Memorandum at page 2.

Constructed Export Price

In accordance with section 772(b) of the Tariff Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, we used CEP for a number of CP Kelco's U.S. sales because CP Kelco sold merchandise to affiliate CP Kelco U.S., Inc. in the United States; CP Kelco U.S., Inc. in turn sold subject merchandise to unaffiliated U.S. customers. We preliminarily find that these U.S. sales are properly classified as CEP sales because they occurred in the United States after importation and were made through CP Kelco U.S. Inc. to unaffiliated U.S. customers.

We based CEP on the prices to unaffiliated purchasers in the United States. We made adjustments for price or billing adjustments, and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate: foreign inland freight; foreign brokerage and handling; international freight; marine insurance; customs duties; U.S. brokerage; U.S. inland freight; and U.S. warehousing expenses. We also reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (*see* "Export Price" section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Further–Manufactured U.S. Sales

In the administrative review CMC from Finland covering the period July 1, 2007, through June 30, 2008, CP Kelco reported that it had made certain sales of subject merchandise to affiliated companies in the United States. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16180 (April 9, 2009) at 16182. However, now, CP Kelco reports that one of the alleged affiliates in question was not, in fact, an affiliate of CP Kelco. *See* CP Kelco's Section A Response at A–49 to A–50. CP Kelco explains that it had erroneously reported that the further manufacturer was affiliated with CP Kelco during the previous review. CP Kelco now reports that the requisite criteria for affiliation thought to be present in the July 1, 2007, through June 30, 2008, administrative review were not actually present then and are not present in this POR. Further, CP Kelco reports that no other affiliated U.S. customers engaged in further manufacturing.

The following persons shall be considered to be "affiliated" or "affiliated persons" according to Section 771(33) the Tariff Act: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or (G) Any person who controls any other person and such other person. Section 771(33) of the Tariff Act further provides that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

The Statement of Administrative Action (SAA) to the Uruguay Round Agreements Act states the following:

> The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another even in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.

See SAA, H.R. Doc. 103–316, vol. 1 at 838 (1994).

Section 351.102(b)(3) of the Department's regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Tariff Act and states that:

> In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The

> Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

The record of this review does not show that any of the above–mentioned criteria are present with regard to the further manufacturer. Thus, we preliminarily determine that the further manufacturer is not affiliated with CP Kelco. In the instant review, CP Kelco made sales of subject merchandise only to the further manufacturer, to the above–mentioned affiliated CEP reseller, and to unaffiliated customers. Therefore, CP Kelco reports that no sales were made to affiliates during this period of review other than to the CEP importer–reseller CP Kelco U.S., Inc. Accordingly, we preliminarily determine that there were no sales made to affiliates in the United Sates during the instant POR which were further manufactured and sold to unaffiliated customers as non–subject merchandise.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1) of the Tariff Act. As CP Kelco's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Tariff Act, we are conducting a sales–below-cost investigation in this review because the Department disregarded some of CP Kelco's sales as having been made at prices below the cost of production in the previous administrative review. *See 2009 Preliminary Results*

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted–average cost of production (COP) for each model based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling, general, and administrative (SG&A) expenses, financial expenses, and packing costs. We relied on the COP data submitted by CP Kelco except in the following instance: we included certain factoring expenses in CP Kelco's financial expense calculation since we did not adjust the sales prices for factoring expenses. For a more detailed discussion of this matter, *see* Memorandum from Sheikh M. Hannan, Accountant to Neal Halper, Director, Office of Accounting, regarding "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results CP Kelco Oy" dated August 2, 2010.

We compared the weighted–average COP of CP Kelco's home market sales to home market sales prices of the foreign like product (net of billing adjustments, discounts, any applicable movement expenses, direct and indirect selling expenses, and packing), as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether such sales were made in substantial quantities within an extended period of time; We also examined whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

D. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because these below–cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because such sales were made: (1) within an extended period of time and in "substantial quantities" within the POR, in accordance with section 773(b)(2)(B) and (C) of the Tariff Act; and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted–average per–unit COP for the POR). We used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Tariff Act.

E. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, early payment discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. We also reduced foreign inland freight, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (*see* "Export Price" section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.*, DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and section 351.411 of the Department's regulations. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* "Level of Trade and CEP Offset" section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Constructed Value (CV)

In accordance with section 773(a)(4) of the Tariff Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Tariff Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance

with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by CP Kelco in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. However, for these preliminary results, we did not base NV on CV in any instances.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of trade of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005) (unchanged in final results of review, 70 FR 58683 (October 7, 2005)). For CEP sales, we consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the U.S. and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

In the current review, CP Kelco reported only one level of trade in the home market. CP Kelco reported two levels of trade in its U.S. sales listing: the EP level of trade and the CEP level of trade. *See* CP Kelco's Section C Response at page C–25.

CP Kelco reported it sold CMC to end users and distributors in both the home market and in the United States. CP Kelco identified two channels of distribution for sales in both the home market and the U.S. market: end users (channel 1) and distributors (channel 2). *See, e.g.*, CP Kelco's Section A Response at A–16 to A–17, and CP Kelco's Section B Response at B–19 to B–20. CP Kelco made both direct (EP) sales of subject merchandise to U.S. customers and indirect (CEP) sales of subject merchandise through its affiliate, CP Kelco U.S., Inc.

We obtained information from CP Kelco regarding the marketing stages involved in making its reported home market and U.S. sales. *See* CP Kelco's Section A response at A–32. CP Kelco described all selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. *Id.*, at A–34. We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for each home market channel of distribution and customer category; we then compared CP Kelco's EP and home market channels of distribution and customer categories.

While we found differences in the levels of intensity performed for some of these functions between the home market end user and distributor channels of distribution, such differences are minor and do not establish distinct and separate levels of trade in Finland. Based on our analysis of all of CP Kelco's home market selling functions, we find all home market sales were made at the same LOT. Further, we find only minor differences between the sole home market LOT and that of CP Kelco's EP sales. Accordingly, we preliminarily determine CP Kelco's home market and EP sales were made at the same LOT.

CP Kelco claims that it did not make home market sales at a level of trade comparable to the CEP level of trade. Therefore, CP Kelco requests the Department make a CEP offset. *See* CP Kelco's Section A Response at A–34 to A–35, CP Kelco's Sections B Response at B–23, and CP Kelco's Sections C Response at C–2.

Thus, we compared the NV LOT (based on the selling activities associated with the transactions between CP Kelco and its customers in the home market) to the CEP LOT (which is based on the selling activities associated with the transaction between CP Kelco and its affiliated importer, CP Kelco U.S., Inc.) Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for CP Kelco U.S., Inc. For example, in comparing CP Kelco's selling activities, we find most of the reported selling functions performed in the home market are not a part of CEP transactions (*i.e.*, sales negotiations, credit risk management, intermediate warehousing, collection, sales promotion, direct sales personnel, technical support, guarantees, and discounts). For those selling activities performed for both home market sales and CEP sales (*i.e.*, customer service, logistics, inventory maintenance, packing, and freight/delivery), CP Kelco reported it performed each activity at either the same or at a higher level of intensity in one or both of the home market channels of distribution. For both the packing and the freight/delivery selling functions, each function is performed at the same level of intensity in one home market channel of distribution, but at a lower level of intensity in the other home market channel of distribution.

We further note that CEP sales from CP Kelco to CP Kelco U.S., Inc., generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes; they require more customer interaction and consequently the performance of more selling functions. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found

only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the U.S. sales. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Currency Conversions

CP Kelco reported certain U.S. sales prices and certain U.S. expenses and adjustments in euros. Therefore, we made euro–U.S. dollar currency conversions, where appropriate. Conversions were based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted–average dumping margin exists for the period July 1, 2008, through June 30, 2009:

Manufacturer / Exporter	Weighted Average Margin (percentage)
CP Kelco	6.10%

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. CP Kelco has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP fifteen days after publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un–reviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of CMC from Finland entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: 1) the cash deposit rate for CP Kelco will be the rate established in the final results of review; 2) if the exporter is not a firm covered in this review or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate of 6.65 percent *ad valorem* from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double the antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 2, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19581 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Patricia Tran, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0588 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2010, the U.S. Department of Commerce ("Department") issued a notice of opportunity to request an administrative review of this order for the period of review May 1, 2009, through April 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 23236–37 (May 3, 2010). On May 27, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from DAK Americas LLC, and Invista, S.a.r.L (collectively, "Petitioners") to conduct an administrative review of Huvis Corporation ("Huvis"), and Woongjin Chemical Co., Ltd. ("Woongjin"). On May 28, 2010, the Department also received an administrative review request from Huvis.

On June 30, 2010, the Department published the notice of initiation of this antidumping duty administrative review, covering Huvis and Woongjin. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 75 FR 37759 (June 30, 2010).

Scope of the Order

Polyester staple fiber ("PSF") covered by the scope of the order is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon, or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.00.25 is specifically excluded from the order. Also, specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from the order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the merchandise covered by the scope of the order is dispositive.

Rescission of Antidumping Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested administrative review. On June 30, 2010, Petitioners withdrew their request for an administrative review of Huvis. On July 1, 2010, Huvis also withdrew its request for an administrative review.

On July 19, 2010, Petitioners withdrew their request for an administrative review of Woongjin. Because Petitioners withdrew its request for an administrative review of Huvis and Woongjin within the 90–day period, and Huvis withdrew their request within this time period as well, the Department is rescinding this administrative review in full in accordance with 19 CFR 351.213(d)(1).

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties at the cash deposit rate in effect on the date of entry, for entries during the period May 1, 2009 through April 30, 2010. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 29, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–19610 Filed 8–6–10; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 11, 2010; 11 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: August 5, 2010.

Alberta Mills,

Acting Secretary.

[FR Doc. 2010–19729 Filed 8–5–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 11, 2010, 10 a.m.—11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda and Priorities Fiscal Year 2012—Hearing.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: August 5, 2010.

Alberta Mills,

Acting Secretary.

[FR Doc. 2010–19731 Filed 8–5–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 146, Friday July 30, 2010, page 44941.

ANNOUNCED TIME AND DATE OF MEETING: 10 a.m.–12 Noon, Wednesday August 4, 2010.

CHANGES TO MEETING: Agenda Item 2. Strategic Plan Has Been Postponed.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: August 4, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–19734 Filed 8–5–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Wage Committee

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held on September 7, 2010, in Rosslyn, VA.

DATES: The meeting will be held on Tuesday, September 7, 2010, at 10 a.m.

ADDRESSES: The meeting will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meeting meets the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence. However, members of the public who may wish to do so are invited to submit material in writing to the chairman (*see* **FOR FURTHER INFORMATION CONTACT**) concerning matters believed to be deserving of the Committee's attention.

Dated: August 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19544 Filed 8–6–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Joint Environmental Impact Statement/ Environmental Impact Report for the San Clemente Shoreline Feasibility Study in San Clemente, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Los Angeles District, and the City of San Clemente are issuing this notice to announce the availability for public review and comment of a Draft Joint Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the San Clemente Shoreline Feasibility Study. The purpose of the San Clemente Shoreline Feasibility Study (Project) is to provide shore protection through nourishment of the beach at the Pier. Developing and maintaining the beach is needed to prevent the severe beach erosion that results from winter storms and to prevent damage to adjacent beachfront structures, including the heavily used rail line that runs along the beach through the City. The City of San Clemente is located along the coast of southern California about 60 miles (100 kilometers) south of Los Angeles at the southern end of Orange County near the border of San Diego County. The study area is encompassed within the City of San Clemente and extends approximately 3,412 ft (1,040 m) from Linda Lane to T Street. The Proposed Project consists of dredging material from offshore Oceanside, then hauling and placing it at San Clemente Beach. The proposed Project is a 50 foot (15 m) resultant beach width. Beach fill would be 3,412 ft (1,040 m) long with a +17 ft (+5.2 m) crest elevation. The dredge volume is estimated to be approximately 251,130 cubic yards (192,000 m3). Construction is anticipated to begin in 2012.

DATES: The Draft EIS/EIR will be available for public review for 45 calendar days from August 9, 2010, through September 23, 2010. Submit comments on or before September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Keeney, Project Ecologist, Planning Division, Environmental Resources Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325, at (213) 452–3875 or at *Thomas.W.Keeney@usace.army.mil.* Written comments are to be provided to Mr. Keeney.

SUPPLEMENTARY INFORMATION: Issues that were found not to be significant for the proposed Project included land use and policy. Issues that were found to be less than significant without the need for mitigation measures were geology and topography, noise, transportation, aesthetics, and public health and safety. The construction and long-term maintenance of the proposed Project

would not have a significant effect on these elements, and the analyses of these issues are detailed in the environmental consequences section. The Project site is not listed as a toxic site.

Although significant impacts to biological resources (*i.e.,* surfgrass) and recreation (*i.e.,* surfing) are not likely to occur due to the footprint and temporary nature of the Project, mitigation measures will be implemented if monitoring demonstrates impacts are significant. If a substantial amount of surfgrass were lost, impacts may not be mitigable to not significant. If adverse impacts to surfgrass beyond those anticipated for the species to recover are observed from the monitoring, subsequent nourishment activities will be modified to avoid or minimize these impacts as part of adaptive management. If adverse impacts still are observed after all reasonable attempts to avoid or minimize impacts have been exhausted, additional renourishment would not occur until impacted surfgrass has recovered or a mitigation measure is accepted. A consistently successful method to transplant surfgrass has not yet been devised, although recent experiments may provide new options. Creation of shallow habitat mitigation reefs may ultimately replace the lost surfgrass if surfgrass eventually colonizes the reefs; however, such colonization is uncertain. Likewise, if surfing is demonstrated to be significantly impacted, mitigation measures will be implemented; however, creation of an artificial surfing reef has not yet been successful off the coast of California.

The U.S. Army Corps of Engineers, Los Angeles District, and City of San Clemente are soliciting comments on the adequacy and completeness of this Draft Joint EIS/EIR. You may comment on the draft environmental document by providing written comments to Mr. Thomas W. Keeney prior to the close of the public comment on September 23, 2010, at 5 p.m. Please limit comments to environmental issues, such as traffic, biology, noise, etc. A public meeting will be held at the Community Development Office, 910 Calle Negocio, San Clemente, CA 92673 on August 19, 2010, at 7 p.m.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–19548 Filed 8–6–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, Defense Language Institute Foreign Language Center

AGENCY: Department of the Army, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Board of Visitors meeting scheduled for August 10 & 11, 2010 from 8 a.m. to 5 p.m. published in the **Federal Register** on Monday, July 26, 2010 (75 FR 43496) has been rescheduled. The Board of Visitors meeting will now be held on September 13 & 14, 2010 from 8 a.m. to 5 p.m. at the Defense Language Institute Foreign Language Center in Monterey, CA, 93944.

FOR FURTHER INFORMATION CONTACT: Mr. Detlev Kesten, Faculty Associate, DLIFLC, 1753 Lewis Road, Monterey, CA, 93944, at (831) 242–6670.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–19547 Filed 8–6–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, Defense Language Institute Foreign Language Center

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

Name of Committee: Board of Visitors, Defense Language Institute Foreign Language Center.

Date: September 13 and 14, 2010.

Time of Meeting: Approximately 8 a.m. through 4:30 p.m. Please allow extra time for gate security for both days.

Location: Defense Language Institute Foreign Language Center and Presidio of Monterey (DLIFLC & POM), Building 614, Conference Room, Monterey, CA, 93944.

Purpose of the Meeting: The purpose of the meeting is to provide a general orientation to the DLIFLC mission and functional areas. In addition, the meeting will involve administrative matters.

Agenda: Summary—September 13—The Board will be briefed on DLIFLC mission and functional areas. September 14—Board administrative details to include parent committee introduction, board purpose, operating procedures review, and oath. DLIFLC functional areas will be discussed.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. No member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board. Although open to the public, gate access is required no later than five work days prior to the meeting. Contact the Committee's Designated Federal Officer, below, for gate access procedures.

Committee's Designated Federal Officer or Point of Contact: Mr. Detlev Kesten, ATFL–APO, Monterey, CA, 93944, *Detlev.kesten@us.army.mil*, (831) 242–6670.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public may submit written statements to the Board of Visitors of the Defense Language Institute Foreign Language Center in response to the agenda. All written statements shall be submitted to the Designated Federal Officer of the Board of Visitors of the Defense Language Institute Foreign Language Center, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements should be sent to: Attention: DFO at ATFL–APO, Monterey, CA, 93944 or faxed to (831) 242–6495. Statements must be received by the Designated Federal officer at least five work days prior to the meeting. Written statements received after this date may not be provided to or considered by the Board of Visitors of the Defense Language Institute Foreign Language Center until its next meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Detlev Kesten, ATFL–APO, Monterey, CA, 93944, *Detlev.kesten@us.army.mil*, (831) 242–6670.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–19546 Filed 8–6–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[Docket ID: DOD–2010–OS–0110]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The Agency proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion: S330.40 CAHS

SYSTEM NAME:

Employee Assistance Program Records (August 27, 1999; 64 FR 46889).

REASON:

This collection is covered under the existing DHHS/FOH EAP Privacy notice 09–90–0010, entitled "Employee Assistance Program (EAP) Records, HHS/OS/ASAM/OHR."

[FR Doc. 2010–19543 Filed 8–6–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services—Special Demonstration Programs—Model Demonstration Project To Improve Outcomes for Individuals Receiving Social Security Disability Insurance (SSDI) Served by State Vocational Rehabilitation (VR) Agencies

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235L.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority under the Special Demonstration Programs to fund a project to identify, develop, and implement a model demonstration project to improve outcomes for individuals receiving Social Security Disability Insurance (SSDI) served by State vocational rehabilitation (VR) agencies. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to improve employment outcomes for SSDI beneficiaries receiving services from State VR agencies.

DATES: *Effective Date:* This priority is effective September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *tom.finch@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of this program is to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services provided under the Rehabilitation Act.

Program Authority: 29 U.S.C. 773(b).

Applicable Program Regulations: 34 CFR part 373.

We published a notice of proposed priority for this program in the **Federal Register** on March 26, 2010 (75 FR 14582). That notice contained background information and our reasons for proposing the particular priority.

Except for minor editorial revisions, there are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, four parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the proposed priority follows.

Generally, we do not address technical and other minor editorial changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Analysis of Comments and Changes

Comment: None.

Discussion: Upon further internal review of the text of the proposed priority, we identified a number of small editorial changes that we believe make the priority clearer.

Changes: In addition to making a number of small clarifying changes, we have revised the bulleted paragraphs of the priority to identify them as paragraphs (a), (b), and (c) so that we can more easily cross-reference the requirements contained in those paragraphs.

Comment: One commenter suggested that the priority should permit the grantee to identify effective VR practices by conducting in-depth case studies of State VR agencies, including State VR agencies with poor and satisfactory outcomes, through analysis of RSA–911 data.

Discussion: The purpose of this priority is to conduct an in-depth analysis of factors that contribute to high performance in State VR agencies. While there may be worthwhile information to be gained by examining agencies with poor and satisfactory outcomes, the Department seeks to use this priority to target high-performing States, if after preliminary analyses it is determined that there are a number of high-performing States to investigate. Applicants are free to propose the process that will be used to identify States that are high-performing. Nothing in this priority precludes an applicant from proposing a project that includes comparing high-performing States with

States that have a history of poor and satisfactory outcomes in this area.

Changes: None.

Comment: One commenter recommended that the grantee examine the characteristics of the SSDI cases to determine if State VR agencies are serving similar or different segments of the SSDI population.

Discussion: We recognize that there may be differences in the characteristics of SSDI beneficiaries served by State VR agencies and that the services provided to different segments of the SSDI population may vary. Nothing in this priority would prohibit an applicant from proposing and justifying an analysis that examined such differences.

Changes: None.

Comment: One commenter stated that the priority should require the grantee to examine the employment outcomes associated with individuals receiving both SSDI and Supplemental Security Income (SSI).

Discussion: This priority does not focus on individuals receiving both SSDI and SSI benefits at the time they are served by State VR agencies. While the background section of the notice of proposed priority included individuals receiving both SSI and SSDI as a focus of the proposed priority, this was an administrative error and was not reflected in the priority itself. We believe that the approach of focusing the priority on individuals receiving only SSDI at the time they are served by State VR agencies is appropriate because the differences between the SSI and SSDI programs (e.g., eligibility) and SSI and SSDI recipients (e.g., work history, amount of disability payment, work-related incentives/disincentives) would make it difficult to analyze, interpret, and generalize the results of an examination that focused on individuals receiving both SSI and SSDI.

Changes: None.

Comment: One commenter recommended that the Department require more preliminary research from the grantee. The commenter suggested that such research would help ensure that the grantee designs an effective demonstration project.

Discussion: We agree with the commenter that preliminary research is needed. We recognize that a demonstration project of considerable scope requires significant time and effort to identify effective practices and to translate these practices into a demonstration that is replicable. For this reason, paragraph (a) of this priority requires the project to begin with an analysis of extant data and in-depth case studies in order to identify key factors related to outcomes and to facilitate design of a demonstration project based on research findings.

Changes: None.

Comment: Two commenters suggested that it will take 24 to 36 months to collect sufficient data to demonstrate effective practices and measure employment outcomes.

Discussion: We recognize that in order to meet the requirements of this priority the grantee will need an intervention period of at least 24 months (beginning from the time of enrollment of SSDI beneficiaries in the VR program to the time they achieve employment outcomes) to implement its demonstration project in the selected sites. In addition, time will be required to track records, analyze data, measure employment outcomes, and disseminate the findings of the demonstration project to State VR agencies. We agree that it will likely require 24 to 36 months for the grantee to conduct adequate follow-up for analyses of outcomes. However, we believe it is best to allow applicants to determine and justify in their applications the exact timeline they will need to implement the requirements of this priority.

Changes: None.

Comment: One commenter asked if proposed projects must focus on the development of effective practices to assist SSDI beneficiaries or if proposed projects can examine practices that increase employment outcomes for State VR clients, which can then be demonstrated to also work with SSDI beneficiaries.

Discussion: The focus of this priority is on factors that improve outcomes for SSDI beneficiaries. Therefore, while the Department recognizes that effective practices in State VR agencies may have general applicability and not be specific to any one target population (e.g., individuals receiving SSDI), the focus of this priority is on effective practices that improve outcomes for the specific population of SSDI beneficiaries, whether or not such practices benefit other populations.

Changes: None.

Comment: One commenter suggested that the Department use this priority to examine the employment outcomes associated with SSDI beneficiaries served by State VR agencies and compare them to the employment outcomes associated with all SSDI beneficiaries in the State.

Discussion: The purpose of this priority is to examine factors that increase employment outcomes and to develop effective practices to assist State VR agencies to increase employment outcomes for SSDI beneficiaries. The focus of the priority is on SSDI beneficiaries who receive services from State VR agencies. Nothing in this priority would preclude an applicant from proposing an analysis of characteristics of SSDI beneficiaries served by State VR agencies in comparison with the characteristics of all SSDI beneficiaries in a State during the case study phase of the project. However, we do not have a sufficient basis for requiring that all applicants conduct such an analysis.

Changes: None.

Comment: One commenter expressed concern about the requirement in the priority that the intervention be based on factors within the control of the State VR agency. If no such factors are identified through the case studies, this commenter asked whether the grantee may develop and implement "novel" approaches to developing evidence-based return-to-work strategies and interventions for SSDI beneficiaries.

Discussion: The Department anticipates funding this priority as a cooperative agreement and will work closely with the grantee at every stage of the project. We will work with the grantee to determine next steps in the event that the case study analysis of SSDI beneficiary outcomes does not provide evidence of a sufficient number of factors related to better employment outcomes that are within the control of the State VR agency or in the event that the Department determines that it is not feasible to implement, demonstrate, and evaluate the intervention model proposed by the grantee. Next steps may include working with the grantee on how it would otherwise accomplish the goals of the project or ending the project following the Department's review.

Changes: Paragraph (b) of the priority has been revised to make it clear that the grantee will consult with the Rehabilitation Services Administration to determine next steps in the event that the case study analysis of SSDI beneficiary outcomes does not provide evidence of a sufficient number of factors related to better employment outcomes that are within the control of the State VR agency or in the event that the Department determines that it is not feasible to implement, demonstrate, and evaluate the intervention model proposed by the grantee.

Comment: One commenter suggested that the Department sponsor a related project that emphasizes the involvement of State VR agencies in early intervention and job retention.

Discussion: The Department recognizes the importance of providing VR services that focus on early intervention and of providing those services to currently or recently

employed individuals to help them retain their jobs. However, early intervention is not the focus of this priority, and the Department cannot comment on the content of future priorities.

Changes: None.

Comment: Two commenters recommended that the priority be revised to require the grantee to conduct rigorous and analytical research on effective practices, such as evidence-based interventions for supported employment, benefits counseling, and behavioral/attitudinal changes.

Discussion: The Department agrees that additional research on effective practices is important. For this reason, we are funding research on effective VR practices through the National Institute on Disability and Rehabilitation Research (NIDRR). NIDRR published a notice of final priority on this topic on July 8, 2010 (75 FR 39220) and anticipates making an award for this project prior to September 30, 2010. Applicants for that priority can suggest additional effective practices for study.

Changes: None.

Comment: One commenter suggested that the priority require site selection to be methodical and include an analysis of organizational capacity and existing services that impact employment outcomes for SSDI beneficiaries.

Discussion: As indicated in paragraph (c) of the priority, sites must be selected based on an analysis of existing and available data that indicate relatively better qualitative and quantitative outcomes for SSDI beneficiaries, compared to the results achieved by other State VR agencies. Applicants are free to propose additional criteria for selecting sites.

Changes: None.

Comment: One commenter recommended that the priority require the use of analytical techniques, including random assignment, to study the development and implementation of evidence-based practices.

Discussion: We have designed this priority to build on information available in extant data systems and are requiring the grantee to (a) conduct in-depth case studies to determine factors that both impede and support strategies that result in better employment outcomes for SSDI beneficiaries and (b) design, implement, and evaluate a demonstration project based on the results of those case studies. The next step for a demonstration project funded under this priority may be taking the grantee's intervention to scale and could involve random assignment and other research designs that would further demonstrate the efficacy of the interventions. The Department will closely monitor the grantee's demonstration to determine if it would be worthwhile to fund projects in the future that focus on scaling up effective practices.

Changes: None.

Comment: One commenter recommended that the Department examine State unemployment insurance (UI) wage records in order to track employment earnings for this priority.

Discussion: The Department recognizes the usefulness of these data for the purpose of evaluation. State VR agency access to UI wage records data varies from State to State. While applicants are free to propose the use of these data for case study analyses, we have no basis for requiring that all applicants adopt this approach. That said, the Department and the Social Security Administration (SSA) have had a data sharing Memorandum of Agreement (MOA) in place since 2003. Data files merged pursuant to this MOA include earnings records for SSDI beneficiaries, and we will continue to examine these data in order to assess the impact of State VR policies, practices, and services on beneficiaries.

Changes: None.

Final Priority

Model Demonstration Project to Improve Outcomes for Individuals Receiving Social Security Disability Insurance (SSDI) served by State Vocational Rehabilitation (VR) Agencies.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority under the Special Demonstration Programs to fund a project to identify, develop, and implement a model demonstration project to improve outcomes for individuals receiving Social Security Disability Insurance (SSDI) who are served by State vocational rehabilitation (VR) agencies. Under this priority, the project must be designed to—

(a) Identify, through in-depth case studies of selected State VR agencies, the factors that account for these agencies achieving employment outcomes that are at or above substantial gainful activity (SGA) for the SSDI beneficiaries they serve;

(b) After consultation with the Rehabilitation Services Administration (RSA), determine whether, of the identified factors, there are a sufficient number of factors related to the better employment outcome results that are within the control of the State VR agency, and if so, develop an intervention model incorporating those factors that can be replicated in other State VR agencies and that can be evaluated in terms of the model's impact after implementation;

(c) Implement and evaluate an intervention model based on replicable factors identified in case studies in at least three State VR agencies, selected by RSA based on information provided by the grantee, that are willing to implement the model. One criterion for selecting these State VR agencies to participate in the model demonstration project is that the SSDI beneficiaries whom these agencies serve have an employment outcome rate at or below the rate for other State VR agencies; and

(d) If the intervention model implemented under paragraph (c) of this priority shows an improved employment rate for SSDI beneficiaries, revise the intervention model based on information learned from the model demonstration project, recommend any strategies needed for implementation of the model by other State VR agencies, and disseminate the findings of this demonstration project to State VR agencies.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with

Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priority.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in the text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have the Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 4, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–19609 Filed 8–6–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Special Demonstration Programs—Model Demonstration Projects To Improve Outcomes for Individuals Receiving Social Security Disability Insurance (SSDI) Served by State Vocational Rehabilitation (VR) Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235L.

DATES: *Applications Available:* August 9, 2010.

Deadline for Transmittal of Applications: September 8, 2010.

Deadline for Intergovernmental Review: October 8, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services provided under the Rehabilitation Act.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2010 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Model Demonstration Projects To Improve Outcomes for Individuals Receiving Social Security Disability Insurance (SSDI) Served by State Vocational Rehabilitation (VR) Agencies.

Program Authority: 29 U.S.C. 773(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The regulations for this program in 34 CFR parts 373. (c) The notice of final priority, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $16,871,400.

Maximum Award: We will reject any application that proposes a budget exceeding the funding available for any single budget period of 12 months. The proposed funding levels for this demonstration project are:

Fiscal year	Maximum funds available
2010	$1,530,700
2011	1,530,700
2012	4,892,500
2013	4,892,500
2014	4,025,000

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including institutions of higher education.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.235L.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 60 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 9, 2010.

Deadline for Transmittal of Applications: September 8, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 8, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Special Demonstration Programs—Model Demonstration Projects to Improve Outcomes for Individuals Receiving Social Security Disability Insurance (SSDI) Served by State Vocational Rehabilitation (VR) Agencies—CFDA Number 84.235L must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described

elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to 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 through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the 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.

Address and mail or fax your statement to: Tom Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. 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:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.235L),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

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.

If your application is postmarked after the application deadline date, we will not consider your application.

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.

c. 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 original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.235L),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424, the CFDA number,

including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the Model Demonstration Projects to Improve Outcomes for Individuals Receiving SSDI Served by State VR Agencies is to enhance qualitative and quantitative employment outcomes for SSDI beneficiaries served by State VR agencies. In order to assess the success of the grantee in meeting this goal, the Department will convene a panel of experts to conduct reviews in the second and fourth years of the project. Based on the second year review of the grantee's annual performance reports and the panel of experts review, the Department will determine the feasibility of the intervention model developed in accordance with paragraph (b). If determined feasible, the grantee must implement, demonstrate, and evaluate an intervention model that can be replicated in other State VR agencies, as required by the absolute priority in paragraphs (c)–(d). The Department will assess the effectiveness of the model and the grantee's performance in the following areas:

- The degree to which the data collected from the project sites show that the intervention model results in improved employment outcomes for SSDI beneficiaries, such as employment rate, wages at case closure, average hours worked, and percentage of individuals earning an amount greater than substantial gainful activity (SGA), as determined by the Social Security Administration, at closure.
- The degree to which the project recommended strategies that could be used by other State VR agencies to implement the model.
- The degree to which the grantee has disseminated its findings to State VR agencies.
- The responsiveness by the grantee to recommendations from the biannual reviews.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tom Finch, U.S. Department of Education, 400 Maryland Avenue SW., room 5147, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *Tom.Finch@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 4, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–19585 Filed 8–6–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–574–000]

Commission Information Collection Activities (FERC–574); Comment Request; Extension

August 2, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due October 8, 2010.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC10–574–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The

Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC10–574. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–574, "Gas Pipeline Certificates: Hinshaw Exemption" (OMB No. 1902–0116), is used by the Commission to implement the statutory provisions of Sections 1(c), 4 and 7 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). Natural gas pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for an exemption under the provisions of the Natural Gas Act (Section 1(c)). If the exemption is granted, the natural gas pipeline company is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale of natural gas in interstate commerce if: (a) They receive gas at or within the boundaries of the state from another person at or within the boundaries of that state; (b) such gas is ultimately consumed in such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission; and (d) that such State Commission is exercising that jurisdiction. The data required to be filed by pipeline companies for an exemption are specified by Title 18 Code of Federal Regulations (CFR) Part 152.

Action: The Commission is requesting a three-year extension of the FERC–574 reporting requirements, with no changes.

Burden Statement: The estimated annual public reporting burden for FERC–574 is reduced from the estimate made three years ago due to the results of an analysis of recent filings showing that 60 hours per response is a more accurate estimate for the average burden hours per response than the 245 hours used in the 2007 estimate.

FERC data collection	Number of respondents (1)	Average number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
FERC–574	1	1	60	60

The total estimated annual cost burden to respondents is $3,977 (60 hours/2,080 hours [1] per year, times $137,874 [2]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

[1] Estimated number of hours an employee works each year.

[2] Estimated average annual cost per employee.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19523 Filed 8–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2217–010.

Applicants: Sunrise Power Company, LLC.

Description: Sunrise Power Company, LLC submits additional information supporting the continuation of its Market-based rate authorization.

Filed Date: 06/25/2010.

Accession Number: 20100625–5138.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 24, 2010.

Docket Numbers: ER02–1319–011; ER00–3562–016; ER00–1770–024; ER02–453–014; ER03–446–010; ER04–831–010; ER09–886–004; ER09–1729–002.

Applicants: Calpine Energy Services LP, Zion Energy LLC, Calpine Philadelphia Inc., Calpine Bethlehem, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC, Calpine Newark Cogen Inc.

Description: Notification of Change in Status of Calpine Bethlehem, LLC, et al.

Filed Date: 07/29/2010.

Accession Number: 20100729–5075.

Comment Date: 5 p.m. Eastern Time on Thursday, August 19, 2010.

Docket Numbers: ER10–1894–002.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits tariff filing per 35: Compliance Filing for WPSR OATT to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5037.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–1901–002.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits tariff filing per 35: Compliance Filing for WPSR OATT to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5039.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–1977–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits tariff filing per 35.17(b): Errata Filing—IBRT—7/30/10 to be effective 9/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5067.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2064–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits its baseline tariff for all Service Agreements, to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5153.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2065–000.

Applicants: D.E. Shaw Plasma Trading, LLC.

Description: The Shaw Parties submits notification of cancellation of Market-Based Rate Tariffs.

Filed Date: 07/30/2010.

Accession Number: 20100730–0223.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2066–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits a Network Integration Transmission Service Agreement *etc.* with City of Seneca, SC.

Filed Date: 07/30/2010.

Accession Number: 20100730–0222.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2067–000.

Applicants: D.E. Shaw & Co. Energy, LLC.

Description: The Shaw Parties submits notification of cancellation of Market-Based Rate Tariffs.

Filed Date: 07/30/2010.

Accession Number: 20100730–0223.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2068–000.

Applicants: Delaware City Refining Company LLC.

Description: Delaware City Refining Company LLC submits tariff filing per 35.13(a)(2)(iii: Change-in-Status Notification to be effective 10/1/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5170.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2069–000.

Applicants: D.E. Shaw Plasma Power, LLC.

Description: The Shaw Parties submits notification of cancellation of Market-Based Rate Tariffs.

Filed Date: 07/30/2010.

Accession Number: 20100730–0223.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2070–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35: 2010_07_30_PSCoOATT_Baseline to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5178.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2071–000.

Applicants: Northern States Power Company, a Minnesota.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.12: 2010_07_30_NSPM_concurrence_PSCoOATT_Baseline to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5179.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2072–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.12: Transmission Owner Agreement to be effective 7/31/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5181.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2073–000.

Applicants: Northern States Power Company, a Wisconsin.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.12: 2010_07_30_NSPW_concurrence_PSCoOATT_Baseline to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5183.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2074–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Company submits tariff filing per 35.12: KCP&L Volume 4 (Market-Based) Baseline Filing to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5184.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2075–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per 35.12: 2010_07_30_SPS_concurrence_PSCoOATT_Baseline to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5185.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2076–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Company submits tariff filing per 35.12: KCP&L (OATT) Baseline Filing to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5186.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2077–000.

Applicants: PBF Power Marketing LLC.

Description: PBF Power Marketing LLC submits tariff filing per

35.13(a)(2)(iii: Change-in-Status Notification to be effective 10/1/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5188.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2078–000.

Applicants: White Oak Energy LLC.

Description: White Oak Energy LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 11/10/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5192.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2079–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–07–30 CAISO Transmission Access Charge Informational Filing to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5204.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2079–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits its revised Transmission Access Charges Informational Errata filing.

Filed Date: 08/02/2010.

Accession Number: 20100802–5001.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER10–2080–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an executed non-conforming Form of Service Agreement for Real-Time Reserve Services During Phased Integration with Big Rivers Electric Corp.

Filed Date: 08/02/2010.

Accession Number: 20100802–5000.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER10–2081–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. submits its baseline tariff filing of its market-based rate wholesale power sales tariff pursuant to FERC's Order No 714, to be effective 8/1/2010.

Filed Date: 08/02/2010.

Accession Number: 20100802–5003.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Report of Canandaigua Power Partners LLC, *et al.*

Filed Date: 07/29/2010.

Accession Number: 20100729–5184.

Comment Date: 5 p.m. Eastern Time on Thursday, August 19, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Quarterly Land Acquisition Report of Arlington Valley, LLC, *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5220.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: NextEra Energy Companies Second Quarter 2010 Site Control Quarterly Filing.

Filed Date: 07/30/2010.

Accession Number: 20100730–5241.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Duke Energy Corporation 2Q 2010 Change in Status Report Land.

Filed Date: 07/30/2010.

Accession Number: 20100730–5242.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Quarterly Land Acquisition Report of Astoria Generating Company, L.P., *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5243.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Quarterly Report of Generation Site Acquisitions of AES Alamitos, LLC, *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5244.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: The Shaw Parties submit Notification of Change in Status/Quarterly Report for Second Quarter 2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5245.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Change in Fact Notice Site Report 2010 Second Quarter of Spring Canyon Energy LLC, *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5246.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Land Acquisition Report of Iberdrola Renewables, Inc., *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5247.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Quarterly Land Acquisition Report of ALABAMA ELECTRIC MARKETING, LLC, *et al.*

Filed Date: 07/30/2010.

Accession Number: 20100730–5248.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Land Acquisition Report (2Q 2010) of Lost Creek Wind, LLC.

Filed Date: 07/30/2010.

Accession Number: 20100730–5251.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: Order 697–C Quarterly Non-Material Change in Status Report Compliance Filing of Xcel Energy Services Inc.

Filed Date: 07/30/2010.

Accession Number: 20100730–5252.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–574–000.

Applicants: Rockland Wind Farm, LLC.

Description: Form 556 for Ridgeline Energy LLC's Rockland Wind Farm located in Power County.

Filed Date: 07/13/2010.

Accession Number: 20100713–5050.

Comment Date: 5 p.m. Eastern Time on Thursday, August 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19525 Filed 8–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13719–000]

Alabama Municipal Electric Authority; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

August 2, 2010.

On April 29, 2010, Alabama Municipal Electric Authority filed an application for a preliminary permit pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the George W. Andrews Lock and Dam Hydroelectric Project. The proposed project would be located at the existing George W. Andrews Lock and Dam on the Chattahoochee River in Huston County, near the town of Columbia, Alabama. The proposed project would occupy federal lands under the jurisdiction of the U.S. Army Corps of Engineers, Mobile District. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A new powerhouse containing four turbine-generators with a total combined plant capacity of 25 megawatts; (2) an approximately 10-mile-long, 115-kilovolt transmission line connecting the powerhouse to an existing substation; and (3) appurtenant facilities. The proposed powerhouse and adjacent facilities would occupy about 8 acres of land on the levee section of the Corps' facility, on the Alabama shore, opposite the river from the lock structure. The proposed project would have an average annual generation of 82 gigawatt-hours.

Applicant Contact: Mr. Mark Crisp, P.E., C.H. Guernsey and Company, 1100 Circle 75 Parkway, Suite 1530, Atlanta, GA 30339, phone: (770) 857–1250.

FERC Contact: Sergiu Serban, (202) 502–6211.

Competing Application: This application competes with Project No. 13081–000 filed November 21, 2007.

Deadline for Filing Comments and Motions To Intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13719–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19524 Filed 8–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13819–000]

Verde Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 2, 2010.

On July 21, 2010, Verde Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Verde Hydroelectric Project, located in Maricopa County, in the State of Arizona. The sole purpose of a preliminary permit, if issued, is to grant

the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) The existing 308-ft in height concrete Bartlett Dam with an 823-ft length at crest and hydraulic head of 251-ft; (2) two existing 72-inch diameter steel penstocks; (3) the existing Bartlett Reservoir having a surface area of 2,815 acres and a storage capacity of 178,000 acre-feet and maximum water surface elevation of 1,798 feet mean sea level; (4) a proposed powerhouse containing three new pump/turbine generating units having an installed capacity of 10- to 15-megawatts; (5) a proposed 12.5 kV interconnection from the transformer near the powerhouse proceeding east to within the existing 345 kv transmission line right-of-way. The proposed development would have an average annual generation of 40,000 megawatt-hours.

Applicant Contact: Thom A. Fischer, P.E., Tollhouse Energy Company, 3633 Alderwood Avenue; Bellingham, WA 98225.

FERC Contact: Mary Greene, 202–502–8865.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13819) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19522 Filed 8–6–10; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 12, 2010, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 8, 2010.

B. New Business

- Joint and Several Liability Debt-Based Reallocation Agreement—Notice and Request for Comments.

C. Reports

- Mission-Related Investments Update.
- Office of Management Services Quarterly Report.

Dated: August 5, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–19735 Filed 8–5–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 23, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 8, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman,

OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1050.

Title: Section 97.313(i), Transmitter Power Standards, New Allocation for Amateur Radio Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit and not–for–profit institutions.

Number of Respondents and Responses: 5,000 respondents; 5,000 responses.

Estimated Time Per Response: 20 minutes (.3 hours).

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 CFR sections 151, 154, 301, 302(a), 303(c) and 303(f).

Total Annual Burden: 1,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is no change in the Commission's burden estimates. There is no change in the recordkeeping requirement. However, the title of this information collection has changed because the rule section number as been modified.

On March 11, 2010, the Commission adopted an Order, Amendment of the Amateur Service Rules to Facilitate Use of Spread Spectrum Communications Technologies, WT Docket No. 10–62, FCC 10–38. This proceeding moved transmitter power limit information that applies to stations transmitting a spread spectrum emission from 47 CFR 97.303(s) to 47 CFR 97.313(i), Transmitter Power Standards. No station may transmit with an effective radiated power (ERP) exceeding 50 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a dipole or the equivalent calculation in decibels. A half–wave dipole antenna will be presumed to have a gain of 1. Licensees using other antennas must maintain in their station records either the manufacturer data on the antenna gain or calculations of the antenna gain.

The information is used to establish a record of amateur operations, so that if interference to critical power line carrier systems occurs, the Commission can respond quickly to locate the source.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–19552 Filed 8–6–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
30–JUN–10	20100840	G	Li & Fung Limited.
		G	Steven Kahn.
		G	The Max Leather Group, Inc.
		G	Cipriani Accessories, Inc.
		G	MLG (2009) Limited Liability Company.
01–JUL–10	20100771	G	Apax Europe VII–B, L.P.
		G	Spectrum Equity Investors IV, L.P.
		G	NetQuote Holdings, Inc.
02–JUL–10	20100793	G	Aalberts Industries N.V.
		G	Conbraco Industries, Inc.
		G	Conbraco Industries, Inc.
	20100844	G	Great Hill Equity Partners IV, LP.
		G	SterilMed Holdings, Inc.
		G	SterilMed Holdings, Inc.
	20100846	G	Ralcorp Holdings, Inc.
		G	American Italian Pasta Company.
		G	IAPC CV.
		G	IAPC Italia Leasing, s.r.l.
		G	AIPC Arizona, LLC.
		G	AIPC Missouri, LLC.
		G	AIPC South Carolina, Inc.
		G	AIPC Finance, Inc.
		G	IAPC Holding BV.
		G	Pasta Lensi, s.r.l.
		G	AIPC Sales Co.
		G	American Italian Pasta Company.
06–JUL–10	20100798	G	Olam International Limited.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	ConAgra Foods, Inc.
		G	ConAgra Foods Food Ingredients Company, Inc.
	20100848	G	Amphenol Corporation.
		G	Jonathan L. Borisch.
		G	Borisch Manufacturing, Inc.
	20100849	G	Water Street Healthcare Partners II, L.P.
		G	MBF Healthcare Partners, L.P.
		G	Medical Specialties Distributors, LLC.
	20100850	G	International Business Machines Corporation.
		G	Coremetrics, Inc.
		G	Coremetrics, Inc.
	20100855	G	Irving Place Capital Partners III, L.P.
		G	Geoffrey Titherington.
		G	Mold-Rite Plastics, LLC.
08–JUL–10	20100666	G	Visa Inc.
		G	CyberSource Corporation.
		G	CyberSource Corporation.
09–JUL–10	20100807	G	Caterpillar Inc.
		G	ElectroMotive Diesel, Inc.
		G	ElectroMotive Diesel, Inc.
12–JUL–10	20100827	G	Providence Equity Partners VI, L.P.
		G	Marsh & McLennan Companies, Inc.
		G	Kroll Inc.
	20100864	G	SCF–V, L.P.
		G	SCF–VI, L.P.
		G	Subsea International Services, Inc.
		G	Triton Group Holdings LLC.
		G	Allied Production Services, Inc.
	20100866	G	SCF–VI, L.P.
		G	SCF–V, L.P.
		G	Forum Oilfield Technologies, Inc.
13–JUL–10	20100826	G	Cardinal Health, Inc.
		G	Raj Mantena.
		G	Healthcare Solutions Holdings, LLC.
	20100871	G	International Business Machines Corporation.
		G	BigFix, Inc.
		G	BigFix, Inc.
	20100875	G	Cablevision Systems Corporation.
		G	Bresnan Broadband Holdings, LLC.
		G	Bresnan Broadband Holdings, LLC.
14–JUL–10	20100857	G	Johnson & Johnson.
		G	Diamyd Medical AB.
		G	Diamyd Medical AB.
	20100873	G	Eli Lilly and Company.
		G	Alnara Pharmaceuticals, Inc.
		G	Alnara Pharmaceuticals, Inc.
15–JUL–10	20100691	G	CenturyLink, Inc.
		G	Qwest Communications International Inc.
		G	Qwest Communications International Inc.
	20100843	G	Schottenstein RVI, LLC.
		G	Retail Ventures, Inc.
		G	Retail Ventures, Inc.
16–JUL–10	20100858	G	Lindsay Goldberg III L.P.
		G	Carl C. Icahn.
		G	PSC Holdings, LLC.
	20100885	G	AEA Investors 2006 Fund L.P.
		G	SFMM Holdings, Inc.
		G	Shoes For Crews Canada Ltd.
		G	SFC Holdings, LLC.
		G	Shoes For Crews, Inc.
	20100890	G	Cliffs Natural Resources Inc.
		G	INR Energy, LLC.
		G	INR–1 Holdings, LLC.
19–JUL–10	20100883	G	The Boeing Company.
		G	Argon ST, Inc.
		G	Argon ST, Inc.
	20100888	G	Genstar Capital Partners V, L.P.
		G	Evolution Benefits, Inc.
		G	Evolution Benefits, Inc.
20–JUL–10	20100872	G	EMC Corporation.
		G	Greenplum, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Greenpium, Inc.
	20100881	G	POSCO.
		G	Daewoo International Corporation.
		G	Daewoo International Corporation.
	20100882	G	Sanofi-Aventis.
		G	Metabolex, Inc.
		G	Metabolex, Inc.
21–JUL–10	20100886	G	Wayzata Opportunities Fund, LLC.
		G	Entegra Power Group LLC.
		G	Gila River Power, L.P.
	20100892	G	Avon Products, Inc.
		G	Gerald A. Kelly, Jr. and Bonnie C. Kelly.
		G	Silpada Designs, Inc.
22–JUL–10	20100856	G	Marfrig Alimentos S.A.
		G	LGB Keystone LLC.
		G	Keystone Foods Intermediate LLC.
	20100863	Y	Ocwen Financial Corporation.
		Y	Barclays PLC.
		Y	BCRE.
	20100878	G	Biovail Corporation.
		G	Valeant Pharmaceuticals International.
		G	Valeant Pharmaceuticals International.
	20100880	G	GTCR Fund IX/A, L.P.
		G	UCB S.A.
		G	UCB, Inc.
	20100891	G	Communications Infrastructure Investments, LLC.
		G	American Fiber Systems Holding Corp.
		G	American Fiber Systems Holding Corp.
	20100896	G	Roper Industries, Inc.
		G	ITN Holdings, LLC.
		G	iTradeNetwork, Inc.
23–JUL–10	20100868	G	Anchorage Capital Partners Offshore, Limited.
		G	Hampton Roads Bankshares, Inc.
		G	Hampton Roads Bankshares, Inc.
	20100895	G	AIF VII Euro Holdings, L.P.
		G	Carib Holdings, Inc.
		G	Carib Holdings, Inc.
	20100899	G	Crown Castle International Corp.
		G	NewPath Networks, Inc.
		G	NewPath Networks, Inc.
	20100903	G	PPL Corporation.
		G	E. ON AG.
		G	E. ON U.S. LLC.
	20100906	G	JSC Atomredmetzoloto.
		G	Uranium One, Inc.
		G	Uranium One, Inc.
	20100908	G	ZM Capital, L.P.
		G	Alloy, Inc.
		G	Alloy, Inc.
	20100916	G	DCP Midstream Partners, L.P.
		G	UGI Corporation.
		G	Atlantic Energy, Inc.
	20100918	G	Bank of America Corporation.
		G	Sentinel Capital Partners III, L.P.
		G	Strategic Partners Holdings, Inc.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative,

Or

Renee Chapman, Contact Representative.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–19361 Filed 8–6–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Security and Strategic Information

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Assistant Secretary for Administration and Management.

ACTION: Notice of a New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Department of Health and Human Services is establishing a new system of records entitled, "Facility and Resource Access Control Records," System No. 09–90–0777. This notice implements in part Homeland Security Presidential Directive 12 (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors" of August 27, 2004. HSPD–12 requires all employees, contractors, and others who will be granted regular access to federal facilities for more than six months to undergo a background investigation to determine suitability and to be issued a Personal Identity Verification (PIV) Card (*i.e.* an identification badge). The purpose of the program is to enhance access controls to federal facilities to improve security. The badge stores the individual's name, employing organization, the badge issuer, the badge serial number, the expiration date, a picture of the badge holder, two fingerprints, and four encryption keys that may be used by the PIV card holder, when properly activated, in association with federal information technology resources. The Facility and Resource Access Control Records comprise information about the issuance of Personal Identity Verification (PIV) cards, PIV card holders (*e.g.* employees, contractors), other individuals who require regular access to HHS facilities or resources, and the use of PIV cards to access facilities or resources. The Facility and Resource Access Control Records also include information about occasional visitors and short-term guests who do not carry PIV cards but to whom HHS will issue temporary credentials.

DATES: *Effective Date:* The new system of records will be effective on the date of publication of this notice, with the exception of the routine uses, which will become effective on September 8, 2010. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to do so.

DATES: Comments are due by September 8, 2010.

ADDRESSES: Address comments to HHS Privacy Act Officer, Mary E. Switzer Building, Department of Health and Human Services, 330 "C" Street, SW., Washington, DC 20201, or via electronic mail to HSPD12-privacy at hhs.gov. Comments will be available for public viewing in the public reading room located at the same address, or on our Web site at *http://www.hhs.gov.* To review comments in person, please call the Division of Freedom of Information and Privacy at 202–690–7453 for an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Maya A. Bernstein, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 434E, Washington, DC 20201, via e-mail at *maya.bernstein@hhs.gov,* or via telephone at 202/690–7100.

SUPPLEMENTARY INFORMATION: The Facility and Resource Access Control Records enhance HHS' security and permit the Department to comply with Homeland Security Presidential Directive 12 (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors." This Presidential mandate requires all government employees, contractors, and certain other individuals to use new identification badges, known as Personal Identity Verification (PIV) cards, as their singular form of identification when accessing government buildings, facilities, or information technology systems. The PIV card will enhance security, increase government efficiency, reduce identity fraud, and protect personal privacy.

Before obtaining a PIV card, each employee or contractor must undergo a standardized security credentialing process, including background investigations, to ensure safety of HHS facilities and the people who work in them. The PIV card system places modern card readers at the entrances of HHS facilities that allow interoperability with all federal agencies and ensure that entry of employees, contractors, and other regular visitors is strictly authorized. Leveraging cutting-edge technologies such as fingerprint recognition and single sign-on capabilities, this technology will reduce identity fraud and ensure only authorized users can access essential information. Finally, by protecting employees, facilities, and information, the PIV card guards the government resources that provide critical services to the American people.

The PIV card will store the holder's name, employing organization, the badge issuer, the badge serial number, the expiration date, a picture of the badge holder, two fingerprints, and encryption keys that may be activated for access to information technology resources, if needed. It will not store other identifying information such as social security number or birth date. An associated database will store similar information in order to verify that individuals entering federal buildings or using other federal resources, such as information technology (IT) systems, are properly authorized for that access. In addition, the database will be used to verify the ability of other agencies' PIV card holders to enter HHS facilities or use HHS resources.

Although HHS will not issue PIV cards to occasional visitors, information about occasional visitors will be maintained as part of the Facility and Resource Access Control Records. Some of these visitors may be required to undergo brief criminal history checks, depending on the reason for their visit and how often they enter our facilities or use our (IT) systems. The Facility and Resource Access Control Records includes that information.

Routine Uses

In addition to the collection, use, and disclosure of information described in the statute itself, the Privacy Act permits HHS to establish disclosures to non-HHS entities that are not already identified by statute, and do not require the individual record subject's consent, by using an administrative process. These disclosures are known as "routine uses," and are permitted to be established if they are "compatible with the purpose" for which the information was collected, and if the agency publishes them in the **Federal Register** for 30 days in advance. Both identifiable and non-identifiable data may be disclosed under a routine use. This notice includes routine uses for the new system, and they are described below.

Most of the routine uses fall into standard categories that are common to most systems of records across the government. These include (1) disclosure to the Department of Justice (DOJ) when DOJ represents HHS, our employees, or the government in litigation, and they need to have access to the records to perform that function. If such a case goes to court, another routine use (2) permits the records to be disclosed in evidence before a federal court or appropriate adjudicative body. There is a disclosure (3) permitted when a record in this system of records or in combination with other records indicates a violation of law — we turn them over to the appropriate law enforcement entity in order to maintain the integrity of the program and ensure trust in the system. Another routine use (4) permits disclosure for intelligence and national security purposes, especially since the system manages information about persons that have access to federal facilities and federal information technology systems that has

been recognized by the President as a homeland security issue.

The routine use disclosure to an individual Member of Congress (5) permits the Department to cooperate with a Member of Congress seeking information on behalf of a constituent (as opposed to the Committees of jurisdiction performing oversight) with a matter that involves these records. If the request is in writing, and we obtain a copy of the request, we will assume the constituent's consent for the Member to obtain records on a constituent's behalf even if a formal authorization is not included, so that the Department and the Member can better serve our citizens. However, the Member would get no more access to the record than that to which the constituent is entitled.

The sixth routine use (6) permits the National Archives and Records Administration to carry out records management functions.

Where HHS engages a contractor to carry out a function related to this system of records, routine use (7) permits disclosure to those individuals who require access to the records in order to perform the contracted work, and we will require the contractor to comply with the Privacy Act. Another routine use (8) permits disclosure to contractors or other agencies for the purpose of assisting the Department in responding to a suspected or confirmed data breach.

When an individual submits an application for a background investigation, the individual normally signs an authorization permitting records to be obtained by the investigator from almost any source. Occasionally, after an individual has moved to another job or contract, if negative information should come to light relevant to another entity's decision about the suitability of the individual, a routine use (9) allows HHS to notify the other entity merely that we have relevant information. It is expected that the other entity, if interested in pursuing the matter, would present a written authorization on which HHS could rely to disclose more detailed records. However, the disclosed information will be limited to that which is reliable enough for such a referral.

Finally, one routine use is particular to the PIV card system and allows the program to function as it is intended. HSPD–12 directs that, eventually, all PIV card holders should, in most cases, be able to visit other federal facilities and, if appropriate, use other agencies' computer resources, by presenting the PIV card. This system of records also describes information about visitors to HHS who have a PIV card from another agency. Therefore, this system of records also comprises information about those visitors, their entry and exit times, and summary information about them. A routine use (10) permits HHS to notify another federal agency if a PIV card is expired or no longer valid.

Safeguards

HHS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable federal laws and regulations and federal and HHS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, and the Clinger-Cohen Act of 1996 Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, and HHS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications and the HHS Information Systems Program Handbook.

Dated: July 26, 2010.

RADM Arthur J. Lawrence,

Director, Office of Security and Strategic Information.

SYSTEM NO. 09–90–0777

SYSTEM NAME:

"Facility and Resource Access Control Records".

SECURITY CLASSIFICATION:

Most identity records are not classified. However, in some cases, records of certain individuals, or portions of some records, may be classified in the interest of national security.

SYSTEM LOCATION:

Data covered by this system are maintained at the following locations: Department of Health and Human Services (HHS), Office of the Secretary, 200 Independence Avenue, SW., Washington, DC 20201; HHS Operating Divisions and regional offices around the country; Qwest Datacenter in Sterling, Virginia; and the Qwest CyberCenter in Highlands Ranch, Colorado. Some data covered by this system will be accessed at HHS locations, both federal buildings and federally-leased space, and at the physical security office(s) or computer security offices of those locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require or are under consideration to obtain regular, ongoing access to HHS facilities, information technology systems, or information classified in the interest of national security, such as applicants for employment or contracts with HHS, federal employees, tribal members, contractors, students, interns, volunteers, affiliates such as individuals authorized to perform or use services provided in HHS facilities (*e.g.,* HEW Credit Union, fitness center, etc.) and individuals formerly in any of these positions. (2) PIV card holders from other agencies who visit HHS facilities or use HHS computer systems. (3) Occasional visitors or short-term employees or guests who do not carry PIV cards and do not require certificates for using encryption with a Public Key Infrastructure (PKI), to whom HHS will issue temporary identification and low assurance credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records maintained on individuals issued credentials by HHS include the following: Full name, Social Security number; date and place of birth; citizenship; signature; image (photograph); fingerprints; hair color; eye color; height; weight; sex; race; scars, marks, or tattoos; organization/office of assignment, location and contact information; PIV card issue and expiration dates; personal identification number (PIN); PIV request form; PIV sponsor, enrollment, registrar and issuance information; PIV card serial number; emergency responder designation; foreign national designator; contractor designator; information derived from documents used to verify identity such as document title, issuing authority, or expiration date; position sensitivity; level of national security clearance and expiration date; computer system user name; user access and

permission rights; authentication certificates; digital signature information; employment category; position title; dates, times, and locations of entries and exits.

(2) HHS maintains the following categories of records about PIV card holders from other agencies entering HHS facilities or using HHS systems: Name, PIV card serial number; dates, times, and locations of entries and exits; organization name; level of national security clearance and expiration date; digital signature information; computer networks, applications, and data accessed.

(3) HHS maintains the following categories of records about occasional visitors and short term guests: name, photograph, date and time of entry and exit, facility to which admitted, and name of person visiting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Information Technology Management Reform Act of 1996 (Pub. L. 104–106, sec. 5113); Electronic Government Act (Pub. L. 104–347, sec. 203); Paperwork Reduction Act of 1995 (44 U.S.C. ch. 35); Government Paperwork Elimination Act (Pub. L. 105–277, sec. 1701, 44 U.S.C. 3504); Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, Aug. 27, 2004; Federal Property and Administrative Act of 1949, as amended.

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the system of records are to (1) Ensure the safety and security of HHS facilities, systems, or information, and our occupants and users; (2) to verify that all persons entering federal facilities, using federal information resources, or accessing classified information are authorized to do so; and (3) to track and control PIV cards and other identity credentials issued to persons entering and exiting the facilities, using systems, or accessing classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

(1) To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

(2) To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(3) Except as noted on Forms SF 85, 85–P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether federal, foreign, state, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

(4) To a federal, state, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

(5) To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

(6) To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(7) To agency contractors who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(8) To appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

(9) To a federal, state, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another federal agency for criminal, civil, administrative personnel or regulatory action.

(10) To another federal agency to notify that agency when, or verify whether, a PIV card is no longer valid.

Note: Disclosures of data pertaining to date and time of entry and exit of an agency employee working in the District of Columbia may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. 6120 *et seq.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and in paper files.

RETRIEVABILITY:

Records are retrievable by name, date of birth, Social Security number, photographic identifiers, biometric identifiers, HHS Identification Number, and PIV card serial numbers.

SAFEGUARDS:

HHS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable federal laws and regulations and federal and HHS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, and HHS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications and the HHS Information Systems Program Handbook.

Paper records are kept in locked cabinets in secure facilities and access to them is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in facilities that are secured by alarm systems and off-master key access. The computer servers themselves are two-factor protected with Public Key Infrastructure (PKI) credentials, Personal Identification Numbers (PINs) and passwords. Access to individuals working at guard stations, operating enrollment stations, issuance stations, or the portal for sponsorship and adjudication will be two-factor protected using PKI and PIN; each person granted access to the system at guard stations, enrollment stations, issuance stations or through the portal must be individually authorized to use the system. A notice warning users that they are responsible for protecting the information in accordance with the Privacy Act, the Computer Security Act, and the Federal Information Security Management Act appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the personal computers at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

An audit trail is maintained and reviewed periodically to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information.

RETENTION AND DISPOSAL:

Records relating to persons' access covered by this system are retained in accordance with General Records Schedule 18, Item 17 approved by the National Archives and Records Administration (NARA). Unless retained for specific, ongoing security investigations, for maximum security facilities, records of access are maintained for five years and then destroyed. For other facilities, records are maintained for two years and then destroyed.

All other records relating to individuals are retained and disposed of in accordance with General Records Schedule 18, item 22, approved by NARA. In accordance with HSPD–12, PIV cards are deactivated within 18 hours of cardholder separation, loss of card, or expiration. PIV cards are destroyed by cross-cut shredding no later than 90 days after deactivation.

SYSTEM MANAGER AND ADDRESS:

Ken Calabrese, HHS Chief Technology Officer, Office of the HHS Chief Information Officer, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to himself or herself by sending a request in writing, signed, to HHS Privacy Act Officer, Room 2221, Mary E. Switzer Building, Department of Health and Human Services, 330 "C" Street, SW., Washington, DC 20201. When requesting notification of or access to records covered by this Notice, an individual should provide his/her full name, date of birth, agency name, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID. Individuals requesting notification via telephone must furnish, at a minimum, name, date of birth, social security number, and home address in order to establish identity. Individuals requesting notification via mail shall submit a notarized request to the responsible Department official to verify his or her identity or shall certify in his or her request that he or she is the individual who he or she claims to be and that he or she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURE:

In addition to the procedures above, requesters should reasonably specify the record contents being sought. If additional information or assistance is required, contact the HHS Privacy Act Officer, Room 2221, Mary E. Switzer Building, Department of Health and Human Services, 330 "C" Street, SW., Washington, DC 20201. Write the words "Privacy Act Request" on the envelope and on the letter. For purpose of access, use the same procedures outlined in the Notification Procedures above. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2).)

CONTESTING RECORDS PROCEDURES:

In addition to the procedures above, requesters should also reasonably

identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete. Rules regarding amendment of Privacy Act records appear in 45 CFR part 5a. If additional information or assistance is required, contact the HHS Privacy Act Officer, Room 2221, Mary E. Switzer Building, Department of Health and Human Services, 330 "C" Street, SW., Washington, DC 20201. Write the words "Privacy Act Request" on the envelope and on the letter.

RECORDS SOURCE CATEGORIES:

Employee, contractor, or applicant; sponsoring agency; former sponsoring agency; other federal agencies; contract employer; former employer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–19536 Filed 8–6–10; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability: Test Tools and Test Procedures Approved for the Office of the National Coordinator for Health Information Technology (ONC) Temporary Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 300jj–11.

SUMMARY: This notice announces the availability of test tools and test procedures approved by the National Coordinator for Health Information Technology (the National Coordinator) for the testing of Complete EHRs and/or EHR Modules by ONC-Authorized Testing and Certification Bodies (ONC–ATCBs) under the ONC temporary certification program. The approved test tools and test procedures are identified on the ONC Web site at: *http://healthit.hhs.gov/certification*.

FOR FURTHER INFORMATION CONTACT: Carol Bean, Director, Certification Division, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

On June 24, 2010, the Department of Health and Human Services issued a final rule establishing a temporary certification program for the purposes of testing and certifying health information technology ("Establishment of the Temporary Certification Program for Health Information Technology," 75 FR 36158) (Temporary Certification Program final rule).[1] The Temporary Certification Program final rule added a new "Subpart D—Temporary Certification Program for HIT" to part 170 of title 45 of the Code of Federal Regulations (CFR). Section 170.423(e) of Subpart D requires ONC–ATCBs to "[u]se test tools and test procedures approved by the National Coordinator for the purposes of assessing Complete EHRs and/or EHR Modules compliance with the certification criteria adopted by the Secretary." The preamble of the Temporary Certification Program final rule stated that when the National Coordinator had approved test tools and/or test procedures ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site. As discussed in the Temporary Certification Program final rule, we anticipated that test tools and test procedures would not be finalized by the National Institute of Standards and Technology (NIST), and therefore unable to be considered for approval by the National Coordinator, until after the Secretary made publicly available a final rule for the initial set of standards, implementation specifications, and certification criteria for electronic health record technology.[2] This final rule, "Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology" (HIT Standards and Certification Criteria final rule) was made available for public inspection on July 13, 2010, and was published in the **Federal Register** on July 28, 2010.

The National Coordinator has approved, for use by ONC–ATCBs in accordance with 45 CFR 170.423(e), test tools and test procedures developed by NIST for testing Complete EHRs and/or EHR Modules to the applicable certification criterion or criteria adopted by the Secretary in the HIT Standards and Certification Criteria final rule. These approved test tools and test procedures are identified on the ONC Web site at: *http://healthit.hhs.gov/certification*.

Dated: August 2, 2010.

David Blumenthal,

National Coordinator for Health Information Technology.

[FR Doc. 2010–19533 Filed 8–6–10; 8:45 am]

BILLING CODE 4150–45–P

[1] The Department issued a proposed rule entitled "Proposed Establishment of Certification Programs for Health Information Technology" (75 FR 11328, March 10, 2010) that proposed the establishment of a temporary certification program and a permanent certification program and stated the Department's intentions to issue separate final rules for each program.

[2] The "Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology" interim final rule was made available for public inspection on December 30, 2009, and published in the **Federal Register** on January 13, 2010 (75 FR 2014).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Title: "Health Care and Other Facilities" Project Status Update Form (OMB No. 0915–0309)—[Extension] .

The Health Resources and Services Administration's Health Care and Other Facilities (HCOF) program provides congressionally-directed funds to health-related facilities for construction-related activities and/or capital equipment purchases. Awarded facilities are required to provide a periodic (quarterly for construction-related projects, annually for equipment only projects) update of the status of the funded project until it is completed. The monitoring period averages about 3 years, although some projects take up to 5 years to complete. The information collected from these updates is vital to program management staff to determine whether projects are progressing according to the established timeframes, meeting deadlines established in the Notice of Grant Award (NGA), and drawing down funds appropriately. The

data collected from the updates is also shared with the Division of Grants Management Operations (DGMO) for their assistance in the overall evaluation of each project's progress.

An electronic form is currently being used for progress reporting for the HCOF program. This form provides awardees access to directly input the required status update information in a timely, consistent, and uniform manner. The electronic form minimizes burden to respondents and informs respondents when there are missing data elements prior to submission. We acknowledge a change in the burden estimate due to close out of old projects, and the addition of new projects for FY 2010.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total Burden hours
Construction-Related	481	4	1,924	.5	962
Equipment Only	1,238	1	1,238	.5	619
Total	1,719		3,162		1,581

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: August 3, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–19549 Filed 8–6–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-10–0783]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Safe Dates Project—(OMB No. 0920–0783 exp. 6/30/2011)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Safe Dates, a dating violence prevention curriculum for 8th and 9th grade students, has been shown to be effective at preventing victimization and perpetration of teen dating violence in one rural North Carolina school district, but appropriateness of the program with urban, high-risk adolescents is unknown. The data collection will require participation from teachers at eight schools who delivered the Safe Dates program and students at one school who received the program. Qualitative data will be collected through student focus groups and teacher interviews. Students will complete a participant profile form to capture basic demographic information. The specific aim of this study is to assess whether the Safe Dates adolescent dating violence prevention program needs modification/adaptation for urban, high-risk adolescents.

Approximately 40 students at one school will participate in focus groups. Two focus groups will consist of 8–10 boys, and two focus groups will include 8–10 girls. Informed written consent from parents for each student's participation and informed written assent from tenth graders for their own participation will be obtained. Twenty teachers will participate in interviews. Students and teachers will be asked about their experiences with the Safe Dates program and ideas they may have about adapting the program for urban schools.

Data collection will occur in July 2010. It is anticipated that study results will be used to determine whether the Safe Dates program should be modified for an urban, high-risk population. There is no cost to respondents other than their time. The total estimated annual burden hours are 849.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Instrument name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total response burden (hours)
Student	Effectiveness follow-up survey	1,318	1	35/60	769
	Focus group guide and participant profile form.	40	1	1.5	60
Teacher	Interview guide	20	1	1	20

Dated: August 3, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–19555 Filed 8–6–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet August 19, 2010, 1–3 p.m. via teleconference.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site at *https://nac.samhsa.gov/CSATcouncil/index.aspx,* or by contacting the CSAT National Advisory Council Designated Federal Official, Ms. Cynthia Graham (*see* contact information below).

Committee Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: August 19, 2010, 1– 3 p.m.: Closed.

Place: SAMHSA Building, 1 Choke Cherry Road, Great Falls Conference Room, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857, Telephone: (240) 276–1692, Fax: (240) 276–1690, e-mail: *cynthia.graham@samhsa.hhs.gov.*

Dated: August 3, 2010.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2010–19539 Filed 8–6–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 22–23, 2010.

Closed: September 22, 2010, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: September 23, 2010, 9 a.m. to 3 p.m.

Agenda: Presentations and other business of the council.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20892, 301–443–9737. *bautistaa@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http:///www.silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–19558 Filed 8–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Workshop on Optimizing Clinical Trial Design for the Development of Pediatric Cardiovascular Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) and National Institutes of Health (NIH), with support from the American Academy of Pediatrics (AAP), the American College of Cardiology (ACC), and the Society for Cardiovascular Angiography and Interventions (SCAI) are announcing a public workshop entitled "Optimizing Clinical Trial Design for the Development of Pediatric Cardiovascular Devices." The topic to be discussed is pediatric cardiovascular device development. The purpose of the public workshop is to solicit information from clinicians, academia, professional societies, other government agencies, and industry on various efficient and pragmatic clinical trial designs that are conducive to overcoming the challenges in developing devices for the pediatric cardiology market. The information gathered in this and future workshops will help to develop future guidance on optimal designs for pediatric cardiology device trials.

Date and Time: The public workshop will be held on September 30, 2010, from 8 a.m. to 5:30 p.m.

Location: The public workshop will be held at Moscone Center, 747 Howard St., San Francisco, CA 94103.

Contact Person: Francesca Joseph, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5277, Silver Spring, MD 20903, 301–796–6805, FAX: 301–847–8621, e-mail: *francesca.joseph@fda.hhs.gov*.

Registration: Registration information will be posted on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

If you need special accommodations due to a disability, please contact Lynn Colegrove by phone 847–434–7820 at least 7 days in advance.

Registration and seating will be on a first-come, first-served basis. A discussion preference will be afforded to clinical research investigators involved in pediatric clinical device trials, health care givers, and patient advocates. There is no registration fee to attend the public workshop. Early registration is recommended because seating is limited. There will be no onsite registration.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: In the medical device industry, rarely have devices been developed, evaluated, and approved specifically for treatment of children with congenital heart disease. The small, heterogeneous population, need for long-term followup, lack of market incentive, and misperceptions of regulatory requirements and costs are a few of the issues that make a standard randomized control trial difficult to conduct in pediatric cardiology. The goal of the workshop is to educate the medical device industry and pediatric clinical community about device development and regulatory approval processes, and to identify clinical trial designs that lend themselves to overcoming the challenges in pediatric cardiovascular device development. Subsequently making this information available to industry, the clinical community, and the public is imperative to furthering the development of pediatric cardiovascular devices and alleviating this critical unmet need. The marketing approval of more cardiovascular devices specifically designed and/or labeled for pediatric patients would have a significant impact on public health. Invited experts will address types of clinical trials with a particular focus on trial designs and statistical analysis methods, as well as alternative sources of clinical data, that can help to address the challenges in this particular patient population. After each section there will be an audience question and answer session and panel discussion allowing workshop participants to interact with the speakers and panelists. A concluding session will allow for additional interactions.

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

Dated: August 4, 2010.

Nancy Stade,

Acting Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–19530 Filed 8–6–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to gather stakeholder input on the development of a generic drug user fee program. The number of human generic drug applications awaiting FDA action and the median review times for generic drug applications have increased in recent years. A user fee program could provide necessary supplemental funding, in addition to current Congressional appropriations, to allow for the timely review of such applications. Although the President's Fiscal Year (FY) 2011 budget includes generic drug user fees, new legislation would be required for FDA to establish and collect user fees under such a program. As FDA begins negotiations with the regulated industry about generic drug user fees, FDA will hold a public meeting to gather the public's input on such a program.

Date and Time: The public meeting will be held on September 17, 2010, from 9 a.m. to 5 p.m.

Location: The meeting will be held at the Hilton Washington DC/Rockville and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Persons: Mary C. Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6178, Silver Spring, MD 20993, 301–796–3519, FAX: 301–847–8753, e-mail: *mary.gross@fda.hhs.gov*, or Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4238, Silver Spring, MD 20993, 301–796–4830, FAX: 301–847–3541, e-mail: *peter.beckerman@fda.hhs.gov*.

Registration and Requests for Oral Presentations: If you wish to attend and/or present at the meeting, please register by September 9, 2010. Please e-mail your registration information to *GDUFA_Meeting@fda.hhs.gov*. Those without e-mail access may register by contacting one of the persons listed in the *Contact Persons* section of the document. Please provide complete contact information for each attendee, including name, title, affiliation, address, e-mail address, and phone number. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization as well as the total number of participants, based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak, and if the entire meeting time is not needed for presentations, FDA reserves the right to terminate the meeting early.

If you need special accommodations due to a disability, please contact Mary Gross or Peter Beckerman (see *Contact Persons*) at least 7 days before the meeting.

Comments: Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments by October 17, 2010. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m.,

Monday through Friday. Submission of comments prior to the meeting is strongly encouraged.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting related to generic drug user fees. The number of generic drug applications awaiting FDA action and the median review time for such applications have increased. The Agency is soliciting comment on whether to seek a user fee program that would provide additional resources for the review of human generic drug applications, as well as what such a program should look like. New legislation would be required for FDA to establish and collect user fees for generic drugs, and FDA is initiating the process for defining the scope and structure of a generic drug user fee program. As part of this process, FDA will hold a public meeting to seek input from stakeholders and the public on generic drug user fees. In addition, members of the public are encouraged to submit written comments. FDA is particularly interested in responses to the following questions and welcomes other pertinent information stakeholders would like to share regarding the application process for generic drugs:

1. How, if at all, should a generic drug user fee program differ from FDA's existing user fee programs, including the Prescription Drug User Fee Act (PDUFA), the Animal Drug User Fee Act (ADUFA), the Medical Device User Fee and Modernization Act (MDUFMA) and Tobacco Product User Fees? (Information on these programs can be found at *http://www.fda.gov*).

2. What should a generic drug user fee program look like or how should a generic user fee be structured? (User fees for brand name drugs include a one-time fee for a new drug application and annual fees for marketed products and facilities at which these products are produced. Should the generic drug fees follow the same structure? If not, what are the unique aspects of the generic drug industry or market that should be considered and how might these impact a proposed user fee plan?)

3. Are performance goals recommended for FDA. If so, what performance goals would you recommend for FDA? If not, why not?

4. Should all applications pay the same fees and be subject to the same goals? (For example, should applications for more complex products pay a higher application fee to reflect the additional regulatory efforts they entail? Should such differences be captured through differential goals?)

5. Including applications for which exclusivities would prevent current marketing, and applications that are awaiting responses from sponsors for noted deficiencies, there is a current queue of over 2,000 applications under review, and approximately 800 new applications submitted each year. How should a generic drug user fee program address applications currently awaiting FDA review?

6. PDUFA currently supports oversight of post-marketing safety of drugs. What kind of support, if any, should a generic user fee provide for post-marketing safety?

II. Why Is FDA Undertaking This Process?

An important responsibility of FDA is to assess generic drug applications. Generic drugs currently are used to fill more than two-thirds of all prescriptions dispensed in the United States and they provide important cost-effective alternatives to the American public. Nonetheless, despite increasing productivity on the part of FDA's Office of Generic Drugs, the number of applications awaiting FDA action has been steadily increasing, and the median time for review of such applications has grown.

Similar to user fees for brand name human drugs, animal drugs, generic animal drugs, and medical devices, the intent of a generic drug user fee program would be to provide additional revenues so that FDA can hire more staff and improve systems to support the generic drug review process. FDA believes the supplementary revenues from generic drug user fees would allow the Agency to review generic drug applications in a timely manner and will provide flexibility, adequacy, and predictability in the funding of FDA's review of generic drug applications.

Although the President's FY 2011 budget contains a generic drug user fee program, new legislation would be needed to put such fees into place. At this time, generic drugs for humans are the largest category of preapproval products regulated by FDA and generic drug applicants do not currently pay any type of user fee. FDA believes that the predictability, flexibility, and adequacy of a funding stream from user fees and the accompanying ability to more efficiently review generic drug applications would benefit the public health, FDA, and the generic drug industry.

III. What Information Should You Know About the Meeting?

A. When and Where Will the Meeting Occur? What Format Will FDA Use?

Through this notice, we are announcing a public meeting to hear stakeholder views on what features FDA should propose for a generic drug user fee program. We will conduct the meeting on September 17, 2010, at the Hilton Washington DC/Rockville and Executive Meeting Center, see *Location*).

In general, the meeting format will include presentations by FDA and presentations by stakeholders and members of the public who have registered in advance to present at the meeting. The amount of time available for presentations will be determined by the number of people who register to make a presentation. We will also provide an opportunity for organizations and individuals to submit written comments to the docket after the meeting. FDA policy issues are beyond the scope of this initiative. Accordingly, the presentations should focus on process and funding issues, and not focus on policy issues.

B. Will Meeting Transcripts Be Available?

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: August 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19537 Filed 8–6–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 15 and 16, 2010, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College (UMUC), 3501 University Blvd. East, Adelphi, MD. The hotel telephone number is 301–985–7300.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 15, 2010, the committee will discuss the results of the Sibutramine Cardiovascular Outcomes Trial (SCOUT) (M01–392), for new drug application (NDA) 20–632, MERIDIA (sibutramine hydrochloride monohydrate) Capsules, sponsored by Abbott Laboratories, for treatment of obesity. The SCOUT study was a randomized, double-blind, placebo-controlled trial, which is a kind of clinical trial designed to provide data with strong measures of accuracy and reliability. The SCOUT trial evaluated the potential benefits of weight loss with MERIDIA on major cardiovascular (heart and blood circulation) adverse events. The preliminary results of the SCOUT trial indicated that clinical trial participants who received MERIDIA instead of placebo (no active drug) had a higher incidence of major cardiovascular adverse events that was statistically significant.

On September 16, 2010, the committee will discuss the safety and efficacy of new drug application (NDA) 22–529, with the proposed trade name LORQESS (lorcaserin hydrochloride) Tablets, sponsored by Arena Pharmaceuticals, Inc., as an adjunct to diet and exercise for weight management in patients with a body mass index (BMI) of equal to or greater than 30 kilograms (kg) per square meter, or a BMI equal to or greater than 27 kg per square meter if accompanied by weight-related co-morbidities (which include, for example: High blood pressure, heart disease, or diabetes). The BMI is a measure of body weight (mass) based on a person's weight and height, and is a widely-used tool for doctors in assessing optimum weights for a patient.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 31, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 23, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 24, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 3, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–19484 Filed 8–6–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–639, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–639, Freedom of Information/Privacy Act Request; OMB Control No. 1615–0102.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 4, 2010, at 75 FR 23785, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS,

Chief, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0102 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–639; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form G–639 is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 4, 2010

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–19595 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID: FEMA–FEMA–2010–0030]

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0102; Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0102; FEMA Form 007–0–1, Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 8, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oira.submission@omb.eop.gov or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0102.

Form Titles and Numbers: FEMA Form 007–0–1, Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Abstract: FEMA Housing Inspection Services contracts inspectors to assess dwelling damage and verify personal information of applicants for FEMA disaster assistance in federally declared disasters areas. Because FEMA needs to evaluate the inspectors' performance, FEMA conducts surveys to measure the satisfaction level of the applicants with their inspection experience. FEMA Inspection Services Managers and Task Monitors generally use the survey results to gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness. The information is shared with Regional staff specific to the federal declaration for which the survey is conducted.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,164.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: .25 burden hours.

Estimated Total Annual Burden Hours: 2,541 burden hours.

Estimated Cost: None.

Lawann Johnson,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–19516 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–643, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615–0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 4, 2010, at 75 FR 23784, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0070 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–643; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Refugees and Asylees, Cuban/Haitian Entrants under section 202 of Public Law 99–603, and Amerasians under Public Law 97–359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 4, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–19608 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0029]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0032; U.S. Fire Administration's National Fire Academy Evaluation Collection

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0032; FEMA Form 064–0–4, NFA Distance Learning Course Evaluation Form; FEMA Form 064–0–5, NFA End of Course Evaluation Form; FEMA Form 064–0–10, USFA Conference/Symposium Form.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 8, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records

Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: U.S. Fire Administration's National Fire Academy Evaluation Collection.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0032.

Form Titles and Numbers: FEMA Form 064–0–4, NFA Distance Learning Course Evaluation Form; FEMA Form 064–0–5, NFA End of Course Evaluation Form; FEMA Form 064–0–10, USFA Conference/Symposium Form.

Abstract: The NFA End of Course Evaluation Form is used to evaluate all traditional classroom based course deliveries and conference/symposia supporting programmatic initiatives. Data provided by students is used to determine the need for course improvements and the degree of student satisfaction with the training experience. Participant stakeholder data provides necessary information in consideration of program revision and development initiatives and evaluates if the information met their needs.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 54,600.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: .14 burden hours.

Estimated Total Annual Burden Hours: 7,590 burden hours.

Estimated Cost: There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

Lawann Johnson,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–19517 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker licenses and all associated permits are cancelled with prejudice.

Name	License #	Issuing port
Hugo Jimenez	15547	Miami.
Allied Customs Broker & Forwarders, Inc.	20090	Miami.

Dated: July 27, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–19477 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker license and all associated permits are cancelled without prejudice.

Name	License #	Issuing port
ABX Logistics USA, Inc	17468	Dallas/Ft. Worth.

Dated: July 20, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–19492 Filed 8–6–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N138; 20124–1113–0000–F5]

Emergency Exemption; Issuance of Emergency Permit to Rehabilitate Sea Turtles Affected by the Deepwater Horizon Oil Spill, Gulf of Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of endangered species emergency permit.

SUMMARY: On April 20, 2010, a massive oil spill occurred as a result of the Deepwater Horizon drilling rig explosion in the Gulf of Mexico. The oil spill continues to threaten the Gulf of Mexico environment and its inhabitants, including five sea turtle species. We, the U.S. Fish and Wildlife Service have authorized Texas State Aquarium, under an Endangered Species Act (ESA) permit, to aid sea turtles affected by the oil spill.

ADDRESSES: Documents and other information concerning the permit are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal

business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION: On April 20, 2010, a massive, oil spill occurred as a result of the Deepwater Horizon drilling rig explosion in the Gulf of Mexico off the State of Louisiana, near the Mississippi River Delta. The oil spill continues to threaten the Gulf of Mexico environment and its inhabitants, including the following five species of sea turtles: The green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), and loggerhead sea turtle (*Caretta caretta*).

We, the U.S. Fish and Wildlife Service (Service) have authorized Texas State Aquarium, under an Endangered Species Act (ESA) section 10(c) permit (TE794593), to aid sea turtles affected by the Deepwater Horizon oil spill. Efforts to rehabilitate the turtles are currently taking place and will continue to be an ongoing process until we are satisfied that the sea turtles no longer need rehabilitation.

Rehabilitation may include the following activities: Examine and document stranded sea turtles; aid with holding/restraining live turtles while others permitted rush to the scene, examine tags, apply tags, collect data/specimens, or attach satellite transmitters; examine for tags and tag live sea turtles; transport live and dead sea turtles to rehabilitation facilities, satellite transmitter attachment sites, and necropsy sites and necropsy dead sea turtles and collect samples; examine gut contents from dead sea turtles; attach satellite transmitters to nesting Kemp's ridley turtles; locate egg chambers and retrieve eggs for protected incubation; provide care for incubating sea turtle eggs; release hatchling sea turtles; examine unhatched eggs and collect tissue/gonad samples; capture juvenile sea turtles in nets and collect associated data; collect blood samples from stranded, nesting, and captured sea turtles; and collect small tissue samples from live stranded, nesting, and captured sea turtles.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 3, 2010.

Joy E. Nicholopoulos,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2010–19557 Filed 8–6–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan/Environmental Impact Statement, Cumberland Gap National Historical Park, Kentucky, Tennessee and Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 the National Park Service (NPS) announces the availability of a Final General Management Plan and Environmental Impact Statement for the Cumberland Gap National Historical Park, Kentucky, Tennessee, and Virginia.

Consistent with NPS laws, regulations, and policies and the purpose of the Cumberland Gap National Historical Park, the Final GMP/EIS describes the NPS preferred alternative—Alternative C—to guide the management of the National Historical Park over the next 15 to 20 years. The preferred alternative incorporates various management prescriptions to ensure protection, access and enjoyment of the park's resources.

The Final GMP/EIS describes the NPS preferred alternative and the potential environmental consequences of implementing the preferred alternative. Impact topics include the cultural, natural, and socioeconomic environments. The Final GMP/EIS contains NPS responses to public comments on the Draft GMP/EIS, and copies of agency correspondence and substantive comment letters.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the Final GMP/EIS in the **Federal Register**.

ADDRESSES: The document will be available for public review and comment online at *http://parkplanning.nps.gov.* A limited number of CDs and hard copies will be made available at National Historical Park headquarters. You may also request a hard copy or CD by contacting Cumberland Gap National Historical Park, U.S. 25E South, P.O. Box 1848, Middlesboro, KY 40965–1848; telephone 606–248–2817.

SUPPLEMENTARY INFORMATION: The Draft GMP/EIS evaluated 3 alternatives. Alternative A (No Action) provides a baseline evaluation of existing resource conditions, visitor use, facilities, and management at the park. Alternative A would continue the current management practices into the future. There would be only minor changes in resources management, visitor programs, or facilities. Under Alternative B opportunities for visitor access would be increased by providing additional park facilities as compared to Alternative A. This would expand visitor use of the park, while avoiding and minimizing potential adverse effects on natural and cultural resources. This would be achieved by strategically locating and limiting the numbers and types of new facilities, primarily within the newly established Developed Zones at Fern Lake, areas adjacent to the Hensley Settlement, the Visitor Center area, and the Wilderness Campground. Alternative C would provide a greater amount of visitor access and facilities in the park as compared to Alternative A. Alternative C would also feature increased levels of education, outreach, and formalized partnering. Otherwise, Alternative C would be similar to Alternative B in that it provides slightly expanded visitor access to the park while minimizing the potential for adverse effects on resources. New facilities would be sited and designed within their cultural and natural settings and context. Sustainable practices would be implemented and new facilities would be designed to be unobtrusive.

The Draft GMP/EIS was available for public and agency review from October 16, 2009, through January 8, 2010. Copies of the document were sent to individuals, agencies, organizations, and local libraries. The document was also made available for public review at the park and on the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*) in October 2009. Public meetings were held in the Cumberland Gap National Historical Park visitor center auditorium on December 8, 2009 and December 9, 2009. During the review period, the NPS accepted written and oral comments on the document. The NPS carefully reviewed all comments and prepared a report on responses to all substantive comments (Chapter 6). The Final General Management Plan sets forth a vision for the development and

operation of Cumberland Gap National Historical Park, Dated: June, 2010.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Cumberland Gap National Historical Park at the address and telephone number shown above.

The responsible official for this Final EIS is the Regional Director, Southeast Region, NPS, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 28, 2010.

Gordon Wissinger,

Acting, Regional Director, Southeast Region, National Park Service.

[FR Doc. 2010–19510 Filed 8–6–10; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–025]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 12, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–467 and 731–TA–1164–1165 (Final) (Narrow Woven Ribbons with Woven Selvedge from China and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 25, 2010.)
5. Outstanding action jackets:

(1.) Document No. GC–10–115 concerning Inv. No. 337–TA–602 (Certain GPS Devices and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 5, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–19736 Filed 8–5–10; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements Under the Disability Employment Initiative

AGENCY: Employment and Training Administration, U.S. Department of Labor (DOL, the Department, or Labor).

Announcement Type: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA–DFA–PY–10–01.

Catalog of Federal Domestic Assistance Number (CFDA): 17.207.

Key Dates: The closing date for receipt of applications under this announcement is September 8, 2010. Applications must be received no later than 4 p.m. Eastern Time.

SUMMARY: The Employment and Training Administration (ETA), in coordination with DOL's Office of Disability Employment Policy (ODEP), announces the availability of approximately $22 million for cooperative agreements to state Workforce Investment Act (WIA) administering entities. The Combined Appropriation Act of 2010, Division D of Public Law 111–117, included $12 million in funds to ETA and $12 million to ODEP to develop and implement a plan for improving effective and meaningful participation of persons with disabilities in the workforce. This funding is being used to implement the Disability Employment Initiative (DEI), under which the Department intends to make 6 to 10 grant awards that are designed to: (1) Improve educational, training, and employment opportunities and outcomes of youth and adults with disabilities who are unemployed, underemployed and/or receiving Social Security disability benefits; and (2) help these individuals with disabilities find a path into the middle class through exemplary and model service delivery by the public workforce system. DEI grants will be awarded for a three year period of performance. Grants will be issued as cooperative agreements with the expectation that there will be considerable engagement by ETA and ODEP with states and their local workforce investment areas throughout the life of the Initiative. Extensive technical assistance will be available to grantees and an independent evaluation of the projects will be conducted utilizing quantitative and qualitative data from grantees.

The Appropriation Committee Senate Report 111–66 on H.R. 3292 stated that:

"these funds * * * will improve the accessibility and accountability of the public workforce development system for individuals with disabilities. The Committee further expects these funds to continue promising practices implemented by disability program navigators, including effective deployment of staff in selected States to: improve coordination and collaboration among employment and training and asset development programs carried out at a State and local level, including the Ticket to Work program and build effective community partnerships that leverage public and private resources to better serve individuals with disabilities and improve employment outcomes."

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantees.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Grant Officer, Reference SGA–DFA PY 10–01, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. For complete application and submission information, please refer to Section IV.

Background: Previous DOL grants to improve employment outcomes of individuals with disabilities through systems change in the public workforce system include ETA's Work Incentive Grants, the Disability Program Navigator Initiative, and Employment Service Models such as ODEP's Customized Employment, Workforce Action (Olmstead), the START–UP Initiative, and State Intermediary Youth grants. These DOL grants demonstrated a number of promising practices that are incorporated in this SGA. In addition, numerous other successful employment service models have been developed in Federal, State and local systems.

Systems Change Models. From PY 2000 through 2010, DOL/ETA funded 65 Work Incentive Grants (WIG) and 51 Disability Program Navigator (DPN) Initiative cooperative agreements to states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands to improve services in the One-Stop Career Center system and improve employment outcomes of persons with disabilities. The WIGs were competitively awarded to state and local workforce areas that addressed systemic issues in the workforce system and resulted in the

development of numerous tools and protocols to improve services to job seekers with disabilities. By 2003, DOL had focused all WIG funds on supporting a full-time, dedicated staff person with disability expertise because this strategy has shown promise in expanding the capacity of the One-Stop Career Center system by providing integrated, accessible, and comprehensive services and promoting career and employment outcomes of individuals with disabilities. All WIG funds were subsequently directed to the support of the DPN Initiative. The DPNs or Navigators were located in local workforce investment areas to: (1) Conduct outreach to the disability community; (2) promote meaningful and effective access to the One-Stop Career Center system; (3) establish linkages to employers to increase job opportunities; and (4) create systemic change through ongoing partnerships and comprehensive, wrap around services for job seekers with disabilities, including integrated resource teams to blend, braid, and leverage resources across workforce and disability systems. The DPN Initiative has created innovation and transformation in the public workforce system by: Building relationships with state and local partners; facilitating youth transition services; promoting asset development and financial literacy training; implementing the Ticket to Work Program; building upon Medicaid Infrastructure Grants; and linking to other community providers.

Employment Service Models. A number of employment service models are being used in Federal and state service systems, including the traditional Vocational Rehabilitation, Supported Employment, Transitional Employment, Self-Employment, and various forms of self-direction that provide control and choice to the individual job seeker. These models may be effective for job seekers and should be available in the workforce system, and all complement and reinforce the WIG/DPN successful strategies with One-Stop Career Centers.

For example, from 2001 through 2006, ODEP funded development and research work on Customized Employment in the One-Stop Career Centers through ODEP initiatives in 26 grants around the country. Overall, these projects were expected to increase the capacity of service-delivery systems to effectively serve people with disabilities and other "hard-to-serve" populations through individualized employment and placement services. Several key findings resulted from this initiative: (1) Partnership and collaboration were essential to systems change; (2) the design of environments, products, and communication practices and the delivery of programs, services, and activities that meet the needs of all customers of the system ("universal design strategies") were fundamental to improving access to the programs and services of the workforce development system; (3) leveraging expertise and resources across both generic and disability-specific systems through integrating funds helped maximize opportunities for individuals and the ultimate outcomes obtained; (4) asset development strategies (*e.g.,* tax incentives, financial education, work incentives) that enhance the economic advantages of employment for people with disabilities; (5) access to flexible dollars supported unique employment-related needs of individual participants; and (6) the customized approach shows promise for improving employment outcomes and wages for individuals with significant disabilities and others with complex barriers to employment.

The Workforce Action grants built capacity within the workforce system to provide employment services for individuals transitioning from institutions and other segregated environments. ODEP has also documented the viability of self employment for people with disabilities, including those with significant disabilities who receive SSI or SSDI benefits, through its national self-employment initiative, START–UP. This initiative resulted in the establishment of a range of businesses by individuals with disabilities. Information on all of the employment service models mentioned above is readily available to the public.

In 2003, State Intermediary Grants, a promising youth transition model, were awarded to eight states. These grants assisted states, under the leadership of the State WIB, in the design, implementation, and evaluation of systems changes needed to improve transition outcomes for youth with disabilities at the local level. ODEP's State Intermediary grantees focused on closing the substantial gap between education and employment outcomes for youth with disabilities and those of their peers without disabilities. ODEP's research indicates that all youth, including those with disabilities, need exposure to the following five educational and career development interventions, which ODEP has branded as the *Guideposts for Success:* (1) School-based preparatory experiences; (2) career preparation and work-based learning experiences; (3) youth development and leadership; (4) connecting activities, including knowledge of transportation, health care, and financial planning; and (5) family involvement and support.

In addition to articulating the general needs of all youth, *Guideposts for Success* also addresses the specific needs of youth with disabilities within each of the five categories. As a result of the grants, both state and local level organizations began to more effectively coordinate services for youth with disabilities through the use of the *Guideposts for Success.* Many youth with disabilities who had not previously received transition services through One-Stop Career Centers and other sources were provided such services. In addition, State and local level intermediaries provided training that enabled many organizations and individuals to become knowledgeable about services and resources available to youth with disabilities. The grants demonstrated that intermediaries can serve a key function by helping to define roles within a partnership and in deciding the level at which issues should be addressed and problems resolved. Research indicates that if youth are provided with these key educational and career development interventions, they will be well prepared to enter the 21st Century workforce. Cross-agency multi-year state plans were developed and used to support broader educational, vocational rehabilitation, and workforce development plans.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides a description of this funding opportunity.

Part II describes the size and nature of the anticipated awards.

Part III describes eligibility information.

Part IV provides information on the application and submission process.

Part V describes the criteria against which applications will be reviewed and explains the proposal review process.

Part VI provides award administration information.

Part VII contains DOL agency contact information.

Part VIII provides other information.

I. Funding Opportunity Description

The Department's prior grant initiatives have resulted in significant improvements in the workforce delivery system. DOL is now looking to refine and verify these delivery strategies for further replication across the workforce system. This DEI SGA requires that applicants develop a project plan that includes each of the Required Project

Components in Section I.A. and utilizes at least two of the Strategic Service Delivery Components in Section I.B. Due to the level of effort expected from grantees and taking into consideration the level of funding available, DOL is requiring applicants to focus on adults *or* youth in order to develop and refine replicable models and expertise. Almost all states and territories have received funding under ETA and/or ODEP grant opportunities made available from PY/FY 2000 to PY/FY 2009. These grants helped identify a number of promising strategies to improve education, training and employment outcomes for adults and youth with disabilities. *Selection of a DEI focus on adults or youth must not preclude the provision of services to all individuals with disabilities, regardless of age, who are accessing the workforce system.* From prior experience, the Department expects that most customers of the public workforce system will benefit from the implementation of the DEI cooperative agreement regardless of what priority is the primary focus.

A. Required Project Components

The following components must be included in the state's DEI technical proposal design:

1. State Level DEI Project Lead—Applicants must designate a DEI project lead at the state level to be responsible for a variety of functions. Responsibilities of the DEI project lead include:

- Identifying and coordinating with the local WIBs that are participating in the initiative to ensure issues and challenges are addressed and common goals are achieved;
- Representing the state in administrative communications with the designated ETA Federal Project Officer (FPO), ETA Grant Officer, and National Office ETA and ODEP representatives;
- Facilitating state and local DEI participation in training and technical assistance activities;
- Establishing and coordinating partnerships with other state level agencies that may be critical to the success of education, training, and employment activities, and that are often most effectively engaged at the state level (*e.g.,* Education, Medicaid Agency and Medicaid Infrastructure Grant Projects, Vocational Rehabilitation, Mental Health, Work Incentive Planning and Assistance Projects, and Mental Retardation/Developmental Disability agencies, among others).
- Coordinating implementation of Ticket to Work administrative activities, such as facilitating access to WIA and Wagner-Peyser individualized records and coordination with SSA or its representatives (*e.g.,* MAXIMUS); and
- Facilitating implementation of additional data collection and process evaluation requirements that may be necessary for evaluation purposes.

2. Disability Resource Coordinator—Local WIBs that participate in the DEI cooperative agreement must commit to hiring a new or designating an existing full-time staff person(s) as the disability resource coordinator(s) to implement the strategic approach of the applicant's proposal. This person or persons should have disability-related skills, experience, and abilities dedicated to carrying out the proposal design at the local level. To the extent possible, former DPNs should be considered for employment in this role due to the extensive training and knowledge they have acquired over the years. The Department also encourages the state and local WIBs to hire individuals with disabilities in these roles.

3. One-Stop Physical, Programmatic, and Communications Accessibility—Applicants must verify that the participating local WIBs are in compliance with physical, programmatic and communication accessibility requirements established in non-discrimination regulations at Section 188 of WIA as a contingent for participation in the DEI cooperative agreement. Applicants must address the status of the most recent accessibility survey in local workforce areas that are participating in the DEI cooperative agreement, along with the corrective actions identified or completed, within 90 days of grant award. The Department expects that applicants and local WIBs will continue to review and upgrade access to their One-Stop Career Center system as part of their on-going administration and compliance obligations.

4. Participation in SSA's Ticket to Work Program as an Employment Network—Employment Network (EN) Status—Operating as an EN under SSA's Ticket to Work program is an important strategic approach to sustainability and collaboration in addressing the needs of people with disabilities receiving Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI) cash benefits. The state workforce agency, or the local WIBs to be involved in the DEI, must be an Employment Network under Ticket to Work and Work Incentives Improvement Act (TWWIIA), or stipulate their commitment to apply for EN status to SSA within 60 days of the DEI grant award. Establishing EN status for workforce programs at the state level is an important factor in successful execution of the EN role for administrative and other reasons. However, a number of WIBs and One-Stop operators also have become ENs and accept Tickets for the provision of training or employment services. Full participation in the Ticket to Work Program by workforce investment areas can provide significant resources to workforce investment areas for increased services to individuals with disabilities. Active participation in the Ticket Program could greatly enhance funding and future sustainability of the DEI project. While the Department recognizes WIBs are, in fact, serving and obtaining employment for significant numbers of SSI/SSDI beneficiaries, there are still challenges to the full engagement of workforce entities as ENs. The Department will be working with states, local WIBs, and SSA to identify and overcome administrative challenges that emerge. Information on SSA's procedure for requesting EN status is available at: *http://www.cessi.net/ttw/EN/one_stops/onestop.asp.*

5. Sustainability—The applicant agrees to make every effort to sustain the disability resource coordinator(s) after the grant period ends and to incorporate into state policy and procedures, as appropriate, the promising practices that were successfully implemented by the project.

6. Evaluation—As part of the evaluation, the Department will compare the outcomes of WIA and Wagner-Peyser adults and youth with disabilities in local workforce areas that receive grant funds to those adults and youth with disabilities in local workforce areas who have access to the standard WIA and Wagner-Peyser services but not the interventions that are included in the applicant's proposal under this SGA. To this end, we ask applicants to identify all the WIBs that have the capacity to implement the pilot and are willing to be part of the evaluation. While only half of the identified WIBs will receive funding through the State to implement the SGA project, all would be part of the evaluation with up to 5% of the State's grant funds available to help offset the increased data requirements. Successful state applicants will work with the Department and the evaluator to select the WIBs that will participate in the DEI grant project while ensuring that all identified WIBs and their workforce investment areas have a fair chance at receiving funding.

The State applicant must agree to participate with DOL's data collection and evaluation activities. The

Department will make maximum use of participant data from the Workforce Investment Act Standardized Record Data (WIASRD) and Wagner-Peyser reporting system, but additional data collection will be necessary. For example, the evaluation contractor will conduct a series of site visits for the purpose of documenting grantee progress and to develop case studies. In addition, WIBs that are identified as willing to participate in the state application (*i.e.,* WIBs selected to participate in the DEI plan and those that are not selected) will be required to collect additional participant data; thereby allowing the Department to determine how services received differ between the enhanced and non-enhanced workforce investment areas and the extent to which outcomes of the adults and youth with disabilities differ during the course of the grant project, in these sites. Awardees will be required to provide access to individualized records that contain sufficient information to allow data matching with SSA disability records. Please note that the Department will work with states that receive a DEI grant award and are single state workforce investment areas to determine an approach that is consistent with this evaluation design.

B. Strategic Service Delivery Components

At a minimum, applicants must identify at least two of the following seven strategic components as significant elements of the service delivery approach for the youth or adult population to be served. Some of these strategies are not mutually exclusive nor are they always distinct or separate activities. These are practices and strategies that have been identified through both ETA and ODEP grant initiatives in increasing education and employment outcomes of the population to be served.

1. Integrated Resource Teams (IRT)

The IRT is a promising practice identified by the DPN Initiative whereby a team comprised of representatives from different agencies and service systems (both generic and disability-specific) coordinate services and leverage funding to meet the employment needs of an individual job seeker with a disability. The job seeker is a member of the IRT working with providers (*e.g.,* interpreter service, community college, etc.) to identify and strategize how their combined services and resources can benefit and support an individual job seeker's education, training or employment goals. IRTs lead to improved communication and coordination of services for those impacted by multiple systems and benefit variables. More information on IRTs and other DPN promising practices can be found at: *http://www.doleta.gov/disability/* and *http://www.disability.workforce3one.org.*

2. Integrating Resources and Services, Blending and Braiding Funds, Leveraging Resources

Integrating services and the blending and braiding of funds from multiple funding sources are strategies that are often incorporated into IRT, *Guideposts,* Vocational Rehabilitation, customized employment, self-employment and other employment models. Leveraging different Federal and state program funds involve two or more agencies contributing to the individual job seeker's education, training or employment goals. For example, supportive services may be covered by one provider, while training costs are covered by another agency or program. The job seeker with a disability may have multiple challenges that are best addressed through a diversified funding strategy. For the purposes of this SGA, the term "blended funding" is used to describe mechanisms that pool dollars from multiple sources and make them in some ways indistinguishable. "Braided funding" utilizes similar mechanisms, but the funding streams remain visible and are used in common to produce greater strength, efficiency, and/or effectiveness.

3. Customized Employment

Customized employment involves individualizing the relationship between job seekers and employers in ways that meet the needs of both. It is based on an individualized determination and discovery of the strengths, requirements, and interests of a person with multiple challenges. The process is designed to meet the workplace needs of the employer and the discrete tasks of the position identified for the job seeker. When a customized relationship is developed, it results in a shared employment alliance. Customized employment offers the chance for a job to fit the individual, meet individual needs, and match what s/he has to offer. Customized employment provides an avenue to employment for job seekers who feel that traditional job search methods do not meet their needs. More information on customized employment is at ODEP's Web site: *http://www.dol.gov/odep/CE-FWA/.*

4. Self-Employment

Self-employment has long been an employment alternative for individuals seeking a new or better career. Today, many job seekers with disabilities are turning to the flexibility of self-employment to meet both their career aspirations and financial goals. Self-employed persons have increased latitude in determining the hours they work, the type of work they do, and how much money they make. Self-employment strategies for youth and adults with disabilities are consistent with ETA's policy guidance in this area. Further information on ODEP's self-employment initiative can be found at: *http://www.dol.gov/odep/categories/workforce/self.htm#init.*

5. Guideposts for Success

Based on an extensive literature review of research, demonstration projects and effective practices covering a wide range of programs and services, including youth development, quality education, and workforce development programs, ODEP, in collaboration with the National Collaborative on Workforce Disability for Youth, identified *Guideposts for Success.* The *Guideposts* reflect what research has identified as key educational and career development interventions that can make a positive difference in the lives of all youth, including youth with disabilities. For more information on the *Guideposts for Success,* please visit *http://www.ncwd-youth.info/guideposts.*

6. Asset Development Strategies

Asset development strategies include various approaches to enhance long-term economic self-sufficiency, including use of individual development accounts, implementation of financial literacy training for youth and adults, incorporation of SSA pass plans and other work incentives, utilization of the Earned Income Tax Credit (EITC) and other tax provisions, and self-directed benefit and resource accounts, among others. Asset development strategies include benefits and services that are funded through resources other than those made available under the WIA, such as tax filing assistance, housing, nutrition, health care, or child care assistance. Information on asset development strategies and tax credits, including their relevance for the workforce development system, can be found at *http://www.dol.gov/odep/fineddev.htm.*

7. Partnerships and Collaboration

Applicants must demonstrate that the proposed project will include coordination with a variety of partners

that impact the ability of adults and youth with disabilities to successfully participate in education, training and employment opportunities. A description of coordination plans and strategy for partnerships must be provided in the project proposal. Coordination across multiple agencies includes outreach to the partner's clients/consumers, co-location and integration in One-Stop Career Centers, and leveraging available funds, resources and organizational expertise. Partnering across multiple systems/programs is often a pre-requisite to providing employment-related supports that are needed to successfully address multiple challenges to employment. Potential partners include, but are not limited to: State and local Vocational Rehabilitation; Medicaid/Medicare; Medicaid Infrastructure Grant Projects, Mental Health; Developmental Disability/Mental Retardation Agency; State and local Education Departments; SSA programs, such as Work Incentives Planning and Assistance (WIPA) Projects and SSA Area Work Incentive Coordinators (AWICs); Temporary Assistance for Needy Families (TANF); community colleges, colleges, and universities; community services organizations including employment service providers; and national, state and local financial literacy and asset development programs and resources; among many others. Critically important to the Department is the inclusion of DOL programs such as adult, dislocated worker and youth training opportunities, Veterans Employment Training Services (VETS) programs, Job Corps, YouthBuild, ex-offender programs, Senior Community Employment Service Program (SCSEP), registered apprenticeship programs, American Indian and Native American education, post-secondary, vocational training, health and education programs, Migrant and Seasonal Farm Workers Programs, and other relevant DOL Federal/State-grant activities, as fundamental elements of the strategic approach.

C. Allowable Uses of Grant Funds

Grant funds may be used to fulfill the requirements identified above in the Funding Opportunity Description of this section (*e.g.,* required project components, strategic service delivery components) and may include, but are not limited to the following:

(1) Disability resource coordinators or other project staff required to implement project design;

(2) Partnership coordination and collaboration activities or meetings required to support the project objectives;

(3) Necessary travel to conduct activities across the state or workforce investment area;

(4) Necessary travel to attend one national conference per year; and

(5) Service and programmatic activities to carry-out the objectives of the DEI cooperative agreement.

Up to 15% of grant funds are available for flexible spending purposes which may include, but is not limited to, procurement of software upgrades and other assistive technology equipment, supportive or intensive services to assure availability of training and employment needs, or other innovative approaches to meet the unique needs of an individual participant. Travel for an ETA/ODEP sponsored conference to be attended by the state lead and local area disability coordinators/project leads should be included in the budget plan. All education, training, job search activities, and supportive services should be funded through WIA, Wagner-Peyser or other program resources to the greatest extent possible. The leveraging of funds and resources for education, training and other activities is critical to the success of the DEI project and the achievement of outcomes for the youth and adults with disabilities that will be accessing the One-Stop Career Center system during the life of this Initiative. Up to 5% of grant funds are available for additional data collection requirements that may be needed.

II. Award Information

A. Award Amount

The Department expects to award approximately six to ten cooperative agreements totaling approximately $22 million ranging from $1.5 million to $6 million. Applicants should request an amount within this funding range proportionate to the needs and relative size of their project. Applications requesting funds exceeding the amount specified above will be found non-responsive and will not be considered.

B. Period of Performance

The period of performance will be 36 months from the date of execution of the grant documents.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

Applicants must be the state WIA administering agency. The state workforce agency must select a minimum of four local WIBs that have the capacity to carry-out the State's proposal under this SGA (please note that single state WIBs and states with less than four workforce investment areas are still eligible to apply). Half of these local WIBs will be responsible for implementing model services applicable to the State's selection of DEI priority areas under this SGA. The Department will work with the state to identify the participating WIBs and will require that other half of the WIBs that are not selected would nevertheless participate in the evaluation component and the collection of additional individualized data.

The Department requires that, at a minimum, the criteria for selecting the local WIB include: (1) Demonstrated success in serving individuals with disabilities as evidenced by their WIA and Wagner-Peyser data and outcomes; (2) assurance of physical, programmatic, and communication accessibility; (3) demonstrated commitment to prior partner collaboration that suggests a high likelihood of success in the implementation of the DEI cooperative agreement's goals and objectives; (4) incorporated policies and procedures to help the One-Stop Career Centers effectively serve persons with disabilities; and (5) conducted outreach to the disability community and employers to facilitate the hiring of people with disabilities.

Applicants must require that local WIBs selected to carry out the objectives of the DEI cooperative agreement will work with the DOL training, technical assistance, and evaluation contractors as applicable. DEI WIBs, and those WIBs that are identified in the application but not selected for DEI implementation, must agree to collect/provide relevant data or other information identified as critical to the evaluation.

B. Cost Sharing or Matching

There is no cost sharing or matching requirement in the DEI SGA, but the Department strongly encourages the leveraging of resources. Leveraged resources can come from a variety of sources, including public (*e.g.,* Federal, State, or local governments) and non-profit sectors. The level of commitment of resources by partner organizations will be considered in the rating criteria.

C. Veterans' Priority

The Jobs for Veterans Act (Pub. L. 107–288) requires priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing this priority of service can be found at 20 CFR Part

1010. In circumstances where a grant recipient must choose between two qualified candidates for training, one of whom is a veteran or eligible spouse, the Veterans Priority of Service provisions require that the grant recipient give the veteran or eligible spouse priority of service by admitting him or her into the training program. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority. Employment and Training Administration Training and Employment Guidance Letter (TEGL) No. 10–09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL No. 10–09 is available at: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816.*

IV. Application and Submission Information

A. How to Obtain an Application Package

This SGA contains all the information and links to forms needed to apply for grant funding. Additionally, all application materials are available on the following Web sites: *http://www.doleta.gov/grants/find_grants.cfm* and *http://www.grants.gov.*

B. Content and Form of Application Submission

The application must consist of three separate and distinct parts: (I) The Cost Proposal, (II) the Technical Proposal, and (III) Attachments to the Technical Proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be reviewed nor considered for award. Please note that it is the applicant's responsibility to ensure that the amount of funds requested is consistent across all parts and sub-parts of the application.

Part I. The Cost Proposal. The Cost Proposal must include the following four items:

• *Application for Federal Assistance SF–424:* The Standard Form (SF)–424, "Application for Federal Assistance" is available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm.* The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the authorized representative of the applicant.

• *Data Universal Number System (D–U–N–S®) Number:* Applicants must supply their D–U–N–S® on the SF–424. All applicants for Federal grant and funding opportunities are required to have a D–U–N–S® Number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, Jun. 27, 2003. The D–U–N–S® Number is a non-indicative, nine-digit number assigned to each business location in the Dun and Bradstreet (D&B) database having a unique, separate, and distinct operation, and is maintained solely by D&B entities. The D–U–N–S® Number is used by industries and organizations around the world as a global standard for business identification and tracking. Obtaining a D–U–N–S® Number is easy and there is no charge. To obtain a D–U–N–S® number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

• *The SF–424A Budget Information Form:* The SF–424A Budget Information Form is available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm.* In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request, explained in detail below.

• *Budget Narrative:* The budget narrative must provide a description of costs associated with each line item on the SF–424A. The budget narrative also should include leveraged resources provided to support the grant activities. In addition, the applicant should address precisely how the administrative costs support the project goals. The entire Federal grant amount requested should be included on both the SF–424 and SF–424A. No leveraged resources should be shown on the SF 424 and SF 424A. Please note that applicants that fail to provide a SF–424, a SF–424A, a D–U–N–S® Number, and a budget narrative will be removed from consideration before the technical review process.

Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at: *http://www.doleta.gov/sga/forms.cfm.*

Part II. The Technical Proposal. The Technical Proposal demonstrates the applicant's capability to implement the grant project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in section V.A of this SGA. The Technical Proposal is limited to 25 double-spaced, single-sided, 8.5 × 11-inch pages with 12 point text and 1-inch margins. *Any materials beyond the 25-page limit will not be read.* Further, any tables or charts contained in the Technical Proposal are included in the 25-page limit and should be presented on single-spaced, single-sided, 8.5 x 11-inch pages with 12 point text and 1-inch margins. Applicants should number the Technical Proposal beginning with page number 1. Applications that do not include Part II, the Technical Proposal, will be considered non-responsive.

Part III. Attachments to the Technical Proposal. In addition to the 25-page Technical Proposal, the applicant must submit the following Required Attachments: (1) Two-page Executive Summary as an attachment to the Technical Proposal; (2) chart displaying WIA and Wagner-Peyser data to address evaluation criteria in Section V.A.; (3) chart displaying state, population of state, and list of each local WIB; and (4) graphic display of work plan implementation schedule, expected milestones, and outcomes. The performance chart and work plan timelines may be attached but cannot exceed four pages each. These Required Attachments will be excluded from the 25-page limit. Required Attachments must be affixed as separate, clearly identified appendices to the application. Additional materials such as résumés or general letters of support or commitment will not be read.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is September 8, 2010. Applications must be received at the address below no later than 4 p.m. Eastern Time. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. If an application is submitted by both hard copy and through *http://www.grants.gov* a letter must accompany the hard copy application stating why two applications were submitted and the differences between the two submissions. If no letter accompanies the hard copy, DOL will review the copy submitted through *http://www.grants.gov.* For multiple applications submitted through *http://www.grants.gov,* DOL will review the latest submittal. Applications that do not meet the conditions set forth in this notice will be considered nonresponsive. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Grant Officer, Reference SGA/DFA, PY–10–01, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*); however due to the expected increase in system activity, applicants are encouraged to use an alternate method to submit grant applications during this heightened period of demand. Applicants submitting proposals in hard copy must submit an original signed application (including the SF–424) and one (1) "copy ready" version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard copy are also required to provide an identical electronic copy of the proposal on compact disc (CD). While not mandatory, DOL encourages the submission of hard copy applications through a professional overnight delivery service.

Applications that are submitted through Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. Eastern Time on the closing date, and then subsequently validated by Grants.gov. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

The Department strongly recommends that before beginning to write the proposal, applicants should immediately initiate and complete the "Get Registered" registration steps at *http://www.grants.gov/applicants/get registered.jsp.* Applicants should read through the registration process carefully before registering. These steps may take as many as four weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. The site also contains registration checklists to help you walk through the process.

The Department strongly recommends that applicants download the "Organization Registration Checklist" at *http://www.grants.gov/assets/ Organization Steps Complete Registration.pdf* and prepare the information requested before beginning the registration process. Reviewing and assembling required information before beginning the registration process will alleviate last minute searches for required information and save time.

To register with Grants.gov, applicants applying electronically must have a D–U–N–S® Number and must register with the Federal Central Contractor Registry (CCR). Step-by-step instructions for registering with CCR can be found at *http://www.grants.gov/ applicants/org_step2.jsp.* All applicants must register with CCR in order to apply online. Failure to register with the CCR will result in your application being rejected by Grants.gov during the submission process. The next step in the registration process is creating a username and password with Grants.gov to create a profile as an Authorized Organizational Representative (AOR). AORs will need to know the D–U–N–S® Number of the organization for which they will be submitting applications to complete this process. To read more detailed instructions for creating a profile on Grants.gov visit: *http:// www.grants.gov/applicants/ org_step3.jsp.* After creating a profile on Grants.gov, the E-Biz Point of Contact (E-Biz POC)—a representative from your organization who is the contact listed for CCR—will receive an e-mail to grant the AOR permission to submit applications on behalf of their organization. The E-Biz POC will then log into Grants.gov and approve an applicant as the AOR, thereby giving him or her permission to submit applications. To learn more about AOR Authorization visit: *http:// www.grants.gov/applicants/ org_step5.jsp,* or to track AOR status visit: *http://www.grants.gov/applicants/ org_step6.jsp.* An application submitted through Grants.gov constitutes a submission as an electronically signed application. The registration and account creation with Grants.gov, with E-Biz POC approval, establishes an AOR. When you submit the application through Grants.gov, the name of your AOR on file will be inserted into the signature line of the application. Applicants must register the individual who is able to make legally binding commitments for the applicant organization as the AOR; this step is often missed and it is crucial for valid submissions.

When a registered applicant submits an application with Grants.gov, an electronic time stamp is generated within the system when the application is successfully received by Grants.gov. Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, which will be received almost immediately after submission, will contain a tracking number and confirm receipt of the application by Grants.gov. The second e-mail will indicate the application has either been successfully validated or rejected due to errors. Only applications that have been successfully submitted by the deadline and subsequently successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission. While it is not required that an application be successfully validated before the deadline for submission, it is prudent to reserve time before the deadline in case it is necessary to resubmit an application that has not been successfully validated. Therefore, sufficient time should be allotted for submission (two business days) and, if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

To ensure consideration, the components of the application must be saved as either .doc, .xls or .pdf files. If submitted in any other format, the applicant bears the risk that compatibility or other issues will prevent our ability to consider the application. ETA will attempt to open the document, but will not take any additional measures in the event of issues with opening. In such cases, the non-conforming application will not be considered for funding. We strongly advise applicants to use the plethora of tools and documents, including FAQs, that are available on the "Applicant Resources" page at *http:// www.grants.gov/applicants/ resources.jsp.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to "Grants.gov Updates" at *http://www.grants.gov/ applicants/ email_subscription_signup.jsp.* If applicants encounter a problem with

Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail *support@grants.gov.* The Contact Center is open 24 hours a day, seven days a week. They are closed on Federal holidays.

Late Applications: For applications submitted on Grants.gov, only applications that have been successfully submitted no later than 4 p.m. Eastern Time on the closing date and subsequently successfully validated will be considered. Applicants take a significant risk by waiting until the application due date to submit by Grants.gov. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month); or (b) sent by professional overnight delivery service to the addressee not later than one working day before the date specified for receipt of applications. "Postmarked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

E. Other Submission Requirements

Withdrawal of Applications. Applications may be withdrawn by written notice at any time before an award is made.

F. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant. Successful and unsuccessful applicants will not be entitled to reimbursement of pre-award costs.

DOL/ETA's acceptance of a proposal and award of Federal funds to sponsor any program does not provide a waiver of any grant requirements and/or procedures. The Office of Management and Budget (OMB) Circulars A–122 and A–87 require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition.

1. *Indirect Cost Rate.* As specified in OMB Circular Cost Principles (A–122 and A–87), indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to use grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal cognizant agency either before or shortly after grant award.

2. *Administrative Costs.* Under this SGA, an entity that receives a grant to carry out a project or program may not use more than ten percent (10%) of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be direct or indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A, Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal cognizant agency. Please note that funds used for disability resource coordinators and any service related costs associated with carrying out the strategies outlined in the applicant's proposal, including local travel, are *not* considered administrative costs.

3. *Allowable Costs.* The Department determines what constitutes allowable costs in accordance with the following Federal cost principles, as applicable: (1) State and Local Government—OMB Circular A–87; (2) Educational Institutions—OMB Circular A–21; (3) Nonprofit Organizations—OMB Circular A–122; and (4) Profit-making Commercial Firms—48 CFR Part 31.

4. *Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance.* The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. *See* 29 CFR part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

5. *Salary and Bonus Limitations.* Under Public Law 109–234, none of the funds appropriated in Public Law 109–149, or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. Public Laws 111–8 and 111–117 contain the same limitations with respect to funds appropriated under each of those Laws. These limitations also apply to grants funded under this SGA. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A–133 (codified at 29 CFR parts 96 and 99). *See* Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DCON=2262.*

6. *Intellectual Property Rights.* The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (1) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (2) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are

program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, grantees must include the following language on all products developed in whole or in part with grant funds: "This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes are permissible. All other uses require the prior authorization of the copyright owner."

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals. Points will be awarded based on how well an applicant fully demonstrates its approach and/or qualifications and clearly provides the information required.

Criterion	Total possible points
1. Program Delivery—Strategic Approach	40
2. Partnership Commitment and Resources	20
3. Demonstrated Experience	15
4. Project Management	15
5. Outcomes and Sustainability	10

1. Program Delivery—Strategic Approach (40 Points)

Discuss the strategic approach and how required and strategic service delivery components set forth in Section I.A., I.B. and I.C. will be incorporated into the project activities, including how the strategic approach will result in increased access to, and use of, the One-Stop Career Center system's services by adults and/or youth with disabilities and their improved education, training, and/or employment outcomes. Note that depending on the selected Strategic Service Delivery Components in Section I.B., not all of the items in the paragraphs below will apply.

The 40 possible points for this criterion will be assessed as follows:

Adults or Youth with Disabilities (5 Points)—Discuss the primary focus of the DEI project (*i.e.,* adult *or* youth focus), the rationale for this selection, and the overall objectives of the DEI project. For purposes of this SGA, youth are considered to be age 14–24 (applicants may select the full range or ages within this range). States and local workforce areas are required to serve both adults and youth with disabilities; however for the purpose of this SGA, DOL is requiring the applicants to focus on one or the other for the purpose of developing replicable models and expertise, given the level of effort that is required with the limited funds that are currently available. Include demographic information, the extent to which adults/youth with disabilities from racial or ethnic minorities will be included, and whether the project will focus on urban or rural environments. Discuss any additional special focus of the project in terms of addressing veterans with disabilities, the homeless, TANF recipients, individuals with developmental, psychiatric and/or other hidden disabilities, out-of-school youth, ex-offenders or other populations with significant disabilities. Provide information on experience to date with adults or youth with disabilities to whom the DEI project is directed and any special initiatives undertaken with the selected population. Identify the extent to which the project design will be directed to SSI/SSDI beneficiaries.

Strategies To Be Deployed (20 Points)—Discuss the overall strategic approach to be implemented and how this will address the unique needs of the primary population, the workforce areas that are expected to participate, why the project design is expected to be successful and how strategic service delivery components in Section I.B. will be deployed to achieve the stated objectives (a minimum of two of the strategic service delivery components must be a significant part of the project design, but more can be included).

i. Adult Focus—Discuss the overall approach to addressing the specific challenges and needs of adult job seekers with disabilities, including the availability of learning and skill assessments (including discovery), retraining options, on-the-job training, customized employment, part-time employment, and self-employment options, among others. Provide information on the availability of supportive services, including assistance with transportation and other short-term requirements for participation in training or employment. Provide information on the state's economy, including career opportunities in high-growth job sectors and how these may be incorporated in the project design. Discuss outreach to the population to be served, marketing of One-Stop services to job seekers with disabilities, and the applicant's experience in conducting similar outreach activities. Discuss linkages to the employer community and how engagement of business and employers will facilitate improved outcomes and achievement of goals. Discuss involvement of various asset development strategies in achieving project goals. If special populations, such as veterans with disabilities and TANF, are a significant focus of the project, discuss what approaches will be used to improve outcomes. Discuss early intervention strategies, including deployment of Medicaid Buy-in, and how SSA work incentive strategies will be utilized for SSI/SSDI beneficiaries.

or

ii. Youth Focus—Discuss the overall strategic approach to addressing the needs of the youth to be served, including the extent to which the focus is on transitioning into the workforce, the age range of youth to be served, outreach to out-of-school and at-risk youth, and how *Guideposts for Success* will be incorporated. Identify what basic and vocational assessments, transition and intermediary services, and parental involvement will occur, if applicable. Describe strategies for linkages with middle and secondary schools and other education components. Discuss the availability of work experience, summer youth activities, mentoring opportunities, on-the-job training, and how other opportunities for youth to engage in work experience will be accomplished. Provide information on the availability of education, training and employment opportunities that focus on career opportunities, in particular in high-growth job sectors, and the applicant's approach to further career pathways. Discuss the objectives of the project design in terms of education outcomes, including access to community college and other secondary education, and the extent to which youth with disabilities will obtain credentials or other certificates of accomplishments. Discuss the extent to which part-time, temporary and self-employment options will be available. Discuss how the project design will address systemic barriers to education and employment for youth on SSI, and the extent to which youth on SSI will be included. Describe inclusion of apprenticeship training and

employment options, if applicable. Discuss the availability of individual development accounts and other asset development activities.

One-Stop Career Center System (15 Points)—Discuss how the state will incorporate the following requirements provided in Section III.A. in the selection of at least two local WIBs: (1) Demonstrated success in serving individuals with disabilities as evidenced by their WIA and Wagner-Peyser data and outcomes; (2) assurance of physical, programmatic, and communication accessibility; (3) demonstrated commitment to prior partner collaboration that suggests a high likelihood of success in the implementation of the DEI cooperative agreement's goals and objectives; (4) incorporated policies and procedures to help the One-Stop Career Centers to effectively serve persons with disabilities; and (5) conducted outreach to the disability community and employers to facilitate the hiring of people with disabilities. Single state workforce areas will be evaluated based upon the applicants addressing these factors at the state level.

Discuss any additional criteria the state will use for selecting WIBs to participate in the DEI project, how many local areas the state plans to include, and how the requirements set forth in Section I.A will be met. Discuss the applicant's status as an Employment Network, plans for becoming an EN at the state or local WIB level, and what role this will play in the overall design and implementation of the project. Identify whether the state currently collects SSI/SSDI status as part of registration in WIA and Wagner-Peyser funded programs. Discuss planned activities under the DEI project to improve physical, programmatic and communication access, if applicable. Discuss how the project design will impact the workforce system, expand comprehensive service delivery, facilitate systems change, incorporate universal design, and improve the effective and meaningful education, training, and employment opportunities to adults or youth with disabilities.

2. Partnership Commitment and Resources (20 points)

Discuss the partners that the applicant is planning to collaborate with in order to achieve the goals and objectives of the adult or youth DEI project, including the extent to which the partners will be engaged and funds and resources leveraged. Include criteria that applicant will use to address partnerships and linkages of the WIBs participating in the cooperative agreement.

The 20 possible points for this criterion will be assessed as follows:

Strategic Partners (10 Points)—Discuss primary partners that will actively participate in the DEI project in terms that demonstrate understanding of the adult or youth focus and how these partners are integral to the goals and objectives of the applicant's project design. Discuss partners involved at the state level, the extent to which strong partnerships with state-level agencies (both generic systems and disability specific programs and systems), have been forged, what additional systems change efforts will be sought through the DEI cooperative agreement, and how the state-level partnerships will be utilized at the local level to increase service delivery and outcomes. Describe what linkages are planned to facilitate improved services and outcomes for SSI/SSDI beneficiaries, including partnerships to address work incentives, asset development, and SSA work provisions will be addressed. Identify the extent to which co-location of and coordination amongst Vocational Rehabilitation, Area Work Incentive Coordinators, education, TANF, Disabled Veterans' Outreach Program, Employment Networks, Medicaid Infrastructure Grant Projects, or other organizational or community providers are a factor in the state's workforce system.

Partner Resources (10 Points)—Discuss how partner resources and programs will be leveraged and incorporated in the project design and how these will improve the services and outcomes of the adults or youth with disabilities as well as accomplish DEI objectives. Identify resources and program dollars that are planned for education and training of adults or youth, including resources that will be available from WIA adult, dislocated worker, and youth programs. Discuss how flexible funding dollars (if applicant plans to use) will augment the available resources of individual job seekers. Discuss partner resources to be available to the adult or youth with a disability through individual development accounts, through IRTs, or other funds that expand the likelihood of individual success and economic independence, including flexible funding available through partner systems or the flexible spending fund.

3. Demonstrated Experience (15 Points)

Provide information regarding the applicant's achievements to date in the education, training and employment or self-employment of adults and/or youth with disabilities, actions taken to assure physical, programmatic and communication accessibility of the workforce system, and the extent to which the applicant has promoted services that addressed the needs of job seekers with disabilities. Provide criteria the applicant will use to identify WIBs with significant accomplishments in the areas below.

The 15 possible points for this criterion will be assessed as follows:

Services and Outcomes of Adults and Youth With Disabilities (5 Points)—Provide data on WIA and Wagner-Peyser services for adults and youth in PY 2008 and 2009. This information can be provided in chart form and provided as an attachment. Applicants focusing the DEI project on adults should include data on the: (1) Number of all exiters/registrants, number and percent of people with disabilities; (2) total number and percent entering employment, number and percent of people with disabilities; (3) total number and percent retaining employment, number and percent of people with disabilities; and (4) average wage of all and average wage of people with disabilities. Applicants focusing the DEI project on youth should include data on the: (1) Number of all exiters participating in older and younger WIA youth programs; (2) educational achievements of all youth and those with disabilities; and (3) employment outcomes of older youth. Applicants will be rated on the extent to which they have been providing services to adults or youth with disabilities and achieved successful outcomes. Additional data that may be available as a result of prior participation with ETA's DPN and ODEP's Customized Employment or Youth demonstration grants may be included.

Physical, Communication and Programmatic Accessibility (5 Points)—Provide detailed information on the status of physical, communication and programmatic accessibility in the state's workforce system, including the status of accessibility surveys, what workforce areas were covered in the survey, corrective actions identified and their status. Information should also include the level of commitment or innovation that has occurred at the state level versus the local WIB level. Discuss implementation of assistive technologies, the percent of workforce areas covered, and what improvements are still needed. Identify the status of communication access and strategies deployed to meet the needs of individuals who are deaf or hard of hearing. Applicants will be rated on the extent to which deliberate strategies have been undertaken to address accessibility and the level of

commitment taken by the applicant to improve and assure accessibility requirements have been met since implementation of the WIA.

Programmatic Experience and Initiative (5 Points)—Provide detailed information on any special initiatives or projects that have been undertaken to address the particular needs of adults or youth with disabilities, including engagement of the workforce systems participation as an EN at the state and/or local level. Discuss implementation and experience with successful strategies under a DPN or ODEP grant. Identify special projects or initiatives that have been directed to populations that are known to often have a disability such as veterans, TANF recipients, the homeless, and ex-offenders * * * Applicants will be rated on the extent to which they have successfully implemented a DPN or ODEP grant, including the identified promising practices, and the extent to which the applicant took other initiatives and actions to serve adults and youth with disabilities and/or other populations with significant barriers.

4. Project Management (10 Points)

Describe the capacity of the state to effectively implement the applicant's proposal. Disability coordinator(s) would be expected to work full time on the initiative and former DPNs may be a valuable resource for this position.

The 10 possible points for this criterion will be assessed as follows:

Staff Capacity (5 Points)—Discuss the experience of the project lead regarding workforce and disability knowledge and the plan to hire experienced and knowledgeable disability coordinator at the local WIB level, including the criteria that will be used to assure that participating WIBs hire individuals with disability expertise. Discuss the possibility of including current or former DPNs in the role of the DEI disability resource coordinator positions. Identify the likely employing entity (*e.g.,* state, local WIB, One-Stop Career Center) of disability resource coordinator position(s). Identify any utilization of consultants anticipated during the course of DEI project.

Fiscal and Administrative Capacity (5 Points)—Describe the capacity of the state to administer the DEI project, including fiscal and oversight capability, the capacity for early start-up, timeliness of WIA quarterly fiscal and program reporting, and ability to make participant data available to the Department. Identify status of common intake, Management Information Systems (MIS) and integrated data sets relative to WIA, Wagner-Peyser, Vocational Rehabilitation, and non-mandated WIA programs such as TANF. Discuss audit or FPO findings and recommendations since PY 2007 and the status of corrective action(s).

5. Outcomes and Sustainability (10 points)

The 10 possible points for this criterion will be assessed as follows:

Outcomes (5 Points)

Identify applicable outcomes that will result from grant activities, including goals to be achieved, individuals with disabilities to be served, and outcomes to be achieved. Provide information on the ability of the applicant to achieve the stated goals and outcomes and provide data on results within the timeframe of the grant. Describe the scope of the project in terms of adults or youth with disabilities expected to receive core, intensive, and training services; education and employment outcomes expected; retention expectations, and average wage to be achieved (employment outcomes that result in sub-minimum wage status will be considered non-responsive). Discuss the capacity of workforce system to capture co-enrollments (*e.g.,* TANF, VR, ENs, etc.), and the commitment of the state to capture partnership involvement and contributions to outcomes. Identify whether the state will provide access to individualized SSNs to the Department or its contractors for evaluation purposes. Discuss applicant's commitment to work with DOL's independent evaluator.

Sustainability (5 Points)

Discuss sustainability strategies for carrying on successful approaches that are demonstrated to improve the education and employment outcomes of adults and youth with disabilities beyond the end of the DEI grant. Provide detailed information on WIA and Wagner-Peyser, Ticket to Work, and other program resources that will be used to replicate or expand the promising practices the project implemented to other LWIBs and One-Stop Career Centers.

B. Review and Selection Process

Applications for grants under this solicitation will be accepted after the publication of this announcement and until the closing date. A technical review panel will carefully evaluate applications against the selection criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, depending on the quality of the responses to the required information described in section V.A. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as geographic balance, and which proposals are most advantageous to the government. The panel results are advisory in nature and not binding on the Grant Officer. The Grant Officer may consider any information that comes to his/her attention, including information and prior performance of DPN and ODEP grants which will be made available to the Grant Officer. The government may elect to award the grant(s) with or without discussions with the applicant. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, including electronic signature via E–Authentication on *http://www.grants.gov,* which constitutes a binding offer by the applicant.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution and non-selected applicants will be notified by mail. Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations (available at *http://gpoaccess.gov/cfr*) and the applicable OMB Circulars (available at *http://www.whitehouse.gov/omb/circulars*). The grants awarded under this SGA are subject to the applicable administrative standards and provisions, including, but not limited to, the following:

- Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).
- Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29

CFR part 95 (Administrative Requirements).

• State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

• Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

The Workforce Investment Act of 1998, Public Law 105–220, 112 Stat. 936 (codified as amended at 29 U.S.C. 2801 *et seq.*) and 20 CFR part 667 (General Fiscal and Administrative Rules). This includes unsuccessful applicant appeal information.

• 29 CFR part 29 and 30—Apprenticeship and Equal Employment Opportunity in Apprenticeship and Training; and

• 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998. The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. section 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of WIA and maintain that hiring practice even though Section 188 of WIA contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

• Under WIA section 181(b)(4), health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in training and other activities. Applicants that are awarded grants through this SGA are reminded that these health and safety standards apply to participants in these grants. In accordance with section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code Section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants. Except as specifically provided in this SGA, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

• 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

• 29 CFR parts 29 and 30—Labor Standards for Registration of Apprenticeship Programs, and Equal Employment Opportunity in Apprenticeship and Training.

• 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

• 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

• 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

• 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

• 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

• All entities must comply with 29 CFR parts 37, 93, and 98, and where applicable 29 CFR parts 96 and 99.

The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. sec. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though Section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

In accordance with section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code Section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

2. Administrative Standards and Provisions

Except as specifically provided, DOL/ETA acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions will be conducted, as practical, to provide full and open competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Reporting and Accountability

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. Grantees must agree to meet DOL reporting requirements. The grantee is required to provide the reports and documents listed below:

The grantee is required to provide the reports and documentation listed below.

• *Quarterly Financial Reports.* A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL ETA's On-Line Electronic Reporting System. A Closeout Financial Status Report is due 90 days after the end of the grant period.

• *Quarterly Progress Reports.* The grantee must submit a quarterly progress report to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies must be submitted providing a detailed account of activities undertaken during that quarter. DOL ETA may require grantees to collect and report additional data elements on either a regular basis or special request basis. Grantees must agree to meet DOL ETA reporting requirements. The quarterly progress report will be in narrative form and must include:

—In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes

—Progress toward meeting performance outcomes

—Challenges being faced by the grantee in implementing the project.

In addition, between scheduled reporting dates, the grantee(s) must immediately inform the designated Federal Project Officer of significant developments affecting the ability to accomplish the work. Applicants must be aware of Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

VII. Agency Contacts

For further information regarding this SGA, please contact Eileen Banks, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3401 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2879 and must specifically address the fax to the attention of Eileen Banks and along with SGA–DFA–PY–10–01, a contact name, fax and phone number, and an e-mail address. Applicants may also e-mail questions to *banks.eileen@dol.gov,* and include a contact name, fax and phone number, and the applicable e-mail address.

VIII. Additional Resources of Interest to Applicants

A. DOL Web-Based Resources for the Applicant

DOL maintains a number of web-based resources that may be of assistance to applicants. These include Workforce3One Resources. For example, the Disability and Employment Workforce3one Web site, *http://disability.workforce3one.org* provides disability and employment resources for the workforce investment system, including promising practices to promote the positive employment outcomes of persons with disabilities and Disability Program Navigator (DPN) successful strategies and promising practices. ETA encourages applicants to view the online tutorial, "Grant Applications 101: A Plain English Guide to ETA Competitive Grants," available through Workforce3One at: *http://www.workforce3one.org/page/grants_toolkit.* In addition to ODEP's web-based resources noted in other parts of this SGA, applicants may find additional helpful information on disability and employment issues at: *http://www.dol.gov/odep.*

B. External Web-Based Resource

Applicants will find additional information on the DPN initiative at *http://www.dpnavigator.net/.* The purpose of this Web site is to build upon the DPN experience and archive materials from the past seven years of DPN training and technical assistance activities.

C. Other Information

OMB Information Collection No. 1225–0086. Expires November 30, 2012

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of Departmental Clearance Officer, 200 Constitution Avenue, NW., Room N–1310, Washington, DC 20210. Comments may also be e-mailed to *DOL_PRA_PUBLIC@dol.gov.* Please do not return the completed application to this address. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this SGA will be used by the Department to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential, and will be available to the public. Applications filed in response to this SGA may be posted on the Department's Web site.

Signed at Washington, DC, this 4th day of August, 2010.

B. Jai Johnson,

Grant Officer, Employment and Training Administration.

[FR Doc. 2010–19602 Filed 8–6–10; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 10–08]

Notice of Quarterly Report (January 1, 2010–March 31, 2010)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter January 1, 2010 through March 31, 2010, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: July 6, 2010.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2010 Quarter 2 Total Obligation: $87,998,166 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: −$371,448				
Land Tenure Project	$30,123,098	Increase Land Titling and Security.	$29,303,833	Area secured with land certificates or titles in the Zones. Proportion of the population informed about land tenure reforms in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new guichets fonciers operating in the Zones. The 256 Plan Local d'Occupation Foncier—Local Plan of Land Occupation (PLOFs) are completed.
Finance Project	$25,937,781	Increase Competition in the Financial Sector.	$23,535,169	Volume of funds processed annually by the national payment system. The components necessary to implement the national payment system are operational: Network equipment and integrator, real time gross settlement system (RTGS), retail payment clearing system, telecommunication facilities. Number of accountants and financial experts registered to become Certified Public Accountant (CPA). Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database.
Agricultural Business Investment Project.	$13,687,196	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$13,581,752	Number of farmers that adopt new technologies or engage in higher value production. Number of enterprises that adopt new technologies or engage in higher value production. Number of farmers receiving technical assistance. Number of farmers employing technical assistance. Number of businesses receiving technical assistance. Number of Ministère de l'Agriculture, de l'Elevage et de la Pêche—Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Zones identified and description of beneficiaries within each zone submitted. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities. Zonal investment strategies for the Zones are developed. Number of ABC clients who register as formal enterprises, cooperatives, or associations. Number of marketing contracts of ABC clients.
Program Administration* and Control, Monitoring and Evaluation.	$18,250,091	.....	$17,577,500	
Pending subsequent reports**.	.....	.....	$1,368,813	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

*** Negative obligations for 2010 resulted from the deobligation of Nicaragua, Madagascar and Honduras. Senegal and Moldova are expected to be obligated in 2010.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Honduras Year: 2010 Quarter 2 Total Obligation: $205,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $20,203,531				
Rural Development Project.	$68,327,183	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$50,641,703	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity. Total value of net sales. Total number of recruited farmers receiving technical assistance. Value of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Percentage of loan portfolio at risk (disaggregated by trust fund and institutions receiving technical assistance from ACDI–VOCA). Funds lent from the trust fund to financial intermediaries through lines of credit. Number of hectares under irrigation. Number of beneficial biological control agents developed for use by program farmers or other farmers for pilot testing. Number of improved coffee hybrids available for cloning. Number of farmers connected to the community irrigation system. Number of certified deliverables across all agricultural public goods grant.
Transportation Project	$119,237,242	Reduce transportation costs between targeted production centers and national, regional and global markets.	$90,472,182	Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume—CA–5. International roughness index (IRI)—CA–5. Kilometers of road upgraded—CA–5. Percent of contracted road works disbursed—CA–5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Percent of contracted road works disbursed—secondary roads. Average annual daily traffic volume—rural roads. Average speed—rural roads. Kilometers of road upgraded—rural roads. Percent of contracted road works disbursed—rural roads. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts.
Program Administration* and Control, Monitoring and Evaluation.	$17,435,575	.....	$9,715,941	
Pending subsequent reports**.	.....	.....	$1,521,767	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Cape Verde Year: 2010 Quarter 2 Total Obligation: $110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $6,855,235				
Watershed and Agricultural Support.	$11,351,549	Increase agricultural production in three targeted watershed areas on three islands.	$8,732,927	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation. Area irrigated with drip irrigation. Percent of contracted irrigation works disbursed (cumulative). Reservoirs constructed. Number of farmers that have completed training in at least 3 of 5 core agricultural disciplines.
Infrastructure Improvement.	$83,160,208	Increase integration of the internal market and reduce transportation costs.	$55,788,977	Travel time ratio: percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads rehabilitated. Percent of contracted Santiago Roads works disbursed (cumulative). Percent of contracted Santo Antao Bridge works disbursed (cumulative). Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Port of Praia: percent of contracted port works disbursed (cumulative). Cargo village: percent of works completed. Quay 2 improvements: percent of works completed. Access road: percent of works completed.
Private Sector Development.	$2,081,223	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$1,297,409	Micro-Finance Institution (MFI) recovery rate, adjusted. MFI portfolio at risk, adjusted. Ratio of MFIs operationally self-sufficient.
Program Administration* and Control, Monitoring and Evaluation.	$13,485,508	.....	$9,836,845	
Pending subsequent reports**.	.....	.....	$337,480	
Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Nicaragua Year: 2010 Quarter 2 Total Obligation: $113,546,407 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $5,858,883				
Property Regularization Project.	$7,205,205	Increase Investment by strengthening property rights.	$5,586,254	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, urban. Number of protected areas demarcated. Area covered by cadastral mapping. Cost to conduct a land transaction.
Transportation Project	$57,999,999	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$51,794,412	Annual Average daily traffic volume: N1 Section R1. Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva-Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N–I Section R1.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				International Roughness Index: N–I Section R2. International Roughness Index: Port Sandino (S13. International roughness index: Villanueva-Guasaule. International roughness index: Somotillo-Cinco Pinos. International roughness index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva-Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Kilometers of designed primary roads (including N–I/Puerto Sandino and V–G). Kilometers of designed secondary roads.
Rural Development Project.	$32,897,500	Increase the value added of farms and enterprises in the region.	$23,425,961	Number of beneficiaries with business plans prepared with assistance from the Rural Development Business Project. Numbers of *manzanas (1 Manzana = 1.7 hectares),* by sector, harvesting higher-value crops. Number of manzanas of beneficiaries of the program that harvest higher-value crops with irrigation or commercial reforestation under Improvement of Water Supply Activities. Number of beneficiaries implementing business plans. Average increase in income of beneficiaries due to program.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$15,443,703	.....	$11,414,813	
Pending subsequent reports**.	.....	.....	$1,459,801	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Georgia Year: 2010 Quarter 2 Total Obligation: $395,300,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $12,569,994				
Regional Infrastructure Rehabilitation.	$310,750,000	Key Regional Infrastructure Rehabilitated.	$146,760,084	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel Time. Kilometers of road paved. Percent of contracted works disbursed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of toads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all subprojects. Population Served by all subprojects. Subprojects completed. Value of project grant agreements signed. Value of project works and goods contracts Signed. Subprojects with works initiated.
Regional Enterprise Development.	$52,530,800	Enterprises in Regions Developed.	$38,981,083	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Increase in gross revenues of portfolio companies (PC). Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Cumulative number of Portfolio companies. Funds disbursed to the portfolio companies.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$32,019,200	.....	$17,670,271	
Pending subsequent reports**.	.....	.....	$239,930	

November 2008, MCC and the Georgian government signed a Compact amendment making up to $100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Vanuatu Year: 2010 Quarter 2 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $3,126,997				
Transportation Infrastructure Project.	$60,162,579	Facilitate transportation to increase tourism and business development.	$45,219,525	Number of international tourists—Efate. Number of international tourists—Santo. Number of room nights occupied—Efate. Number of room nights occupied—Santo. Average annual daily traffic—Efate. Average annual daily traffic—Santo. Kilometers of road upgraded—Efate. Kilometers of roads upgraded—Santo. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Percent of contracted roads works disbursed.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$5,527,421	.....	$3,029,668	
Pending subsequent reports**.	.....	.....	$40,780	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Armenia Year: 2010 Quarter 2 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $9,068,556				
Irrigated Agriculture Project (Agriculture and Water).	$152,709,208	Increase agricultural productivity and Improve and Quality of Irrigation.	$45,101,470	Recovery of Water User Associations (WUA) operations and maintenance cost by water charges. Primary canals rehabilitated. Tertiary canals rehabilitated. Percent of contracted irrigation works disbursed. Value of signed contracts for irrigation works. Number of farmers using better on-farm water management. Number of farmers trained. Number of agribusinesses assisted. Value of agricultural loans to farmers/agribusinesses.
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$7,870,944	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Percent of contracted roads works disbursed. Signed contracts for roads works. Percent of contracted studies disbursed. kilometers (km) of roads under design. Signed contracts for feasibility and/or design studies. Kilometers (km) of roads under works contracts.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Program Administration*, Due Diligence, Monitoring and Evaluation.	$15,840,792	.....	$9,116,839	
Pending subsequent reports**.	.....	.....	$1,007,199	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Benin Year: 2010 Quarter 2 Total Obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $8,344,844				
Access to Financial Services.	$19,649,999	Expand Access to Financial Services.	$3,943,254	Volume of credits granted by the Micro-Finance Institutions (MFI). Volume of saving collected by the Micro-Finance Institutions. Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Average time required by Cellule de Surveillance des Structures Financières Décentralisées (CSSFD) in treating MFI applications. Number of institutions receiving grants through the Facility. Second call for proposal for grants launched. Number of MFIs *inspected by CSSFD.*
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$2,474,444	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Number of cases processed at Arbitration Center per year. Number of Information, Education and Communication Campaign (IEC) sessions hosted by Chamber of Commerce (CAMeC). Passage of new legal codes. Average time required for Tribunaux de premiere instance—arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Court inspections per year. Number of Court employees trained. Number of beneficiaries of legal aid services. Complete construction on 9 new court houses. Average time required to register a business (*société*). Average time required to register a business (sole proprietorship). Number of businesses accessing CAMEC service. Business registration center (CFE) information and outreach campaign executed throughout Benin.
Access to Land	$36,020,000	Strengthen property rights and increase investment in rural and urban land.	$13,378,640	Total value of investment in targeted urban land parcels. Total value of investment in targeted rural land parcels. Average cost required to obtain a new land title through on demand process. Average cost required to convert occupancy permit to land title through systematic process. Percentage of respondents perceiving land security in the Occupancy Permit (PH) into Land titles (TF) or Rural Land Plan Foncier Rural (PFR) areas. Number of new land disputes reported by commune heads. Seven studies complete. Land code texts adopted (laws, decrees and land code).

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Access to Markets	$169,447,001	Improve Access to Markets through Improvements to the Port of Cotonou.	$32,086,625	Value ($) of equipment purchased. Number of land certificates issued within MCA-Benin implementation. Number of habitation permits converted to land titles. Number of Continuously Operating Reference (CORS) stations installed. Number of public and private surveyors trained. Number of communes with new cadastres. Land market information system established. Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Container ship waiting times at the port. Port design-build contract awarded. Port crime levels (number of thefts). Internal port circulation time. Average time to clear customs. Execution rate of training plan. Port meets—international port security standards (ISPS). Public consultation completed (3). Environmental permits issued.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$47,911,040	.....	$22,482,370	
Pending subsequent reports**.	.....	.....	$283,061	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Ghana Year: 2010 Quarter 2 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $21,933,254				
Agriculture Project	$227,899,382	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$73,381,076	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production with MCC support. Value of agricultural loans to farmers/agribusinesses. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Percent of contracted irrigation works disbursed. Percent of people aware of their land rights. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.
Rural Development Project.	$89,361,539	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$14,660,025	Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of basic school blocks constructed to Ministry of Education (MOE) construction standards. Number of schools designed and due diligence completed. Distance to collect water. Time to collect water. Incidence of guinea worm. Average number of days lost due to guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/nonconventional water systems constructed/rehabilitated. Number of small-town water systems constructed. Number of pipe extension projects constructed. Number of stand-alone boreholes/wells/non-conventional water systems identified and due diligence performed for rehabilitation/construction.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. Number of electricity projects identified and due diligence completed.
Transportation	$174,285,120	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$35,543,256	International roughness index. Annualized average daily traffic. Kilometers of road completed. Percent of contracted road works disbursed. Value of signed contracts for road works. Kilometers of road designed. Percent of contracted design/feasibility studies completed. Value of signed contracts for feasibility and/or design studies. Travel time for walk-on passengers. Travel time for small vehicles. Travel time for trucks. Annual average daily traffic (vehicles). Annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Percent of contracted work disbursed landings and terminals. Value of signed contracts for works: Ferry and floating dock. Value of signed contracts for works: Landings and terminals.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$55,462,959	.....	$21,548,749	
Pending subsequent reports**.	.....	.....	−$1,755	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: El Salvador Year: 2010 Quarter 2 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: $26,132,618				
Human Development Project.	$95,073,000	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$15,830,730	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools. Middle technical schools remodeled and equipped. Scholarships granted to students of middle technical schools. Students of non-formal training. Cost of water. Time collecting water. Households benefiting with water solutions built. Potable water and basic sanitation systems with construction contracts signed. Cost of electricity. Electricity consumption. Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Community Infrastructure Works with Construction Contracts Signed.
Productive Development Project.	$87,466,000	Increase production and employment in the Northern Zone.	$21,919,506	Number of hectares under production with MCC support. Number of farmers trained.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Connectivity Project	$233,559,999	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	$41,423,394	Value of agricultural loans to farmers/agri-businesses. Number of agribusinesses assisted. Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Kilometers of roads under works contract. Signed contracts for roads works. Percent of contracted roads works disbursed.
Program Administration* and Control, Monitoring and Evaluation.	$54,718,001	.....	$13,105,371	
Pending Subsequent Report**.	.....	.....	$0	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Mali Year: 2010 Quarter 2 Total Obligation: $460,811,164 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: $18,557,892				
Bamako Sénou Airport Improvement Project.	$181,254,264	Establish an independent and secure link to the regional and global economy.	$11,978,769	Total wage bill of tourism industry. Freight volume. Employment at airport. Signature of design contract. Average number of weekly flights (arrivals). Passenger traffic (annual average). Percent works complete. Airside Infrastructure Design, and Airside Infrastructure Construction Supervision, (AIR A01) and Landside Infrastructure Design (New Terminal & Associated Works) and Landside Construction Supervision is launched. Time required for passenger processing at departures and arrivals. Passenger satisfaction level. Percent works complete. Percent of airport management and maintenance plan implemented. Airport meets Federal Aviation Administration (FAA) and International Civil Aviation Organization (ICAO) security standards. Technical assistance delivered to project.
Alatona Irrigation Project	$234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	$46,189,523	Number of agricultural jobs created in Alatona zone. Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Average daily vehicle count. Percentage works complete. Total irrigated land in the Alatona zone. Irrigation system efficiency on Alatona Canal during the rainy season and the dry season. Kilometers of road under design/feasibility study. Value of signed contracts for road works. Kilometers of road under works contract. Percent of works completed on main system construction. Percent of contracted irrigation works disbursed for tranche 1. Value of signed contracts for irrigation works. Value of signed contracts for feasibility and/or design studies. Percent of contracted (design/feasibility) studies disbursed. Area planted by new settlers (wet season). Titles registered in the land registration office of the Alatona zone (for 5- or 10-hectare farms). Total land payments made. Total market gardens allocated in Alatona zones for the populations affected by the project (PAPs).

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Decree transferring legal control of the project impact area is passed. Selection criteria for new settlers approved. Contractor implementing the "Mapping of Agricultural and Communal Land Parcels" contract is mobilized. School enrollment rate. Percent of Alatona population with access to drinking water. Number of schools available in the Alatona. Number of health centers available in the Alatona. Number of concessions that have been compensated. Resettlement census verified. Adoption rate of improved agriculture techniques among populations affected by the project (PAPs). Number of operational mixed cooperatives. Area planted by PAPs (wet season rice). Area planted with shallots during dry season. Number of farmers completing literacy training. Number of people completing the rice and shallot production techniques module. Number of farmers completing land titling training. Water management system design and capacity building strategy implemented. Call for proposals for the applied research grants launched. Average portfolio at risk among Alatona microfinance institutions. Average loan repayment rate of Alatona clients (farmers organizations or individual farmers). Amount of credit extended to Alatona farmers. Number of farmers accessing grant assistance for first loan from financial institutions. Financial institution partners identified (report on assessment of the financial institutions in the Office du Niger—Office of Niger zone (ON zone)).
Industrial Park Project	$2,643,432	Develop a platform for industrial activity to be located within the Airport domain.	$2,637,472	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.
Program Administration* and Control, Monitoring and Evaluation.	$42,028,793	.....	$18,330,983	
Pending Subsequent Report**.	.....	.....	$3	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Mongolia Year: 2010 Quarter 2 Total Obligation: $284,902,443 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Disbursement: $2,169,773				
Property Rights Project	$22,910,728	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$1,317,528	Number of studies completed. Legal and regulatory reforms adopted. Number of landholders reached by public outreach efforts. Personnel Trained. Number of Buildings rehabilitated/constructed. Value of equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Rural Hectares Formalized. Urban parcels formalized.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Rail Project	$188,378,000	Increase rail traffic and shipping efficiency.	$369,560	Increase in gross domestic product due to rail improvements. Freight turnover. Mine traffic. Percent of wagons leased by private firms. Railway operating ratio. Customer satisfaction. Wagon time to destination. Average locomotive availability.
Vocational Education Project.	$25,492,856	Increase employment and income among unemployed and underemployed Mongolians.	$1,431,975	Rate of employment. Students completing newly designed long-term programs. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	$16,969,757	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	$1,273,192	Diabetes and hypertension controlled. Percentage of cancer cases diagnosed in early stages. Road and traffic safety activity finalized and key interventions developed.
Program Administration* and Control, Monitoring and Evaluation.	$31,151,102	.....	$7,523,502	
Pending subsequent reports**.	.....	.....	$43,201	

In late 2009, the MCC's Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects from the rail project, and the remaining portion to the addition of a road project.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Mozambique Year: 2010 Quarter 2 Total Obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: $4,957,265				
Water and Sanitation Project.	$203,585,393	Increase access to reliable and quality water and sanitation facilities.	$3,085,162	Time to get to non-private water source. Percent of urban population with improved water sources. Percent of urban population with improved sanitation facilities. Number of private household water connections in urban areas. Number of private household sanitation connections in urban areas. Number of standpipes in urban areas. Final detailed design for 5 towns submitted. Final detailed design for 3 cities submitted. Percent of rural population with access to improved water sources. Number of rural water points constructed. Final design report 1 (400 WP) submitted. Final design report II (200 Water points) submitted. Implementing agreement signed with the Administration for Water and Sanitation (AIAS) Infrastructure.
Road Rehabilitation Project.	$176,307,480	Increase access to productive resources and markets.	$1,339,678	Change in international roughness index (IRI). Average annual daily traffic volume. Kilometers of road rehabilitated. Kilometers of road under design. Percent of Namialo-Rio Lúrio Road—Metoro feasibility, design, and supervision contract disbursed. Percent of Rio Ligonha-Nampula feasibility, design, and supervision contract disbursed. Percent of Chimuara-Nicoadala feasibility, design, and supervision contract disbursed. Kilometers of roads under works contract. Percent of Namialo-Rio Lúrio Road construction contract disbursed.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Land Tenure Services Project.	$39,068,307	Establish efficient, secure land access for households and investors.	$3,125,681	Percent of Rio Lúrio—Metoro Road construction contract disbursed. Percent of Rio Ligonha-Nampula Road construction contract disbursed. Percent of Chimuara-Nicoadala Road construction contract disbursed. Feasibility/Environmental and Social Assessment studies, design, supervision, and construction contract (ESA) for Namialo-Rio Lúrio—Metoro Road segment signed. Feasibility/ESA contract for Rio Ligonha-Nampula Road segment signed. Feasibility/ESA contract for Chimuara-Nicoadala Road signed. Time to get land usage rights direito de uso e aproveitamento da terra (state-granted land right) (DUAT). Cost to get land usage rights DUAT. Total number of officials and residents reached with land strategy and policy awareness and outreach messages. Land strategy approved. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Rural hectares mapped in Community Land Fund Initiative. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Rural hectares formalized through Community Land Fund Initiative. Urban parcels formalized. Number of communities delimited. Number of households having land formalized.
Farmer Income Support Project.	$18,400,117	Improve coconut productivity and diversification into cash crop.	$1,979,071	Income from coconuts and coconut products. Survival rate of coconut seedling. Number of diseased or dead palm trees cleared. Number of coconut seedlings planted. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies.
Program Administration* and Control, Monitoring and Evaluation.	$69,562,756	.....	$10,618,260	Contract for project implementation signed.
Pending Subsequent Report**.	.....	.....	$947,078	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Lesotho Year: 2010 Quarter 2 Total Obligation: $362,527,119 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $8,132,856				
Water Project	$164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$7,962,527	School days lost due to water borne diseases. Diarrhea notification at health centers. Time saved due to access to water source. Rural household (HH) provided with access to improved water supply. Rural HH provided with access to improved ventilated latrines. Rural water points constructed. Number of new latrines built. Urban HH with access to potable water supply. Number of enterprises connected to water network. Households connected to improved water network. Cubic meters of treated water from metolong dam delivered through a conveyance system to Water and Sewerage Authority (WASA). Value of water treatment contract works award.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Value of conveyance system contract work award. Species population. Livestock grazing per area. Area put under conservation.
Health Project	$122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	$5,594,923	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). Proportion of blood units collected annually. Deliveries conducted in the health centers. Immunization coverage rate. Number of Health Centers (H/C) constructed and fully equipped. Value of contract works for health center construction. Percentage of contract works for health center construction disbursed. Percentage of contract works for Botshalo Complex disbursed. Percentage of contract works for Out-Patient Department (OPD) Centers disbursed. Percentage of HSS Contract disbursed. Proportion of People Living With AIDS (PLWA) receiving Antiretroviral treatment (ARV) (by age and sex). Referred tests from central laboratory per year by types (number).
Private Sector Development Project.	$36,470,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	$3,190,732	Average time (days) required to enforce a contract. Pending commercial cases. Cases filed at the commercial court. Value of commercial cases. Judicial staff trained. Administrative and clerical staff trained. Awareness campaigns. Portfolio of loans. Loan processing time. Bank accounts. Paper-based payments. Electronic payments. Value of contract services signed. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. New land disputes brought to the Land Tribunal and Courts of Law. Time to complete a land transaction. Time to complete transfer of land rights. Land transactions recorded. Land parcels formalized. Number of land administration personnel trained. Land Act adopted. People trained on gender equality and economic rights. ID cards issued. Population registered in the national database.
Program Administration* and Control, Monitoring and Evaluation.	$39,654,682	.....	$12,059,494	
Pending Subsequent Report**.	.....	.....	$150,871	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Morocco Year: 2010 Quarter 2 Total Obligation: $697,500,000 Entity to which the assistance is provided: MCA Morocco Total Quarterly Disbursement: $12,316,461				
Fruit Tree Productivity	$300,896,445	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$15,609,252	Total annual volume of production of dates and olives. Cropped area covered by olive trees. Survival rate of newly planted olive trees after 2 years project-supported establishment period. Yield of rehabilitated olive trees. Cropped area covered by date trees.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Small Scale Fisheries	$116,168,027	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	$2,492,975	Yield of rehabilitated date palms. State of fish stock. Domestic fish consumption level. Fisherman net revenue. Average fisherman sales price at Point de Débarquement Aménagés (PDA). Volume sold at wholesale markets. Fish sale price. Average sales price. Volume of sales among mobile fish vendors.
Artisan and Fez Medina ..	$111,873,858	Increase value added to tourism and artisan sectors.	$637,900	Average revenue of potters receiving Artisan Production Activity. Employment and wages among project graduates. Tourist arrivals. Artisan profits (artisans engaged in product finishing and points of sale). Employment created. Small and Medium Enterprises (SME) value added.
Financial Services	$46,200,000	Increase supply and decrease costs of financial services available to microenterprises.	$12,974,091	Gross loan portfolio outstanding of microcredit associations. Portfolio at risk >30 days ratio. Operating expense ratio.
Enterprise Support	$33,850,000	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	$2,588,790	Average annual sales of participating businesses. Survival rate of participating businesses.
Program Administration* and Control, Monitoring and Evaluation.	$88,511,670	.....	$12,828,073	
Pending Subsequent Report**.	.....	.....	$173,509	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Tanzania Year: 2010 Quarter 2 Total Obligation: $698,136,000 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Disbursement: $3,562,670				
Energy Sector	$206,042,428	Increase value added to businesses.	$4,382,035	New power customers. Energy generation—Kigoma. Transmission capacity. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted.
Transport Sector	$368,847,428	Increase cash crop revenue and aggregate visitor spending.	$3,811,282	International roughness index (Tunduma, Tanga, Nantumbo, Peramiho). Average annual daily traffic (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers upgraded/completed (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed on construction works (Tunduma, Tanga, Nantumbo, Peramiho). Signed contracts for construction works (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Signed contracts for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers of roads under design (Tunduma, Tanga, Nantumbo, Peramiho). International roughness index (Zanzibar Rural Roads). Average annual daily traffic (Zanzibar Rural Roads). Kilometers upgraded/completed (Zanzibar Rural Roads). Percent disbursed on construction works (Zanzibar Rural Roads).

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed for feasibility and/or design studies (Zanzibar Rural Roads). Signed contracts for feasibility and/or design studies (Zanzibar Rural Roads). Kilometers of roads under design (Zanzibar Rural Roads). Passenger arrivals. Percentage of upgrade complete (airport). Percent disbursed on construction works (airport). Signed contracts for construction works (airport).
Water Sector Project	$65,692,143	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	$1,619,625	Prevalence of diarrhea (Dar es Salaam). Prevalence of diarrhea (Morogoro). Prevalence of cholera (Dar es Salaam). Prevalence of cholera (Morogoro). Volume of individual water consumption (Dar es Salaam). Volume of individual water consumption (Morogoro). Number of households using improved source for drinking water (Dar es Salaam). Number of households using improved source for drinking water (Morogoro). Number of businesses using improved water source (Dar es Salaam). Number of businesses using improved water source (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Volume of non-revenue water (Dar es Salaam). Operations and maintenance cost recovery ratio (Dar es Salaam). Operations and maintenance cost recovery ratio (Morogoro). Percent disbursed on construction works. Signed contracts for construction works.
Program Administration* and Control, Monitoring and Evaluation.	$57,554,001	.....	$4,742,878	
Pending Subsequent Report**.	.....	.....	$206,197	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Burkina Faso Year: 2010 Quarter 2 Total Obligation: $478,943,569 Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Disbursement: $2,203,660				
Roads Project	$194,130,681	Enhance access to markets through investments in the road network.	$30,195	To Be Determined (TBD).
Rural Land Governance Project.	$59,934,614	Increase investment in land and rural productivity through improved land tenure security and land management.	$995,715	TBD.
Agriculture Development Project.	$141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	$72,153	TBD.
Bright 2 Schools Project ..	$26,829,669	Increase primary school completion rates.	$26,829,669	TBD.
Program Administration* and Control, Monitoring and Evaluation.	$56,138,546	.....	$8,428,572	
Pending Subsequent Report**.	.....	.....	$65,145	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Namibia Year: 2010 Quarter 2 Total Obligation: $304,477,817 Entity to which the assistance is provided: MCA Namibia Total Quarterly Disbursement: $1,800,085				
Education Project	$144,976,559	Improve the education sector's effectiveness, efficiency and quality.	$899,988	To Be Determined (TBD).
Tourism Project	$66,959,291	Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.	$302,775	TBD.
Agriculture Project	$46,965,320	Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.	$42,682	TBD.
Program Administration* and Control, Monitoring and Evaluation.	$45,576,647	.....	$3,977,655	
Pending Subsequent Report**.	.....	.....	$1,071,642	
Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Moldova Year: 2010 Quarter 2 Total Obligation: $7,970,942 Entity to which the assistance is provided: MCA Moldova Total Quarterly Disbursement: $0				
Road Rehabilitation Project.	$800,000	.....	$0	To Be Determined (TBD).
Transition to High Value Agriculture.	$6,788,251	.....	$0	TBD.
Program Administration and Monitoring and Evaluation.	$382,691	.....	$0	TBD.

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).
*** The obligated funds reflect a preliminary grant to Moldova for the purpose of implementing a compact. MCC has awarded Moldova a compact grant of $262 million which will take effect once Moldova meets certain conditions.

619(b) Transfer or Allocation of Funds

[FR Doc. 2010–19474 Filed 8–6–10; 8:45 am]
BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0139]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). 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 April 2, 2010.

1. *Type of submission:* Extension.

2. *The title of the information collection:* 10 CFR Part 11, Criteria and Procedures for Determining Eligibility for Access to, or Control Over, Special Nuclear Material.

3. *Current OMB approval number:* 3150–0062.

4. *The form number if applicable:*

5. *How often the collection is required:* On occasion. New applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

6. *Who will be required or asked to report:* Employees (including applicants for employment), contractors, and consultants of NRC licensees and contractors whose activities involve access to, or control over, special nuclear material at either fixed sites or for transportation activities.

7. *An estimate of the number of annual responses:* 5.

8. *An estimate number of annual respondents:* 5 NRC licensees.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1.25 hours (approximately 0.25 hours annually per response).

10. *Abstract:* NRC regulations in 10 CFR Part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to the Office of Personnel Management (OPM), which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 8, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0062), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 2nd day of August, 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–19560 Filed 8–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2008–0617]

Nebraska Public Power District: Cooper Nuclear Station; Notice of Availability of the Final Supplement 41 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–46 for an additional 20 years of operation for the Cooper Nuclear Station (CNS). CNS is located near Brownville, Nebraska, on the Missouri River in Nemaha County. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 41, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Nebraska Public Power District; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determines that the adverse environmental impacts of license renewal for CNS are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 41 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the final Supplement 41 to the GEIS is ML102100371. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's Public Document Room Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail at *pdr.resource@nrc.gov.* In addition, the Auburn Memorial Library, located at 1810 Courthouse Avenue, Auburn, NE 68305, has agreed to make the final supplement to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Bennett M. Brady, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Ms. Brady may be contacted at 1–800–368–5642, extension 2981 or via e-mail at *Bennett.Brady@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of July, 2010.

For the Nuclear Regulatory Commission.

Andrew S. Imboden,

Chief, Environmental Review Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–19564 Filed 8–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0273]

Draft Emergency Action Level Frequently Asked Questions; Request for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available for comment Emergency Action Level (EAL) frequently asked questions (EALFAQs). These EALFAQs will be used to provide clarification of guidance submitted by the Nuclear Energy Institute (NEI) and endorsed by the NRC related to the development of EALs. These EALFAQs were developed by the NRC at the request of NEI. The NRC is publishing these preliminary results to inform the public and solicit comments.

DATES: Submit comments by September 8, 2010. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0273 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for

submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods:

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0273. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for the Draft Emergency Action Level Frequently Asked Questions is ML102030343. The draft question is also available on the NRC Web site at *http://www.nrc.gov/about-nrc/emerg-preparedness/emerg-action-level-dev.htm.* The ADAMS accession number for the NEI's "Methodology for Development of Emergency Action Levels," 99–01 Revision 5 is ML080450149.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0273.

FOR FURTHER INFORMATION CONTACT: Don A. Johnson, Office of Nuclear Security and Incident Response, Mail Stop T3–B46M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–4040 or by e-mail at *don.johnson@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is requesting comment on this draft EALFAQ. The NRC has developed this pilot program for the staff to provide clarification of endorsed EAL development guidance [ADAMS accession number for the EALFAQ process is ML051950213]. This process is intended to describe the manner in which the NRC may provide interested outside parties an opportunity to share their individual views with NRC staff regarding the appropriate response to questions raised on the interpretation or applicability of emergency preparedness (EP) regulatory guidance issued by the NRC, before the NRC issues an official response to such questions.

Dated at Rockville, MD this 2nd day of August, 2010.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Deputy Director for Emergency Preparedness, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2010–19559 Filed 8–6–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request to OMB for approval of modifications to information collection.

SUMMARY: Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget ("OMB") approve modifications to a collection of information under the Paperwork Reduction Act (OMB control number 1212–0055; expires September 30, 2011). The purpose of the information collection is to enable PBGC to locate and pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. PBGC intends to add three new forms to the information collection and to modify an approved form. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 8, 2010.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov,* or by fax to (202) 395–6974. Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The Disclosure Division will e-mail, fax, or mail the requested information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024, ext. 3072 (Burns) or 3041 (Klion). (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC is requesting that OMB approve modifications to an information collection needed to locate and pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information that participants and beneficiaries are asked to provide when applying for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. The information collection also includes My Pension Benefit Account (My PBA), an application on PBGC's Web site, *http://www.pbgc.gov*, through which plan participants and beneficiaries may conduct electronic transactions with PBGC, including applying for pension benefits, designating a beneficiary, granting a power of attorney, changing contact information, and applying for electronic direct deposit. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments, or to provide respondents with specific

information about their pension plan so they may obtain rough estimates of their benefits.

Most of the applications and forms are covered by the current approval. However, PBGC intends to add three new forms to the information collection and intends to modify an existing form. Two of the new forms will be used to confirm continuing eligibility of participants who are receiving benefits based on disability. The other new form will be used to determine whether participants are eligible for additional pension service credit under the Uniformed Services Employment and Reemployment Rights Act, which establishes specific rights for reemployed service members in their employee pension benefit plans. (*See* PBGC's final regulation on USERRA Benefits under Title IV of ERISA, 74 FR 59093 (Nov. 17, 2009).) PBGC also intends to modify PBGC Form 704 (Request for Earnings Information) to eliminate the requirement that respondents provide copies of IRS Form W–2 (Wage and Tax Statement) to confirm their earnings.

The collection of information under the regulation has been approved by OMB under control number 1212–0055 (expires September 30, 2011). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that 84,800 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 63,550 hours (an average of about 45 minutes per response) and $3,730 (based on PBGC's estimate that less than 10% of all benefit applications and information forms submitted annually to PBGC will be by mail, at an average of $.44 per submission). PBGC further estimates that 12,000 individuals annually will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 3,500 hours (an average of about 20 minutes per response). Thus, the total estimated annual burden associated with this collection of information is 67,050 hours and $3,730.

Issued in Washington, DC, August 3, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–19515 Filed 8–6–10; 8:45 am]

BILLING CODE 7709–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 8, 2010.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Travis Farris, Assistant Counsel to the Inspector General, Office of Inspector General, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Travis Farris, Office of Inspector General, 202–205–7178 *travis.farris@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: The form is used to collect information needed to make character determinations with respect to applicant for monetary loan assistance or applicants for participation in SBA programs. The information collected is used to conduct name checks looking for criminal records at the national (FBI) and local levels.

Title: "Statement of Personal History."

Description of Respondents: On Occasion.

Form Number: 912.

Annual Responses: 142,000.

Annual Burden: 35,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–19563 Filed 8–6–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12262 and #12263]

Ohio Disaster #OH–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Ohio dated 08/04/2010.

Incident: Severe Storms and Tornadoes.

Incident Period: 06/05/2010 through 06/06/2010.

DATES: *Effective Date:* 08/04/2010.

Physical Loan Application Deadline Date: 10/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/04/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wood.

Contiguous Counties:

Ohio: Hancock, Henry, Lucas, Ottawa, Putnam, Sandusky, Seneca.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12262 C and for economic injury is 12263 0.

The States which received an EIDL Declaration # are Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 4, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–19561 Filed 8–6–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12264 and # 12265]

Ohio Disaster # OH–00022.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Ohio dated 08/04/2010.

Incident: Severe Storms and Flooding.

Incident Period: 07/20/2010 through 07/21/2010.

DATES: Effective Date: 08/04/2010.

Physical Loan Application Deadline Date: 10/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/04/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lawrence.

Contiguous Counties:

Ohio: Gallia, Jackson, Scioto.

Kentucky: Boyd, Greenup.

West Virginia: Cabell, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.00

The number assigned to this disaster for physical damage is 12264 B and for economic injury is 12265 0.

The States which received an EIDL Declaration # are Ohio, Kentucky, West Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 4, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–19562 Filed 8–6–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12242 and # 12243]

Kentucky Disaster Number KY–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–1925–DR), dated 07/23/2010.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 07/17/2010 and continuing through 07/30/2010.

DATES: *Effective Date:* 07/30/2010.

Physical Loan Application Deadline Date: 09/21/2010.

EIDL Loan Application Deadline Date: 04/25/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Kentucky, dated 07/23/2010 is hereby amended to establish the incident period for this disaster as beginning 07/17/2010 and continuing through 07/30/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate, Administrator for Disaster Assistance.

[FR Doc. 2010–19503 Filed 8–6–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Availability of SBA Draft Strategic Plan for Fiscal Years 2011–2016 and Request for Public Comment

AGENCY: U.S. Small Business Administration.

ACTION: Notice of availability; request for comment.

SUMMARY: This notice announces the availability of the Small Business Administration's draft Strategic Plan. The Government Performance and Results Act of 1993 requires that Federal agencies update their strategic plans every three years and, in doing so, solicit the views and suggestions of those entities potentially affected by or interested in the plan. Therefore, the Agency is interested in receiving comments on our draft Strategic Plan.

DATES: Comments must be received by August 31, 2010. If comments are received late, we will consider them to the extent practicable.

ADDRESSES: To access the draft strategic plan for the FY 2011 to FY 2016 planning period, go to *http://www.sba.gov/aboutsba/budgetsplans/serv_budget_strategicplan.html.* You

can provide your comments by e-mail to *Strategicplan@sba.gov.* If you wish to send written comments, request a paper copy or have any questions, please direct them to: U.S. Small Business Administration, Strategic Plan-Office of Performance Management, Office of the Chief Financial Officer, 409 Third Street, SW., Suite 6000, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act requires that each Federal agency update their strategic plan every three years, (5 U.S.C. 306), and submit their plan to the Congress. This draft Strategic Plan describes our mission, strategic goals, objectives, and means and strategies to achieve those goals. To access the draft strategic plan, go to *http://www.sba.gov/aboutsba/budgetsplans/serv_budget_strategicplan.html.*

Public Participation Policy

It is the policy of the Agency to ensure that public participation is an integral and effective part of SBA activities and decisions are made with the benefit of significant public perspectives. The Agency recognizes the many benefits to be derived from public participation for both stakeholders and SBA. Public participation provides a means for SBA to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum possible, enabling the Agency to make more informed decisions. Likewise, public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation.

We anticipate publishing the final SBA Strategic Plan on September 30, 2010, and making it available on the Internet at that time.

Authority: 5 U.S.C. 306.

John Kushman,

Chief Financial Officer (Acting).

[FR Doc. 2010–19507 Filed 8–6–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29376; File No. 812–13623]

Kohlberg Capital Corporation; Notice of Application

August 3, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: *Summary of the Application:* Kohlberg Capital Corporation ("Kohlberg Capital") requests an order to permit it to issue restricted shares of its common stock (*i.e.,* stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) ("Restricted Stock") to its directors who are not also employees or officers of Kohlberg Capital ("Non-Employee Directors") under the terms of its 2010 Amended and Restated Non-Employee Director Plan (together with any Kohlberg Capital executive compensation plan that did, does, or may in the future, exist, "Plans").

DATES: *Filing Dates:* The application was filed on January 20, 2009, and amended on July 9, 2009, and on July 29, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 2010, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Kohlberg Capital Corporation, 295 Madison Avenue, 6th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Kohlberg Capital, a Delaware corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] Kohlberg Capital provides debt and equity growth capital to privately-held middle market companies and its investment objective is to generate current income and capital appreciation from investments in senior secured term loans, mezzanine debt and selected equity investments in such companies. Kohlberg Capital may also invest in loans to larger, publicly traded companies, high-yield bonds, distressed debt securities and debt and equity securities issued by collateralized debt obligation funds. As of June 30, 2010, there were 22,549,235 shares of Kohlberg Capital's common stock outstanding.

2. Kohlberg Capital currently has seven directors serving on its board of directors ("Board") of whom four are Non-Employee Directors. Currently, none of Kohlberg Capital's Non-Employee Directors is an "interested person" of Kohlberg Capital within the meaning of section 2(a)(19) of the Act, but it is possible that Kohlberg Capital may have Non-Employee Directors in the future who are interested persons of Kohlberg Capital.

3. Kohlberg Capital believes that, because the market for qualified director candidates is highly competitive, its successful performance depends on its ability to offer compensation packages to its directors that are competitive with those offered by other investment management businesses. Kohlberg Capital states that granting Restricted Stock to Non-Employee Directors under the 2010 Amended and Restated Non-Employee Director Plan is fair and reasonable and would be competitive with compensation packages offered by other investment management businesses.

4. Except to the extent restricted under the terms of the 2010 Amended and Restated Non-Employee Director Plan, a Non-Employee Director granted Restricted Stock will have all the rights of any other shareholder, including the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

right to vote the Restricted Stock and the right to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Non-Employee Director. Except as the Board otherwise determines, upon termination of a Non-Employee Director's service on the Board, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall generally be forfeited.

5. The maximum amount of Restricted Stock that may be issued under the Plans will be 10% of the outstanding shares of Kohlberg Capital's common stock on the effective date of the 2010 Amended and Restated Non-Employee Director Plan plus 10% of the number of shares of Kohlberg Capital's common stock issued or delivered by Kohlberg Capital (other than pursuant to compensation plans) during the term of the 2010 Amended and Restated Non-Employee Director Plan.[2] No Non-Employee Director may be granted more than 25% of the shares reserved for issuance under the 2010 Amended and Restated Non-Employee Director Plan.

6. Under the 2010 Amended and Restated Non-Employee Director Plan, Non-Employee Directors automatically would be granted 1,000 shares of Restricted Stock each year on the date of the annual meeting of shareholders (or meeting in lieu of the annual meeting of shareholders). Half of the Restricted Stock grant would vest immediately, and the remaining half would vest on the earlier of (i) the first anniversary of such grant, or (ii) the date immediately preceding the next annual meeting of shareholders (or meeting in lieu of the annual meeting of shareholders). Pro rata grants of Restricted Stock would be made to Non-Employee Directors appointed outside the annual election cycle. The grants of Restricted Stock to Non-Employee Directors under the 2010 Amended and Restated Non-Employee Director Plan will be automatic (subject to the authority of the Board set forth in Section 9(b) of the 2010 Amended and Restated Non-Employee Director Plan to prevent or limit the granting of Restricted Stock) and will not be changed without Commission approval.

7. The 2010 Amended and Restated Non-Employee Director Plan will be submitted to Kohlberg Capital's shareholders for their approval following the issuance of the order and will not become effective unless and until shareholders approve it.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the 2010 Amended and Restated Non-Employee Director Plan.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value ("NAV"). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the 2010 Amended and Restated Non-Employee Director Plan would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Kohlberg Capital requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. Kohlberg Capital states that the concerns underlying those sections include: (a) preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. Kohlberg Capital states that the 2010 Amended and Restated Non-Employee Director Plan does not raise the concern about preferential treatment of Kohlberg Capital's insiders because the 2010 Amended and Restated Non-Employee Director Plan is bona fide compensation plan of the type that is common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. Kohlberg Capital states that it is not aware of any specific discussion in Section 61 and its legislative history regarding the use of direct grants of stock as incentive compensation. Kohlberg Capital states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Kohlberg Capital also asserts that the 2010 Amended and Restated Non-Employee Director Plan would not become a means for insiders to obtain control of Kohlberg Capital because the number of shares of Kohlberg Capital issuable under the 2010 Amended and Restated Non-Employee Director Plan, and the number of shares issuable to an individual Non-Employee Director, would be limited as set forth in the conditions.

5. Kohlberg Capital further states that the 2010 Amended and Restated Non-Employee Director Plan will not unduly complicate Kohlberg Capital's capital structure because equity-based compensation arrangements are widely used among corporations and commonly known to investors. Kohlberg Capital notes that the 2010 Amended and Restated Non-Employee Director Plan will be submitted to its shareholders for their approval or disapproval after the issuance of any order. Kohlberg Capital represents that a concise, "plain English" description of the 2010 Amended and Restated Non-Employee Director Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to Kohlberg Capital's shareholders. Kohlberg Capital also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Kohlberg Capital further notes that the 2010 Amended and Restated Non-Employee Director Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, Kohlberg Capital will comply with the disclosure requirements for

[2] For purposes of calculating compliance with this limit, Kohlberg Capital will count as Restricted Stock all shares of its common stock that are issued pursuant to the Plan less any shares that are forfeited back to Kohlberg Capital and cancelled as a result of forfeiture restrictions not lapsing.

executive compensation plans applicable to operating companies under the Exchange Act.[3] Kohlberg Capital thus concludes that the 2010 Amended and Restated Non-Employee Director Plan will be adequately disclosed to investors and appropriately reflected in the market value of Kohlberg Capital's common stock.

6. Kohlberg Capital acknowledges that, while awards granted under the 2010 Amended and Restated Non-Employee Director Plan would have a dilutive effect on the shareholders' equity in Kohlberg Capital, that effect would be outweighed by the anticipated benefits of the 2010 Amended and Restated Non-Employee Director Plan to Kohlberg Capital and its shareholders. Kohlberg Capital asserts that it needs the flexibility to provide the requested equity-based compensation in order to be able to compete effectively with other financial services firms for talented directors. Kohlberg Capital states that its Non-Employee Directors make a significant contribution to the management of its business and to the analysis and supervision of its portfolio investments, by providing guidance regarding, among other things, operational matters and strategic direction, as well as by serving on the Board's three committees. Kohlberg Capital believes that its ability to make Restricted Stock grants under the 2010 Amended and Restated Non-Employee Director Plan to Non-Employee Directors provides a means of retaining the services of current Non-Employee Directors and of attracting qualified persons to serve as Non-Employee Directors in the future. Kohlberg Capital believes that the Restricted Stock grants will provide significant incentives to the Non-Employee Directors to devote their best efforts to the success of Kohlberg Capital's business and the enhancement of shareholder value in the future. Kohlberg Capital also states that the Restricted Stock will provide a means for the Non-Employee Directors to increase their ownership interests in Kohlberg Capital, thereby ensuring close identification of their interests with those of Kohlberg Capital and its shareholders.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or profit-sharing plan," which includes a stock option or purchase plan. Non-employee directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. Kohlberg Capital requests an order pursuant to section 57(a)(4) and rule 17d–1 to permit Kohlberg Capital to issue Restricted Stock to Non-Employee Directors pursuant to the 2010 Amended and Restated Non-Employee Director Plan. Kohlberg Capital states that the 2010 Amended and Restated Non-Employee Director Plan is in the interests of Kohlberg Capital's shareholders because the 2010 Amended and Restated Non-Employee Director Plan will help Kohlberg Capital attract and retain highly qualified directors, help align the interests of Kohlberg Capital's Non-Employee Directors with those of its shareholders, and is designed to produce a better return for Kohlberg Capital's shareholders.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The 2010 Amended and Restated Non-Employee Director Plan will be authorized by Kohlberg Capital's shareholders.

2. The amount of voting securities that would result from the exercise of all of Kohlberg Capital's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 25% of the outstanding voting securities of Kohlberg Capital (excluding Restricted Stock), except that if the amount of voting securities that would result from the exercise of all of Kohlberg Capital's outstanding warrants, options, and rights issued to Kohlberg Capital's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plans, would exceed 15% of the outstanding voting securities of Kohlberg Capital (excluding Restricted Stock), then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 20% of the outstanding voting securities of Kohlberg Capital (excluding Restricted Stock).

3. The maximum amount of Restricted Stock that may be issued under the Plans will be 10% of the outstanding shares of common stock of Kohlberg Capital on the effective date of the 2010 Amended and Restated Non-Employee Director Plan plus 10% of the number of shares of Kohlberg Capital's common stock issued or delivered by Kohlberg Capital (other than pursuant to compensation plans) during the term of the 2010 Amended and Restated Non-Employee Director Plan.

4. The Board will review the 2010 Amended and Restated Non-Employee Director Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the 2010 Amended and Restated Non-Employee Director Plan could have on Kohlberg Capital's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the 2010 Amended and Restated Non-Employee Director Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the 2010 Amended and Restated Non-Employee Director Plan would not have an effect contrary to the interests of Kohlberg Capital's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the 2010 Amended and Restated Non-Employee Director Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

[3] Kohlberg Capital will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. *See* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19527 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 12, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 12, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 5, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–19713 Filed 8–5–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62621 File No. SR–FINRA–2010–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 4530 (Reporting Requirements) in the Consolidated FINRA Rulebook

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt NASD Rule 3070 (Reporting Requirements) as FINRA Rule 4530 (Reporting Requirements) in the consolidated FINRA rulebook, subject to certain amendments, and to delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 (Reporting Requirements) and Incorporated NYSE Rules 351.10 and 351.13. The proposed rule change also would add a supplementary material section to proposed FINRA Rule 4530.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of FINRA, 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt NASD Rule 3070 as FINRA Rule 4530 in the Consolidated FINRA Rulebook, subject to certain amendments as described below. The proposed rule change also would delete paragraphs (a) through (d) of Incorporated NYSE Rule 351[4] and NYSE Rules 351.10 and 351.13 from the Transitional Rulebook.[5] Further, the proposed rule change would add a supplementary material section to proposed FINRA Rule 4530 as detailed below.

Background

NASD Rule 3070 and NYSE Rule 351 require members to report to FINRA certain specified events (*e.g.,* regulatory actions) and quarterly statistical and summary information regarding written customer complaints. FINRA uses the reported information for regulatory purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Proposal

FINRA proposes replacing NASD Rule 3070 and NYSE Rule 351 with a single

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[5] NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation) govern trade investigation reporting requirements. NYSE Rules 351(f), 351.11 and 351.12 govern the annual attestation requirement of the research analyst conflict of interest rules. These provisions will be addressed as part of the supervision rules and research analyst conflict of interest rules, respectively. *See Regulatory Notice* 08–24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) and *Regulatory Notice* 08–55 (October 2008) (FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules).

rule, proposed FINRA Rule 4530, in the Consolidated FINRA Rulebook. FINRA Rule 4530 is based in large part on NASD Rule 3070, taking into account certain requirements under NYSE Rule 351. The proposed rule also includes a supplementary material section that contains certain clarifications and definitions as well as codifications of existing staff guidance. More specifically, FINRA is proposing the following changes.

a. Reporting Deadline (Proposed FINRA Rule 4530(a))

FINRA Rule 4530(a) consolidates the requirement (currently in NASD Rules 3070(a)(1), (a)(9) and (b)) that a firm report an event after the firm "knows or should have known" of the existence of the event. Consistent with the requirements of NYSE Rule 351, FINRA Rule 4530(a) also extends the time period for reporting any of the events specified in paragraph (a) of the proposed rule to no later than 30 calendar days after the firm knows or should have known of the existence of the event (rather than the 10 business days currently provided under NASD Rule 3070(b)). The proposed 30-calendar-day reporting deadline also is consistent with the reporting deadline for disclosing information on the Forms BD (Uniform Application for Broker-Dealer Registration), U4 (Uniform Application for Securities Industry Registration or Transfer) and U5 (Uniform Termination Notice for Securities Industry Registration) (collectively referred to as the "Uniform Forms").

b. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

NASD Rule 3070(a)(1) requires that a firm report whenever the firm or an associated person of the firm has been found to have violated any provision of any securities law or regulation, "any" rule or standard of conduct of "any" governmental agency, self-regulatory organization ("SRO"), or financial business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade. This provision requires firms to report findings of violations by an external body.

FINRA Rule 4530(a)(1)(A) generally retains the requirement under NASD Rule 3070(a)(1), though it limits the scope of reportable findings of violation by an external body to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization. FINRA believes that limiting the scope of the rule to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization will make it more effective and relevant to FINRA's program, as well as enhance firms' ability to more accurately report such information. For similar reasons, FINRA has eliminated the requirement that firms report any and all findings that amount to violations of just and equitable principles of trade. However, for instance, firms would continue to report a finding of violation of an SRO's just and equitable principles of trade rule, such as FINRA Rule 2010.

c. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

FINRA Rule 4530(a)(1)(G) merges for simplification the reporting provisions, currently in NASD Rules 3070(a)(7) and (a)(8) and NYSE Rules 351(a)(7) and (a)(8), pertaining to (1) any securities- or commodities-related civil litigation or arbitration; and (2) any claim for damages by a customer or broker-dealer, disposed of by judgment, award or settlement for certain monetary thresholds. In addition, the proposed rule extends the provision relating to civil litigation or arbitration matters to include the reporting of any "insurance" civil litigation or arbitration that is "financial related." Further, the proposed rule clarifies that firms are required to report any claim for damages by a customer or broker-dealer that is "financial" or "transactional" in nature. FINRA believes that transactional claims by customers, including contractual disputes, are relevant to its programs since they may reveal misconduct, such as an impermissible customer loan.

d. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

Consistent with NYSE Rule 351(a)(9), FINRA Rule 4530(a)(1)(H) requires a firm to report whenever the firm itself is subject to a "statutory disqualification" and clarifies that a firm is required to report whenever an associated person of the firm is subject to a "statutory disqualification." The proposed rule also replaces the requirement in NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9) to report whenever a firm or an associated person of the firm "is associated in any business or financial activity" with a person subject to a "statutory disqualification" with a requirement to report whenever the firm or an associated person of the firm "is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities" with a person subject to a "statutory disqualification." FINRA believes that this change provides greater clarity as to the scope of the provision.

e. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Similar to NASD Rule 3070(a)(10) and NYSE Rule 351(a)(10), FINRA Rule 4530(a)(2) continues to require a firm to report certain disciplinary actions taken by the firm against its associated persons. However, the proposed rule clarifies that any such disciplinary action involving the withholding of compensation or of any other remuneration (not just commissions) in excess of $2,500 is a reportable event.

f. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

NYSE Rule 351(a)(1) requires that a firm report whenever it or its associated persons have violated any provision of any securities law or regulation, "any" agreement with or rule or standard of conduct of "any" governmental agency, SRO, or business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the NYSE. This provision requires firms to report their internal conclusions of the enumerated violative conduct.

FINRA Rule 4530(b) generally incorporates the requirement under NYSE Rule 351(a)(1) and provides that a firm is required to report to FINRA no later than 30 calendar days after the firm has concluded, or reasonably should have concluded, on its own that an associated person of the firm or the firm itself has engaged in violative conduct.[6] However, the proposed rule limits the scope of reportable violative conduct to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of

[6] Proposed FINRA Rule 4530(b) was originally proposed as FINRA Rule 4530(a)(3) in *Regulatory Notice* 08–71 (discussed in Item II.C. of this filing). As discussed above, proposed FINRA Rule 4530(a) requires a firm to report an event after the firm "knows or should have known" of the existence of the event. To clarify the standard applicable to a firm's internal conclusion of violation, FINRA is proposing to re-designate paragraph (a)(3) as paragraph (b) of FINRA Rule 4530 and require a firm to report where it has concluded or reasonably should have concluded that the firm or an associated person has engaged in the enumerated violative conduct.

any domestic or foreign regulatory body or SRO.

Additionally, FINRA Rule 4530.01 excludes from the reporting requirement an isolated violation by the firm or an associated person of the firm that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery. Thus, for example, if a firm discovers a few corporate accounts that, due to a ministerial lapse, do not have a record identifying the person(s) authorized to transact business on behalf of the accounts and upon discovering the problem promptly updates the accounts with the required information, it would not be considered a reportable event for purposes of proposed FINRA Rule 4530(b). Conversely, if there is a wholesale failure by a firm to maintain such information, it would be considered a reportable event for purposes of the proposed rule.

Further, if a firm disciplines an associated person in the manner described in FINRA Rule 4530(a)(2), FINRA Rule 4530.01 requires the firm to report the event under paragraph (a)(2), rather than paragraph (b) of the proposed rule.

g. Domestic and Foreign Actions and Actions By a Regulatory Body (Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

Currently, both NASD Rule 3070 and NYSE Rule 351 make frequent reference to, for example, "any" regulatory or self-regulatory body, without denoting that it includes both domestic and foreign regulators. FINRA Rules 4530(a)(1)(A), (C), (D) and (F) clarify that they apply to both domestic and foreign actions and that they apply to actions by a "regulatory body." FINRA Rule 4530.04 defines the term "regulatory body" as governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

h. Reporting Obligation (Proposed FINRA Rule 4530(e))

NASD Rule 3070(d) provides that compliance with NASD Rule 3070 does not relieve a firm or an associated person from certain other obligations, such as the requirement to disclose information on the Uniform Forms, as applicable.

FINRA Rule 4530(e) continues the requirement of NASD Rule 3070(d). The proposed rule also clarifies that a firm has an obligation to report the specified events (FINRA Rules 4530(a) and (b)) and quarterly statistical and summary information regarding written customer complaints (FINRA Rule 4530(d)), regardless of whether such information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, the proposed rule provides that a firm is not required to report an event otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm discloses the event on the Form U5, consistent with the requirements of that form. While information disclosed on the Forms BD and U4 are not subject to this exception at this time, FINRA will work toward the goal of eliminating duplicative reporting of information disclosed on those forms.

i. Elimination of the Exemption for Dual Members Subject to Another SRO's Rule

NASD Rule 3070(e) provides an exemption for firms subject to substantially similar reporting requirements of another SRO. This provision is intended to exempt Dual Members subject to the reporting requirements of NYSE Rule 351. The proposed rule change eliminates this exemption since FINRA proposes creating a single rule and deleting the applicable reporting requirements of NYSE Rule 351 (as noted below). Accordingly, all FINRA members will be subject to FINRA Rule 4530.

j. Filing of Related Documents With FINRA (Proposed FINRA Rule 4530(f))

NASD Rule 3070(f) requires a firm to file copies of certain criminal and civil complaints and arbitration claims with FINRA, including copies of (1) any complaint in which the firm is named as a defendant or respondent in any securities- or commodities-related private civil litigation; and (2) any securities- or commodities-related arbitration claim filed against the firm in any forum other than FINRA Dispute Resolution. Consistent with FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f) extends the filing requirement to copies of any "insurance" civil litigation or arbitration that is "financial related."

k. Additional Supplementary Material (Proposed FINRA Rules 4530.02, .03, .05, .06, .07 and .08)

In addition to the supplementary material discussed above (FINRA Rules 4530.01 and .04), FINRA proposes adding the following supplementary material:

- FINRA Rule 4530.02 clarifies the distinction between a firm's internal conclusion of violative conduct and a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, SRO or business or professional organization;
- FINRA Rule 4530.03 defines the term "found" as used in FINRA Rule 4530(a)(1)(A) generally consistent with the definition of the term in the Uniform Forms, and clarifies that the term also includes any formal finding (regardless of whether the finding will be appealed), but that it does not include a minor rule violation involving a fine of $2,500 or less;
- FINRA Rule 4530.05 clarifies that for purposes of FINRA Rules 4530(a) and (b), firms should not report a single event under more than one paragraph or subparagraph, but that they may be required to report related events under more than one paragraph or subparagraph.
- FINRA Rule 4530.06 clarifies that when calculating the monetary thresholds for reporting civil litigations, arbitrations or claims for damages for purposes of FINRA Rule 4530(a)(1)(G), firms must include any attorneys fees and interest in the total amount. The proposed rule also codifies existing staff guidance regarding the calculation of the monetary thresholds when the parties are subject to "joint and several" liability (*i.e.,* if the parties are subject to "joint and several" liability, each party is separately liable for the aggregate amount);[7]
- FINRA Rule 4530.07 clarifies that for purposes of FINRA Rules 4530(a), (b) and (d), firms should report an event relating to a former associated person if the event occurred while the individual was associated with the member; and
- FINRA Rule 4530.08 codifies existing staff guidance regarding a firm's obligation to report quarterly statistical and summary information with respect to written customer complaints alleging theft or misappropriation of funds or securities, or forgery.[8]

l. Provisions Transferring With Non-Substantive Changes (Proposed FINRA Rules 4530(a)(1)(B), (a)(1)(E), (d) and (g))

FINRA proposes to transfer into FINRA Rule 4530 with non-substantive changes the provisions of NASD Rules 3070(a)(2), (a)(5), (c) and (g).

m. NYSE Provisions Proposed for Deletion

FINRA proposes to delete paragraphs (a) through (d) of NYSE Rule 351 and NYSE Rules 351.10 and 351.13 relating to the reporting of specified events and quarterly statistical and summary information regarding written customer

[7] *See Notice to Members* 96–85 (December 1996) (Customer Complaint Reporting Rule Update).

[8] *See Notice to Members* 96–85.

complaints as these provisions are substantially similar to proposed FINRA Rule 4530, otherwise incorporated as described above, rendered obsolete by the approach reflected in the proposed rule, or addressed by other rules.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 240 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act by enhancing FINRA's ability to detect and investigate violative conduct.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In November 2008, FINRA published *Regulatory Notice* 08–71 soliciting comment on a proposal relating to the FINRA reporting requirements. FINRA received 21 comment letters in response to the *Notice,*[10] which are discussed below.[11] A copy of the *Notice* is attached as Exhibit 2a. A list of the comment letters received in response to the *Notice* is attached as Exhibit 2b. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c.[12]

1. Reporting Deadline (Proposed FINRA Rule 4530(a))

As discussed above, the proposed rule requires that a firm report an event after the firm "knows or should have known" of the existence of the event. One commenter argues that the "should have known" standard is too demanding.[13] The purpose of the "should have known" standard is to ensure that members do not intentionally avoid becoming aware of a reportable event.[14] FINRA does not believe that this standard, which has been a part of NASD Rule 3070 since its adoption, is too demanding.

2. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

Several commenters argue that the proposed rule, including the requirement to report external findings relating to "insurance" matters, is too expansive and unduly burdensome.[15] As noted above, the proposed rule actually limits the scope of current reportable external findings and requires firms to report external findings related to the financial services industry (*i.e.,* securities, insurance, commodities, financial or investment related). Additionally, the requirement to report matters related to the financial services industry, such as "insurance" and "commodities" matters, is consistent with other provisions of the current rules. This information assists FINRA in identifying and investigating firms, offices and associated persons that may pose a regulatory risk. Some of these commenters are also concerned that the proposed rule may reach the activities of affiliates.[16] Similar to NASD Rule 3070, the proposed rule is limited to findings against a firm or an associated person of the firm.

Some commenters believe that the proposed term "business or professional organization" is overly broad and vague compared to the current term "financial business or professional organization."[17] The proposed rule requires firms to report a business or professional organization's findings of violations relating to securities, insurance, commodities, financial or investment-related matters. For instance, a finding of violation of the Code of Professional Conduct of the American Institute of Certified Public Accountants is an example of the type of finding by a business or professional organization that is reportable under the proposed rule.

3. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

As originally proposed in *Regulatory Notice* 08–71, the rule required members to report any insurance-related civil litigation or arbitration. The purpose of this proposed change was to make the provision consistent with other provisions of NASD Rule 3070 and NYSE Rule 351 that require the reporting of regulatory matters relating to insurance. Several commenters argued that the proposed requirement will result in voluminous reporting regarding insurance matters completely unrelated to securities activities (*e.g.,* auto and health).[18] In response, FINRA has revised the proposed rule to require the reporting of any "insurance" civil litigation or arbitration that is "financial related." One of these commenters also argued that the requirement to report "any other claim for damages" by a customer or broker-dealer is too expansive since it may require the reporting of a wide array of matters (*e.g.,* family grievances).[19] In response to this comment, FINRA has revised the proposed rule to require the reporting of any claim for damages by a customer or broker-dealer that is "financial" or "transactional" in nature.

One commenter asks that FINRA clarify that matters reportable under the proposed rule continue to be subject to the current dollar thresholds for

---

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See* Letter from Puplava Securities, Inc., dated December 4, 2008 ("Puplava"); letter from Committee of Annuity Insurers, dated December 29, 2008 ("CAI"); letter from Cutter & Company, Inc., dated December 29, 2008 ("Cutter"); letter from Farmers Financial Solutions, LLC, dated December 29, 2008 ("Farmers"); letter from National Association of Independent Broker-Dealers, Inc., dated December 29, 2008 ("NAIBD"); letter from GBS Financial Corp., dated December 30, 2008 ("GBS"); letter from Goodwin Browning & Luna Securities, dated December 30, 2008 ("Goodwin"); letter from OmniCap, LLC, dated December 30, 2008 ("OmniCap"); letter from Pointe Capital, Inc., dated December 30, 2008 ("Pointe"); letter from R.F. Lafferty & Co., Inc., dated December 30, 2008 ("Lafferty"); letter from Wachovia Securities, LLC, dated December 30, 2008 ("Wachovia"); letter from Financial Telesis, Inc., dated January 5, 2009 ("Telesis"); letter from Askar Corp., dated January 6, 2009 ("Askar"); letter from Investment Company Institute, dated January 15, 2009 ("ICI"); letter from Northwestern Mutual Investment Services, LLC, dated January 15, 2009 ("Northwestern"); letter from Charles Schwab & Co., Inc., dated January 16, 2009 ("Schwab"); letter from Financial Services Institute, Inc., dated January 16, 2009 ("FSI"); letter from National Society of Compliance Professionals, Inc., dated January 16, 2009 ("NSCP"); letter from PFS Investments, Inc., dated January 16, 2009 ("PFS"); letter from the Securities Industry and Financial Markets Association, dated January 16, 2009 ("SIFMA"); and letter from State Farm VP Management Corp., dated January 16, 2009 ("State Farm").

[11] Askar, GBS, Goodwin, Lafferty, OmniCap, Pointe and Telesis support NAIBD's comments. Northwestern submitted its own comments, but it also supports FSI's comments.

[12] The Commission notes that these documents are attached to the filing, not to this notice.

[13] NSCP.

[14] *See also* Securities Exchange Act Release No. 35956 (July 11, 1995), 60 FR 36838 (July 18, 1995) (Notice of File No. SR–NASD–95–16).

[15] FSI, NAIBD, Northwestern, NSCP and State Farm.

[16] FSI, Northwestern and NSCP.

[17] NAIBD, NSCP and Wachovia.

[18] CAI, Cutter, Farmers, FSI, NSCP, Schwab and State Farm.

[19] Cutter.

reporting ($15,000 for associated persons; $25,000 for firms).[20] In response to this comment, FINRA has revised the proposed rule to clarify this point.

Several commenters suggest that the current dollar thresholds for reporting are too low and outdated.[21] FINRA believes that the current dollar thresholds continue to be consistent with the purposes of the rule. In addition, the $15,000 reporting threshold for an associated person is consistent with the Forms U4 and U5 current reporting thresholds.

4. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

As noted above, the proposed rule replaces the current requirement to report whenever a firm or an associated person of the firm "is associated in any business or financial activity" with a person subject to a "statutory disqualification" with a requirement to report whenever the firm or an associated person of the firm "is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities" with a person subject to a "statutory disqualification." Two commenters ask whether the term "investment advice" in the proposed rule refers to advisory activities and suggest that the inclusion of such activities broadens the scope of NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9).[22] FINRA notes that advisory activities are covered under the current rules (*i.e.,* considered a "financial activity") and will continue to be covered under the proposed rule. One of these commenters also requests that FINRA Rule 4530(a)(1)(H) include the phrase "knows or should have known," which is currently in NASD Rule 3070(a)(9).[23] As discussed above, FINRA is proposing to consolidate in a single paragraph, FINRA Rule 4530(a), the various references to the "knows or should have known" standard.

5. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Several commenters suggest that the current $2,500 threshold for reporting internal disciplinary actions is too low and outdated.[24] FINRA believes that the current dollar threshold continues to be consistent with the purposes of the rule.

6. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

Several commenters believe that the proposed provisions are unnecessary, unduly burdensome, overly broad and costly.[25] These commenters also argue that the provisions are vague and too subjective and that certain terms, such as "the member has concluded," "isolated" and "ministerial," need further clarification. For instance, one commenter asks whether internal conclusions that are equivalent to minor rule violations will have to be reported.[26] One commenter recommends that the proposal exclude either a "ministerial" or "non-material" violation.[27] One commenter suggests that the requirement be limited to those matters that result in "material customer harm."[28] Another commenter recommends that the requirement be limited to matters that result in "customer harm."[29] Some of these commenters also suggest that if FINRA opts to retain the proposed requirement, it adopt the reporting standard set forth in NYSE *Information Memorandum* 06–11, which provides that if a firm determines not to impose discipline against an individual, the firm need only report any recidivist or ongoing violative conduct by the individual.[30] NYSE *Information Memorandum* 06–11 also provides that a firm need only report systemic firm failures involving numerous customers, multiple errors or significant dollar amounts, as well as violative conduct by the firm or its employees that has widespread or potential widespread impact to the firm, its customers or the industry.

FINRA believes that the standard set forth in *Information Memorandum* 06–11 is too narrow. However, in response to the comments, FINRA has provided an example in Item II.A. of this filing of the types of reportable and non-reportable matters.

One commenter suggests that the proposed requirement be limited to conclusions reached at a senior level.[31] Another commenter requests that FINRA clarify that a settlement with a customer does not create the presumption that a reportable violation has occurred.[32] Additionally, one commenter asks whether internal audit findings are deemed internal conclusions.[33] FINRA believes that a firm is free to determine the level of seniority required of an associated person in making a determination of a reportable internal conclusion; however, it will not be a defense to a failure to report such conduct that it was of a nature that did not merit consideration by a person of such seniority. With respect to settlements, it is not the fact that a firm has settled a matter that makes it a reportable event under FINRA Rule 4530(b), rather it is whether the firm has reached an internal conclusion or reasonably should have reached an internal conclusion that the firm or an associated person has engaged in the enumerated violative conduct.[34] Regarding internal audit findings, FINRA believes that the existence of such findings creates a strong presumption that the matter is reportable, but that any particular finding is eligible to be viewed by the firm as non-reportable (*i.e.,* an isolated, ministerial violation that did not result in customer harm and was remedied promptly upon discovery).

Further, two commenters believe that matters subject to a firm's internal review process as required under other rules (*e.g.,* FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes)) should be excluded from the proposed requirement.[35] FINRA believes that firms have an obligation to meet each of their regulatory requirements (including the requirements of FINRA Rule 3130) and that the obligation to meet a regulatory requirement is not superseded based on compliance with other regulatory requirements.

Additionally, some commenters suggest that the proposed requirement may have a chilling effect on a firm's willingness to reach such conclusions or that reporting such information, which may lack qualified or total immunity, may result in defamation suits.[36] Without opining on the issues raised by these commenters, FINRA questions the collateral effects posited by the commenters given the use of the information for FINRA internal examination and enforcement purposes and that, in any event, FINRA believes that the goals of customer protection and market integrity necessitate the reporting of such conduct to FINRA.

[20] State Farm.

[21] CAI, FSI and NSCP.

[22] Cutter and NAIBD.

[23] NAIBD.

[24] CAI, FSI and NSCP.

[25] CAI, FSI, ICI, Northwestern, NSCP, PFS, Schwab, SIFMA and State Farm.

[26] Schwab.

[27] ICI.

[28] Northwestern.

[29] FSI.

[30] FSI, NSCP, PFS, Schwab and SIFMA.

[31] CAI.

[32] PFS.

[33] NSCP.

[34] Firms should note that certain settlements will have to be reported based on other reporting requirements (*e.g.,* FINRA Rule 4530(a)(1)(G)).

[35] CAI and ICI.

[36] CAI, FSI and Schwab.

7. Domestic and Foreign Actions and Actions By a Regulatory Body (Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

One commenter suggests that it may be too difficult to obtain information from foreign regulatory bodies.[37] In general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control. In addition, as noted above, firms cannot intentionally avoid becoming aware of a reportable event.

8. Quarterly Statistical and Summary Information Regarding Written Customer Complaints (Proposed FINRA Rule 4530(d))

One commenter argues that the requirement to report quarterly statistical and summary information regarding written customer complaints, including e-mails, is unduly burdensome and wants to know how the data is used and how it benefits the industry.[38] FINRA uses the reported information for its internal examination and enforcement purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Additionally, in response to one commenter,[39] FINRA wishes to clarify an interpretive position related to FINRA Rule 4530(c). In *Notice to Members* 96–85, FINRA (then NASD) stated that for purposes of reporting written customer complaints under NASD Rule 3070(c), the term "customer" is defined as any person other than a broker-dealer with whom the member has engaged, or has sought to engage, in securities activities, therefore, it was intended to exclude non-securities products. A member is not required to report written complaints relating to non-securities products, but only to the extent that such complaints are not from customers that the member has engaged, or has sought to engage, in securities activities. However, if a member has engaged, or has sought to engage, in securities activities with a person, then any written complaint from that person is reportable under the proposed rule, regardless of whether it relates to non-securities products.[40]

9. Reporting Obligation (Proposed FINRA Rule 4530(e))

As originally proposed in *Regulatory Notice* 08–71, the rule required members to report an event under the rule regardless of whether the event was disclosed on the Forms BD, U4 or U5. Several commenters raised concerns regarding this obligation.[41] FINRA has revised the proposed rule to provide that a firm is not required to report an event otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm has disclosed the event on the Form U5, consistent with the requirements of that form. This exception to FINRA Rules 4530(a) and (b) only applies to information that has been disclosed on the Form U5. As noted above, FINRA will also work toward the goal of eliminating duplicative reporting of information disclosed on the Forms BD and U4.

10. Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(f))

As originally proposed in *Regulatory Notice* 08–71, the rule required members to file, in addition to report, any insurance-related civil litigation or arbitration. Several commenters argued that the proposed requirement will result in voluminous filings regarding insurance matters completely unrelated to securities activities.[42] Consistent with the revisions to FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f) has been revised to require the filing of copies of any "insurance" civil litigation complaint or arbitration claim that is "financial related."

11. Calculation of Monetary Thresholds and Former Associated Persons (Proposed FINRA Rules 4530.06 and .07)

Several commenters raise concerns regarding the inclusion of attorneys fees and interest when calculating the dollar thresholds for reporting civil litigations, arbitrations or other claims for damages.[43] Based on FINRA's experience, some firms have considered structuring settlements using attorneys fees to avoid the dollar thresholds for reporting. The inclusion of attorneys fees and interest in the proposed rule is intended to address this concern. One commenter believes that "joint and several" liability should not be aggregated for purposes of the proposed rule.[44] As noted above, since each party subject to "joint and several" liability is separately liable for the aggregate amount, the aggregate amount must be reported for each party. For instance, if two parties have "joint and several" liability for $40,000, the amount reported would be $40,000 for each party.

Some commenters are also concerned that it may be too difficult to obtain information from former associated persons.[45] As discussed above, in general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control, with the understanding that firms cannot intentionally avoid becoming aware of a reportable event.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[37] NSCP.

[38] Puplava.

[39] Schwab.

[40] FINRA notes that the original proposal in *Regulatory Notice* 08–71 included a provision reminding firms of their obligations under proposed FINRA Rule 3110(b)(5) to have procedures to capture, acknowledge and respond to all written (including electronic) customer complaints. Proposed FINRA Rule 3110(b)(5) is part of the proposed consolidated supervision rules. *See Regulatory Notice* 08–24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls). FINRA will consider whether to re-propose the reference to FINRA Rule 3110(b)(5) at a later date.

[41] CAI, Cutter, FSI, NAIBD, NSCP, Schwab and SIFMA.

[42] CAI, Farmers, NSCP and State Farm.

[43] CAI, Cutter, FSI, NAIBD, Northwestern, NSCP, Schwab and SIFMA.

[44] Schwab.

[45] CAI, FSI, Northwestern and NSCP.

Number SR–FINRA–2010–034 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2010–034 and should be submitted on or before August 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19505 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62632; File No. SR–BX–2010–049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

August 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule 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 Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Changes to Trading Fees:

The BOX Fee Schedule currently lists certain execution fees as 'standard' trading fees, meaning that these execution fees are not dependent upon whether the transaction added or removed liquidity on BOX.[5] These standard fees, specifically within Sections 1–3 of the BOX Fee Schedule, are applicable to certain Public Customer PIP Improvement Orders,[6] Broker Dealer proprietary accounts and Market Maker accounts, respectively. The standard fees are currently set at $0.20 per contract executed for Broker Dealer proprietary accounts and Market Maker accounts. The Exchange proposes to make the following adjustments to trading fees effective Monday, July 19, 2010; with the exception of the Public Customer Trading Fees, which will be effective August 1, 2010:

Public Customer Trading Fees

The Exchange proposes to amend Section 1 of the BOX Fee Schedule relating to standard transaction fees applicable to Public Customers. Currently, except for non-CPO, there are no standard trading fees for any Public Customer Orders which may be executed on BOX, including CPOs and Public Customer Orders on the Book.[7] The Exchange proposes to add to the standard transaction fees for Public Customer accounts a $0.25 per executed contract charge for a Primary Improvement Order for a Public Customer and, effective August 1, 2010, for all non-PIP transactions, a $0.10 charge per executed contract.[8]

Fees and Charges to SPY, QQQQ, and IWM

Currently, the standard fee for transactions in the Exchange Traded Fund Shares ("ETFs") Standard & Poor's Depositary Receipts® ("SPY"), Powershares® QQQ Trust Series 1 ("QQQQ") and iShares Russell 2000®

[5] *See* Section 7 of the BOX Fee Schedule which sets forth any applicable 'liquidity fees and credits'.

[6] According to Section 1 of the BOX Fee Schedule a Public Customer is charged $0.15 per executed contract of an Improvement Order on its behalf in the PIP where that order is not submitted as a Customer PIP Order ("CPO") whereby it is labeled as a "non-CPO".

[7] Applicable charges and credits described in Section 7 of the BOX Fee Schedule also apply to Public Customer Orders.

[8] The above fees are in addition to any applicable charges and credits described in Section 7 of the BOX Fee Schedule.

Index Fund ("IWM") are set at $0.10 per contract for Broker Dealers and at $0.05 per contract for BOX Market Makers. In addition, the credits and fees of Section 7 of the BOX Fee Schedule currently apply equally for these three classes at $0.05 for both the fees and credits. The Exchange proposes to remove the different fees for transactions in SPY, QQQQ, and IWM throughout the BOX Fee Schedule so that transactions in these three classes will no longer be treated separately from other classes.

Transactions in the PIP

Currently, the standard fee for transactions within the PIP, including transactions in SPY, QQQQ and IWM, is set at $0.20 per contract, both for Broker Dealers and for BOX Market Makers. The Exchange proposes to amend Sections 2 and 3 to raise the standard transaction fee for PIP executions from $0.20 to $0.25 both for Broker Dealers and for BOX Market Makers.

Fees and Credits in Section 7

Currently, the existing credits and fees within Section 7 for transactions in the PIP are $0.15. These credits and fees apply equally to all account types, whether Public Customer, Broker Dealer or Market Maker and are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule. The Exchange proposes to increase the existing credits and fees within Section 7 for transactions in the PIP, from $0.15 to $0.25.

Currently, the volume discount for the fees charged to Initiating Participants only applies to executions in PIP auctions initiated by the particular Initiating Participant which occur at a price at least better than the NBBO and after a threshold average daily volume ("ADV") of 50,000 contracts per month is reached. Any PIP executions of the Initiating Participant above this threshold receive a $0.05 discount. The Exchange proposes to replace the volume discount with a per contract execution fee based upon a tiered fee schedule to apply to executions in PIP auctions initiated by the particular Initiating Participant.[9] Each Initiating Participant's ADV for executions in PIP auctions will be calculated. All PIP executions by the Initiating Participant for that month will be charged the same per contract fee according to the respective PIP auction ADV pursuant to the following table:

Average daily volume for initiating participant	Fee per contract
ADV of 150,001 contracts and greater	$0.10
ADV of 100,001 contracts to 150,000 contracts	0.12
ADV of 50,001 contracts to 100,000 contracts	0.15
ADV of 20,001 contracts to 50,000 contracts	0.17
ADV of 0 contracts to 20,000 contracts	0.25

This proposed tiered fee schedule is designed to incent BOX Participants to submit their Public Customer Orders into the PIP for the possibility of price improvement. As a BOX Participant's monthly PIP initiated trading volume increases, the per-contract fee that an Initiating Participant is charged for such executions is decreased.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, as well as Section 6(b) of the Act,[12] in general, and Section 6(b)(4) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges as well as apply such fees in a manner which is equitable based upon the particular account type, e.g. Public Customer, Market Maker or Broker Dealer, for which such transactions are executed. The obligations of Public Customers, Market Makers on BOX and Brokers Dealers that execute transactions on BOX are different. For example, BOX Market Makers must maintain active two-sided markets in options classes to which they are assigned and also have certain restrictions regarding trading activity in classes outside of their assignment, both of which do not apply to Public Customers or Broker Dealers on BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[14] and Rule 19b–4(f)(2) thereunder,[15] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

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:

[9] This tiered fee schedule shall apply to the standard transaction fee for PIP trades charged to Public Customers pursuant to Section 1(b), Broker-Dealers pursuant to Section 2(a) or Market Makers pursuant to Section 3(a) of the Fee Schedule. For example, a Broker-Dealer Primary Improvement Order submitted by an Initiating Participant who has reached the highest ADV tier of over 150,001 contracts executed in PIP auctions for the month will be charged a $0.10 standard transaction fee plus a provide liquidity fee of $0.25, for a total fee of $0.35 on his Primary Improvement Order.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

Electronic Comment

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–049 on the subject line.

Paper Comment

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, located at 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–BX–2010–049 and should be submitted on or before August 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19607 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62629; File No. SR–NASDAQ–2010–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change Relating to the National Quotation Dissemination Service

August 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to amend NASDAQ Rule 7017 to re-establish retroactively through January 1, 2008, a pilot program under Nasdaq Rule 7017(b), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive the National Quotation Dissemination Service ("NQDS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to re-establish retroactively through January 1, 2008, the fee reduction pilot program under NASDAQ Rule 7017(b) that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Background

NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or "core" data in its capacity as Securities Information Processor ("SIP") for the national market system plan governing securities listed on NASDAQ as a national securities exchange ("NASDAQ UTP Plan").[3] As the SIP, NASDAQ disseminates the NASDAQ Level 1 data entitlement containing consolidated quotation and last sale information from each self-regulatory organization ("SRO") that quotes or trades NASDAQ-listed securities. NASDAQ collects revenue derived from the sale of NASDAQ Level 1, deducts expenses incurred as the SIP, and distributes the proceeds to the SROs pursuant to the terms of the NASDAQ UTP Plan.

Second, NASDAQ separately disseminates proprietary or "non-core" data in its capacity as a registered national securities exchange. Non-core data is any data generated by the NASDAQ Market Center Execution System that is voluntarily disseminated by NASDAQ. Non-core data is not required to be supplied to the SIP for inclusion in the consolidated data, including quotation and last sale data that is consolidated but which NASDAQ can disseminate separate and apart from the consolidated data.[4] NASDAQ has numerous proprietary data products, such as NASDAQ TotalView, NASDAQ Last Sale, and NASDAQ Basic. Revenue from the sale of proprietary data products is NASDAQ's and is not distributed pursuant to the NASDAQ UTP Plan.

The National Quotation Dissemination Service ("NQDS") is a proprietary data product that contains the best bid and offer quotation of each registered market maker quoting in NASDAQ-listed securities on the NASDAQ Stock Market. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms.

Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professional users alike. In August 2000, NASDAQ filed a proposed rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee

[3] *See* Securities Exchange Act Release No. 59039 (Dec. 2, 2008) at p. 41.

[4] *Id.*

reduction commenced on August 31, 2000 on a one-year pilot basis.[5] On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, January 24, 2006, and April 25, 2007, NASDAQ, filed proposed rule changes to extend the pilot for additional one-year periods.[6] Thus, NASDAQ has assessed the same non-professional user fee for NQDS for roughly 10 years.

NASDAQ is proposing to establish the fee-reduction pilot retroactively to January 1, 2008 to avoid a lapse in the pilot and the need to collect additional fees from investors.[7] NASDAQ has consistently supported broad, effective dissemination of market information to public investors. NASDAQ notes that the pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates NASDAQ's continued commitment to individual investors and responds to the demand for real-time market data by non-professional market participants. In addition, NASDAQ member firms often supply real-time market data to their customers through automated means. Thus, NASDAQ member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets. NASDAQ's inability to extend the pilot fee reduction retroactively as requested would effectively result in an increase in fees that NASDAQ would be required to collect retroactively. This fee increase would harm investors and offer no benefit to the market.

NQDS is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[10]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price NQDS is constrained by (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary quotation data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders that exist in the marketplace.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated quotation data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it constrains the fees assessed for

[5] *See* Securities Exchange Act Release No. 43190 (Aug. 22, 2000); 65 FR 52460 (Aug. 29, 2000).

[6] *See* Securities Exchange Act Release No. 44788 (Sept. 13, 2001); 66 FR 48303 (Sept. 19, 2001). Securities Exchange Act Release No. 46446 (Aug. 30, 2002); 67 FR 57260 (Sept. 9, 2002). Securities Exchange Act Release No. 48386 (Aug. 21, 2003); 68 FR 51618 (Aug. 27, 2003). Securities Exchange Act Release No. 50318 (Aug. 3, 2004); 69 FR 54821 (Sept. 10, 2004); Securities Exchange Act Release No. 53531 (Mar. 21, 2006); 71 FR 15506 (Mar. 28, 2006); Securities Exchange Act Release No. 55668 (Apr. 25, 2007); 72 FR 24347 (May 2, 2007). NASDAQ previously sought authority retroactively to assess the NQDS non-professional fee from December 31, 2007 going forward. *See* SR–NASDAQ–2009–055.

[7] On July 27, 2010, NASDAQ filed a proposed rule change to make the pilot fee reduction permanent. *See* SR–NASDAQ–2010–093 (July 27, 2010).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

proprietary data (such as NQDS data). The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are included in the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS publishes certain data at no charge on its website and via data feeds in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.[11] A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson.

In continuing the current price for NQDS, NASDAQ considered the competitiveness of the market for quotation data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users. The existence of numerous alternatives to NQDS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NQDS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–096. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–096 and should be submitted on or before August 30, 2010.

[11] However, BATS recently received approval to begin offering and charging for three new data products, which include BATS Last Sale Feed, BATS Historical Data Products, and a data product called BATS Market Insight. *See* Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR–BATS–2010–002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19606 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62619; File No. SR–Phlx–2010–100]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce its Options Regulatory Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative August 2, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Options Regulatory Fee ("ORF") to decrease the current $.0035 per contract fee to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (*i.e.,* that clear in the customer account of the member's clearing firm at OCC). The Exchange proposes instead to assess a $.0030 per contract ORF. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The purpose of the proposed rule change is to ensure that the ORF would not exceed costs.

The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.[4] The ORF is not charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative August 2, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee change is reasonable because the Exchange desires to ensure that the revenue collected from the ORF does not exceed regulatory costs. The Exchange believes that this fee proposal is equitable because the reduction of the ORF to $.0030 per contract will apply to all market participants who are being assessed the ORF.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF would apply to all "C" account origin code orders executed by a member on the Exchange. Exchange rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. *See* Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and paragraph (f)(2) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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 No. SR–Phlx–2010–100 and should be submitted on or before August 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19528 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62615; File No. SR–BX–2010–052]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add 75 Classes to the Penny Pilot Program

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on July 21, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the "Exchange") proposes to designate 75 options classes to be added to the Penny Pilot Program, as referenced in Chapter V, Section 33 of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The Exchange intends to notify BOX Options Participants of the classes to be added to the Penny Pilot Program via Regulatory Circular.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 19, 2009 the Exchange submitted a proposed rule change [3] with the Securities and Exchange Commission ("Commission") to, among other things, expand the number of classes included in the Penny Pilot Program over four successive quarters, with 75 classes added in each of November 2009, February 2010, May 2010, and August 2010.[4] Options classes with high premiums will be excluded for the quarterly additions.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 60886 (Oct. 27, 2009), 74 FR 56897 (Nov. 3, 2009) (SR–BX–2009–067). This proposal was effective immediately upon filing.

[4] The quarterly additions will be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on May 3, 2010 shall be determined using data from the six month period ending March 31, 2010. The Exchange has filed three (3) previous proposals similar to the present proposal, for the November 2, 2009, February 1, 2010 and May 3, 2010 expansions of 75 classes, respectively. *See* Securities and Exchange Act Release No. 60950 (Nov. 6, 2009), 74 FR 58666 (Nov. 6, 2009) [sic] (SR–BX–2009–069); Securities and Exchange Act Release No. 61456 (Feb. 1, 2010), 75 FR 6235 (Feb. 8, 2010) (SR–BX–2010–011); and 62039 (May 5, 2010), 75 FR 26313 (May 11, 2010) (SR–BX–2010–032). These proposals were effective immediately upon filing.

[5] The threshold for designation as "high priced" at the time of selection of new classes to be included in the Penny Pilot Program is $200 per share or a calculated index value of 200. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall

Continued

Based on trading activity for the six months ending June 30, 2010, the Exchange proposes to add the following 75 classes to the Penny Pilot Program on August 2, 2010:

Symbol	Company Name	Symbol	Company Name
MBI	MBIA Inc.	KMP	Kinder Morgan Energy Partners LP
MA	Mastercard Inc.	MRO	Marathon Oil Corp.
ATPG ...	ATP Oil & Gas Corp/United States	AGO	Assured Guaranty Ltd.
YUM	Yum! Brands Inc.	GIS	General Mills Inc.
RCL	Royal Caribbean Cruises Ltd.	ANR	Alpha Natural Resources Inc.
BPOP ...	Popular Inc.	GENZ ..	Genzyme Corp.
EK	Eastman Kodak Co.	CB	Chubb Corp.
CNX	Consol Energy Inc.	ADM	Archer-Daniels-Midland Co.
DCTH*	Delcath Systems Inc.	HSY	Hershey Co./The
MTG	MGIC Investment Corp.	TXT	Textron Inc.
PXP	Plains Exploration & Production Co.	GGP* ...	General Growth Properties Inc.
GPS	Gap Inc./The	NOV	National Oilwell Varco Inc.
TSL	Trina Solar Ltd.	TWX	Time Warner Inc.
EWW ...	iShares MSCI Mexico Investable Market Index Fund	XOP	SPDR S&P Oil & Gas Exploration & Production ETF
CRM	Salesforce.com Inc.	MYL	Mylan Inc./PA
SWN	Southwestern Energy Co.	TSO	Tesoro Corp.
HBAN ...	Huntington Bancshares Inc./OH	CI	CIGNA Corp.
EOG	EOG Resources Inc.	ESI	ITT Educational Services Inc.
APA	Apache Corp.	NKE	NIKE Inc.
VVUS ...	Vivus Inc.	FIS*	Fidelity National Information Services Inc.
JDSU ...	JDS Uniphase Corp.	SUN	Sunoco Inc.
ACI	Arch Coal Inc.	BBBY ..	Bed Bath & Beyond Inc.
NE	Noble Corp.	APWR	A–Power Energy Generation Systems Ltd.
BAX	Baxter International Inc.	FWLT ..	Foster Wheeler AG
ADSK ...	Autodesk Inc.	LNC	Lincoln National Corp.
KRE	SPDR KBW Regional Banking ETF	RSH	RadioShack Corp.
XL	XL Group Plc.	TYC	Tyco International Ltd.
WLT	Walter Energy Inc.	CL	Colgate-Palmolive Co.
IBN	ICICI Bank Ltd.	FXP	ProShares UltraShort FTSE/Xinhua China 25
EWY	iShares MSCI South Korea Index Fund	NTAP ..	NetApp Inc.
WHR	Whirlpool Corp.	SO	Southern Co.
BHI	Baker Huges Inc.	PHM	Pulte Group Inc.
HOT	Starwood Hotels & Resorts	ACAS ..	American Capital Ltd.
QLD	ProShares Ultra QQQ	XLNX ...	Xilinx Inc.
VRSN ...	VeriSighn Inc.	DO	Diamond Offshore Drilling Inc.
PCL	Plum Creek Timber Co. Inc.	CMA	Comerica Inc.
NBR	Nabors Industries Ltd.	KEY	KeyCorp
ESRX ...	Express Scripts Inc.	.....	

* Please note that the class is presently not listed for trading on BOX. If the class is listed for trading on BOX at a later date it will be subject to the applicable minimum trading increments as set forth in Chapter V, Section 6(b) of the BOX Rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes added to the Penny Pilot Program in a manner consistent with prior rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(6)(3)(A)[8] of the Act and Rule 19b–4(f)(1)[9] thereunder, as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.196–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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 No. SR–BX–2010–052 and should be submitted on or before August 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19519 Filed 8–6–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 7098]

U.S. Department of State Advisory Committee on Private International Law: Public Meeting on the Work of the UNCITRAL Working Group on International Arbitration and Conciliation

In June, the United Nations Commission on International Trade Law (UNCITRAL) approved revisions to the 1976 UNCITRAL Arbitration Rules. The 2010 UNCITRAL Arbitration Rules will take effect on August 15, 2010. [*http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1976Arbitration_rules.html*] In its next phase of work, the UNCITRAL Working Group on International Arbitration and Conciliation will take up the topic of transparency in investor-State arbitration. The Working Group is scheduled to meet in Vienna October 4–8, 2010. In preparation for that meeting, a public meeting will be held, under the auspices of the Department of State's Advisory Committee on Private International Law, to obtain the views of concerned stakeholders.

Time and Place: The public meeting will take place at the Department of State's Annex 4 in Room 240, South Building, 23rd and C Streets, NW., Washington, DC, on September 15, 2010. Visitors should appear at the gate at the southwest corner of 23rd and C Streets by 9:45 a.m. EDT. Persons arriving at other times will need to make arrangements for entry using the contact information provided below. The meeting will begin at 10 a.m. and is expected to last no later than 1 p.m. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: It is requested that persons wishing to attend contact Trisha Smeltzer prior to September 8, 2010, at *smeltzertk@state.gov* or 202–776–8423 and provide their name, and date of birth for pre-clearance purposes, as well as email address and affiliation. Members of the public who are not pre-cleared might encounter delays with security procedures. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. *Please see* the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. A member of the public requesting reasonable accommodation should make his or her request upon registering for the meeting. Such requests received after September 13th will be considered, but might not be possible to fulfill. Please contact Ms. Smeltzer for additional meeting information, including teleconferencing dial-in details.

Dated: August 2, 2010.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2010–19614 Filed 8–6–10; 8:45 am]

BILLING CODE 7410–08–P

DEPARTMENT OF STATE

[Public Notice 7099]

Notice of Meeting

Title: Shipping Coordinating Committee; Notice of Committee Meeting.

The Shipping Coordinating Committee (SHC) will conduct two separate open meetings on September 2 and September 10 at the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the September 2 meeting is to prepare for the fifteenth Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) to be held at the IMO headquarters in London, United Kingdom, from September 13 to September 17, 2010. This SHC meeting will begin at 10 a.m. and will be held in room 1303.

The primary matters to be considered at the DSC meeting include:

— Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

[10] 17 CFR 200.30–3(a)(12).

—Amendments to the International Maritime Solid Bulk Cargoes Code (IMSBC Code) including evaluation of properties of solid bulk cargos.
—Casualty and incident reports and analysis.
—Guidance on protective clothing.
—Revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.
—Stowage of water-reactive materials.
—Review of the Guidelines for packing of cargo transport units.
—Revision of the Recommendations for entering enclosed spaces aboard ships.
—Consideration for the efficacy of Container Inspection Programme.
—Installation of equipment for detection of radioactive sources or radioactive contaminated objects in ports.
—Amendments to the International Convention for Safe Containers, 1972 and associated circulars.

The primary purpose of the September 10 meeting is to prepare for the sixty-first Session of the International Maritime Organization (IMO) Marine Environmental Protection Committee (MEPC) to be held at the IMO Headquarters, United Kingdom, from September 27 to October 1, 2010. This SHC meeting will begin at 9:30 a.m. and be held in room 2415.

The primary matters to be considered at the MEPC meeting include:

—Harmful aquatic organisms in ballast water
—Recycling of ships
—Prevention of air pollution from ships
—Reduction of Greenhouse Gas emissions from Ships
—Consideration and adoption of amendments to mandatory instruments
—Interpretations of and amendments to MARPOL and related instruments
—Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) and the OPRC–Hazardous and Noxious Substances Protocol and relevant conference resolutions
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas
—Inadequacy of reception facilities
—Reports of sub-committees
—Work of other bodies
—Status of conventions
—Harmful anti-fouling systems for ships
—Promotion of implementation and enforcement of MARPOL and related instruments
—Technical Cooperation Sub-program for the Protection of the Marine Environment
—Role of the human element
—Formal safety assessment
—Noise from commercial shipping and its adverse impacts on marine life
—Work program of the Committee and subsidiary bodies
—Application of the Committees' Guidelines
—Election of the Chairman and Vice-Chairman for 2011
—Any other business
—Consideration of the report of the Committee

Members of the public may attend the two meetings up to the seating capacity of the rooms. To facilitate the building security process and request reasonable accommodations, those who plan to attend one or both of the two meetings should contact the following coordinators at least 7 days prior to the meetings:

—For the September 2nd DSC meeting, contact Mr. Richard Bornhorst, by e-mail at *richard.c.bornhorst@uscg.mil,* by phone at (202) 372–1426, by fax at (202) 372–1925, or in writing at Commandant (CG–5212), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126.
—For the September 10th MEPC meeting, contact LCDR Brian Moore, by e-mail at *brian.e.moore@uscg.mil,* by phone at (202) 372–1434, by fax at (202) 372–1925, or in writing at Commandant (CG–5224), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126.

Requests for reasonable accommodation not made at least 7 days prior to the SHC meeting might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: August 2, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–19615 Filed 8–6–10; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA); Notice Regarding the 2010 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for petitions.

SUMMARY: This notice announces the 2010 Annual Review of the Andean Trade Preference Act (ATPA). Under this process, petitions may be filed calling for the limitation, withdrawal or suspension of ATPA or ATPDEA benefits by presenting evidence that the eligibility criteria of the program are not being met. USTR will publish a list of petitions filed in response to this announcement in the **Federal Register**.

DATES: The deadline for the submission of petitions for the 2010 Annual ATPA Review is September 15, 2010.

ADDRESSES: Petitions should be submitted electronically via the Internet at *http://www.regulations.gov*, docket number USTR–2010–0018. For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446 and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201–06), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and extended by the Andean Trade Preference Act (Pub. L. 110–436), provides for trade benefits for eligible Andean countries. The current beneficiaries of the ATPA are Colombia, Ecuador and Peru. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of articles and countries for the benefits of the ATPA, as amended. The 2010 Annual ATPA Review is the seventh such review to be conducted pursuant to the ATPA review regulations. To qualify for the benefits of the ATPA and ATPDEA, each country must meet several eligibility criteria, as set forth in sections 203(c) and (d), and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3202(c), (d); 19 U.S.C. 3203(b)(6)(B)), and as outlined in

the **Federal Register** notice USTR published to request public comments regarding the designation of eligible countries as ATPDEA beneficiary countries (67 FR 53379). Under section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)), the President may withdraw or suspend the designation of any country as an ATPA or ATPDEA beneficiary country, and may also withdraw, suspend, or limit preferential treatment for any product of any such beneficiary country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria.

The ATPA regulations provide the schedule of dates for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2010 Annual ATPA Review, all petitions to withdraw or suspend the designation of a country as an ATPA or ATPDEA beneficiary country, or to withdraw, suspend, or limit application of preferential treatment to any article of any ATPA beneficiary country under the ATPA, or to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) of the ATPA, must be received by the Andean Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. EDT on September 15, 2010. Petitioners should consult 15 CFR 2016.0 regarding the content of such petitions.

Public Comment: Requirements for Submissions: To ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0018 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 "Notices" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *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 *http://www.regulations.gov* Web site provides the option of making submissions by filling in a "Type Comment & Upload File" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment & Upload File" field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If you use an application other than those two, please identify the application in your submission.

Persons wishing to file comments containing business confidential information must submit a business confidential version and a public version. The file name of the business confidential version should begin with the characters "BC". Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. Persons wishing to file comments containing business confidential information must also provide, in a separate submission, a public version of the comments. The file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395–3475. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 2010–19554 Filed 8–6–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 295 (Sub-No. 8X)]

The Indiana Rail Road Company—Abandonment Exemption—in Sullivan County, IN

The Indiana Rail Road Company (INRD) filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a 4.37-mile portion of its Kindill Lead extending from milepost 3.1 to milepost 7.47, in Sullivan County, Ind.[1] The line traverses United States Postal Service Zip Codes 47438 and 47882.

INRD has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line (there is none) can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad & The Union Pacific Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 8, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to

[1] On July 23, 2010, INRD amended its notice of exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible

Continued

file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 19, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to INRD's representative: John Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 540, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

INRD has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 13, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), INRD shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by INRD's filing of a notice of consummation by August 9, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 4, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–19540 Filed 8–6–10; 8:45 am]

BILLING CODE 4915–01–P

so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR § 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

Docket Number FRA–2010–0114

Applicant: Paducah & Louisville Railway, Inc., Mr. C. D. Edwards, General Supervisor of Signals & Structures, 1500 Kentucky Avenue, Paducah, KY 42003.

The Paducah & Louisville Railway, Inc. seeks approval of the proposed removal of two intermediate signal locations at milepost (MP) J 14.9 and MP J 10.9 between Shively, KY, MP J 4.0 and West Point, KY, MP J 21.0.

The reason given for the proposed changes is to upgrade EC 5 at signal locations MP J 13.3 and MP J 9.1.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2010–0114 and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.* FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Issued in Washington, DC on August 3, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–19490 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to continue in effect Volvo Trucks North America's (Volvo) exemption for five of its drivers to enable them to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. FMCSA previously announced its decision to renew Volvo's exemption, pending a review of public comments. No comments were received.

DATES: This exemption is effective from February 4, 2010, through February 4, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the CDL requirements of 49 CFR 383.23 for a maximum 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. FMCSA evaluated Volvo's application and decided to grant the renewal of the exemption for five of Volvo's engineers and technicians for a 2-year period, effective February 4, 2010, as previously announced in the **Federal Register** (75 FR 33663, June 14, 2010).

Comments

In the **Federal Register** notice of June 14, 2010, FMCSA requested public comment on the renewal; the Agency received none in the 30-day comment period (FMCSA Docket No. FMCSA–2006–25756).

Terms and Conditions for the Exemption

Based upon its evaluation of the application, FMCSA granted Volvo a renewal of the exemption from the Federal CDL requirement in 49 CFR 383.23 for a period of 2 years from February 4, 2010, through February 4, 2012, for 5 drivers (Jonas Gustafsson, Christer Milding, Jonas Nilsson, Bjorn Nyman, and Sten-Ake Sandberg) who test-drive CMVs within the United States. The exemption is subject to the following terms and conditions: (1) This exemption is valid only when these drivers are acting within the scope of their employment by Volvo, (2) The drivers must keep a copy of the exemption on the vehicle at all times for presentation to a duly authorized Federal, State, or local enforcement official, (3) The drivers and Volvo must adhere to driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the United States, (4) The drivers and Volvo must adhere to drug and alcohol regulations, including testing, as provided by in 49 CFR part 382, (5) The drivers are subject to all other provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 390–397) unless specifically exempted herein, (6) Volvo must notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving this exempted driver, and (7) Volvo must notify FMCSA in writing if this driver is convicted of a disqualifying offense described in sections 383.51 or 391.15 of the FMCSRs.

This exemption will be revoked if: (1) The drivers for Volvo fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: August 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–19589 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty-Sixth Meeting, RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

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

ACTION: Notice of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held October 5–7, 2010, starting at 9 a.m.

ADDRESSES: The meeting will be held at the RTCA Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment meeting. The agenda will include:

- Opening Session (Welcome, Chairman's Opening Remarks, Introductions)
- Approval of Summary from the Fifty-Fifth Meeting—(RTCA Paper No. 061–10/SC135–678).
- Review/Approval Revised DO–160F—*Environmental Conditions and Test Procedures for Airborne Equipment*—(RTCA Paper No. 117–10/SC135–689).
- Review Revised Terms of Reference.
- New/Unfinished Business.
- Establish Date for Next SC–135 Meeting.
- Closing

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–19613 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, T.F.Green Airport, Warwick, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for T.F.Green Airport as submitted by the Rhode Island Airport Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F.Green Airport are in compliance with applicable requirements of part 150, effective July 27, 2010.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the Rhode Island Airport Corporation. The specific maps under consideration were Figure 1 Existing Condition (2010) Noise Exposure Map, Figure 2 Forecast Condition (2020 EIS No-action) Noise Exposure Map, and Figure 3 Forecast Conditions (2020 EIS Preferred Alternative) Noise Exposure Map in the submission. The FAA has determined that these maps for T.F.Green Airport are in compliance with applicable requirements. This determination is effective on July 27, 2010.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Rhode Island Airport Corporation

T.F.Green Airport, 2000 Post Road, Warwick, RI 02886;

Or:

Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts, on July 27, 2010.

LaVerne Francis Reid,

Manager, Airports Division.

[FR Doc. 2010–19611 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–34]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 30, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0184 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on August 3, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0184.

Petitioner: FlightSafety International.

Section of 14 CFR Affected: 14 CFR 61.57(c).

Description of Relief Sought

FlightSafety International proposes an exemption that would permit FlightSafety International to provide instrument proficiency checks and endorsements in an approved 14 CFR part 142 course using a Level 6 flight training device.

[FR Doc. 2010–19512 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Elimination of USDOT Number Registrant-Only Classification

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of procedural changes to the Performance and Registration Information Systems Management Program.

SUMMARY: FMCSA announces elimination of the "registrant-only" USDOT number as part of the Performance and Registration Information Systems Management (PRISM) program. FMCSA developed the concept of a "registrant-only" USDOT number to identify registered owners of commercial motor vehicles (CMVs) that are not motor carriers, but lease their CMVs to entities that are motor carriers. FMCSA has concluded that registrant-only USDOT numbers are being used differently from what the Agency intended and thus the practice of issuing registrant-only numbers to entities that are not motor carriers is having an adverse affect on the Agency's ability to track motor carriers' safety violations. As a result, FMCSA made the decision to eliminate the PRISM procedure that requires non-motor carrier registrants to obtain USDOT numbers, and will maintain all existing numbers as dormant registrant-only USDOT numbers.

DATES: The effective date of the change is September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Tom Lawler, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. (202) 366–3866 (telephone), 202–366–3375 (fax), *tom.lawler@dot.gov* (e-mail).

Background

PRISM was created by Section 4003 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240 (105 Stat.1914, 2144, Dec. 18, 1991) as a demonstration project. The goal of the demonstration project was to explore the potential benefits of using State commercial vehicle registration sanctions as an incentive to improve motor carrier safety [49 U.S.C. 31106(b)]. In 1998, Congress authorized additional funding through Section 4004 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178 (112 Stat. 107, 398, June 9, 1998) to implement the PRISM program nationwide.

In 1999, FMCSA created the "registrant-only" USDOT number classification to identify registered owners of CMVs that are not motor carriers but lease their CMVs to entities that are motor carriers. Because the registrant is not a motor carrier, the registrant-only USDOT number is used to track ownership of CMVs in the Motor Carrier Management Information System (MCMIS). A registrant-only USDOT number does not authorize a non-motor carrier to operate in interstate commerce, and it should not have any safety events assigned to it. However, in numerous cases, law enforcement personnel have been presented a registrant-only number during inspections and crash investigations. As a result, data that should be assigned to the record of the motor carrier operating the CMV has been erroneously assigned to the registrant-only DOT number. The Agency conducted an analysis in 2009 and found that over 35,500 (18%) of the more than 200,000 registrant-only records in MCMIS contained crash and inspection activity that should have been recorded on the lessee's motor carrier record.

Placement of this information on a registrant-only record adversely affects the accuracy of FMCSA's safety monitoring system. Motor carriers that improperly use registrant-only numbers can evade FMCSA oversight, including compliance reviews and new entrant program audits. In addition, if safety events are not properly attributed to the motor carriers operating CMVs, FMCSA cannot factor those events into the motor carriers' safety ratings.

Action To Be Taken

On September 1, 2011, FMCSA will eliminate the practice of allowing non-motor carrier registrants to obtain registrant-only USDOT numbers. Approximately 40 of the State jurisdictions that are PRISM members will be affected by this change. Members will need to modify their forms, instruction manuals, computer systems' validation and safety edits, renewal application and MCS–150 edits and procedures. FMCSA will be working with members to make the necessary changes. The goal is for members to make these changes by August 31, 2011.

While members are modifying their systems, the FMCSA Division Offices will be researching the events attributed to the registrant-only records and reassigning the events to the proper motor carrier record on MCMIS, or, if appropriate, changing the non-motor carrier to motor carrier status. The registrant-only USDOT numbers will remain on MCMIS as dormant numbers unless a non-motor carrier changes its status to motor carrier. FMCSA's goal is to have all of the records corrected by December 31, 2011.

Issued on: July 30, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–19593 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0187]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before September 8, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0187 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 21 individuals listed in this Notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Randall J. Benson

Mr. Benson, age 40, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/50. Following an examination in 2010, his optometrist noted, "This patient does not present any greater risk in driving tasks than other drivers and, given his record, he should have sufficient vision to perform the driving tasks required for a commercial vehicle." Mr. Benson reported that he has driven straight trucks for 4 years, accumulating 60,000 miles. He holds a Class D operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry D. Brown

Mr. Brown, 53, has had complete loss of vision in his left eye since 1985. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my professional opinion Mr. Larry Brown has sufficient vision to perform the driving task of a commercial vehicle based on his vision and prior work experience." Mr. Brown reported that he has driven straight trucks for 19 years, accumulating 47,500 miles. He holds a Class B Commercial Driver's License (CDL) from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Julian W. Collins

Mr. Collins, 49, has had macular scarring in his right eye due to a traumatic injury sustained in 1996. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/15. Following an examination in 2010, his ophthalmologist noted, "I certify that Mr. Collins's eye exam today is stable and that in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Collins reported that he has driven straight trucks for 8 years, accumulating 40,000 miles and tractor trailer combinations for 23 years, accumulating 414,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James G. Etheridge

Mr. Etheridge, 45, has had complete loss of vision in his right eye since 1971 due to trauma. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "Patient's vision is sufficient to drive a commercial vehicle." Mr. Etheridge reported that he has driven straight trucks for 12 years, accumulating 240,000 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerry A. Evans

Mr. Evans, 63, has had a prosthetic right eye due to trauma since 1980. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2010, his ophthalmologist noted, "It is my medical opinion that Mr. Evans has the ability to perform driving tasks necessary to operate a commercial vehicle." Mr. Evans reported that he has driven straight trucks for 30 years, accumulating 507,000 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Guy R. Flowers, Jr.

Mr. Flowers, 57, has had complete loss of vision in his left eye since 2005 due to trauma. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, providing he utilizes adequate rear-view mirror and side-view mirrors on both sides of his vehicle, he should have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Flowers reported that he has driven tractor-trailer combinations for 27 years, accumulating 2.1 million miles. He holds a Class A CDL from Alaska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeremy L. Fricke

Mr. Fricke, 27, has had complete loss of vision in his right eye since 2000 due to trauma. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2010, his optometrist noted, "His vision in the left eye is excellent uncorrected and, in my opinion, is sufficient to perform the driving tasks required to operate a

commercial vehicle." Mr. Fricke reported that he has driven straight trucks for 11 years, accumulating 27,500 miles and tractor-trailer combinations for 7 years, accumulating 54,600 miles. He holds a Class D operator's license from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard W. Gleiforst

Mr. Gleiforst, 48, has had a prosthetic left eye due to trauma since 1993. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2010, his optometrist noted, "In my medical opinion Richard Gleiforst has sufficient vision to operate a commercial vehicle as he has been for the last ten years." Mr. Gleiforst reported that he has driven straight trucks for 4 years, accumulating 17,600 miles and tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Edward P. Hynes, II

Mr. Hynes, 52, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mr. Hynes can recognize the colors of traffic control signals and devices showing red, green and amber; and in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hynes reported that he has driven straight trucks for 25 years, accumulating 2 million miles. He holds an operator's license from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith R. Jordan

Mr. Jordan, 40, has had retinal scarring in his right eye since 1990. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Since Mr. Jordan has had this condition for a long time, and it is stable, it is my opinion that his vision is sufficient to do the tasks needed to operate a commercial vehicle." Mr. Jordan reported that he has driven straight trucks for 22 years, accumulating 22,000 miles and tractor trailer combinations for 15 years, accumulating 840,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Theodore D. Kirby

Mr. Kirby, 30, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, Mr. Kirby has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kirby reported that he has driven straight trucks for 3 years, accumulating 45,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph A. Leigh, Jr.

Mr. Leigh, 48, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "I do believe that Mr. Leigh has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Leigh reported that he has driven straight trucks for 20 years, accumulating 1.5 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John L. Lethcoe

Mr. Lethcoe, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision only. Following an examination in 2010, his ophthalmologist noted, "In my opinion, his vision is sufficient to continue to operate a commercial vehicle." Mr. Lethcoe reported that he has driven straight trucks for 5.5 years, accumulating 198,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald J. McTague

Mr. McTague, 53, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "My opinion is that Mr. McTague should have no restrictions on him in regards to operating a commercial vehicle." Mr. McTague reported that he has driven straight trucks for 12 years, accumulating 900,000 miles and tractor-trailer combinations for 17 years, accumulating 2.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Benito Saldana

Mr. Saldana, 52, has retinal detachment in his left eye due to a traumatic injury sustained in 1981. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his ophthalmologist noted, "It is my medical opinion that this gentleman has proven that he can drive a commercial vehicle and he can continue doing his job." Mr. Saldana reported that he has driven tractor-trailer combinations for 34 years, accumulating 4.4 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 14 miles per hour (mph).

Julius Simmons, Jr.

Mr. Simmons, 40, has had loss of vision in his right eye since 1988 due to trauma. The best corrected visual acuity in his right eye is hand-motion only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I do believe that the issues involving the right eye do not affect his ability to safely operate a commercial vehicle." Mr. Simmons reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.6 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows two crashes, one for which he was not cited, and no convictions for moving violations in a CMV.

Kenneth J. Weaver

Mr. Weaver, 31, has had hamartoma in his right eye since birth. The best corrected visual acuity in his right eye is light perception only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Kenneth Weaver has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Weaver reported that he has driven tractor-trailer combinations for 3 years accumulating 75,750 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Carl V. Wheeler

Mr. Wheeler, 54, has had a prosthetic left eye since 1980. The best corrected

visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, Mr. Wheeler has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wheeler reported that he has driven straight trucks for 35 years, accumulating 437,500 miles and tractor-trailer combinations for 10 years, accumulating 42,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen B. Whitt

Mr. Whitt, 44, has had pseudoangioma in his right eye since 1994. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "It is my medical opinion that Stephen Whitt has sufficient vision to perform the task of driving a commercial vehicle." Mr. Whitt reported that he has driven straight trucks for 15 years, accumulating 750,000 miles and tractor-trailer combinations for 20 years, accumulating 3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Darrell F. Woosley

Mr. Woosley, 66, has had loss of vision since 2006 due to a central retinal vein occlusion. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/25. Following an examination in 2010, his ophthalmologist noted, "It is my opinion that Mr. Darrell Woosley's vision is sufficient to allow him to drive a commercial vehicle based on his testing in the clinic." Mr. Woosley reported that he has driven tractor-trailer combinations for 44 years, accumulating 3.1 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV. On the first occasion, he was cited for failure to obey a traffic sign and on the second occasion, he exceeded the speed limit by 9 mph.

Jason M. Zaragoza

Mr. Zaragoza, 37, has had macular scarring in his right eye since 2003. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I certify that in my medical opinion, Jason Zaragoza has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Zaragoza reported that he has driven straight trucks for 8 years, accumulating 208,000 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. The Agency will consider all comments received before the close of business September 8, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 29, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–19594 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0114]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 30 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective August 9, 2010. The exemptions expire on August 9, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Background

On June 16, 2010, FMCSA published a Notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 34209). That Notice listed 30 applicants' case histories. The 30 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the

level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 30 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 30 exemption applicants listed in this Notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, corneal scarring, glaucoma, loss of vision, macular degeneration, macular scarring, optic atrophy, prosthesis and retinal scarring. In most cases, their eye conditions were not recently developed. All but 9 of the applicants were either born with their vision impairments or have had them since childhood. The 9 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 29 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 30 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3½ to 42 years. In the past 3 years, three of the drivers had convictions for traffic violations and one of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 16, 2010 notice (75 FR 34209).

Basis for Exemption Determination

Under 49 U.S.C. 311936(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 30 applicants, two of the applicants had traffic violations for speeding, one of the applicants had a traffic violation for improperly stopping on a highway, and one of the drivers was involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the

interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 30 applicants listed in the notice of June 16, 2010 (75 FR 34209).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 30 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving record for Chris A. Miller and was in favor of granting a Federal vision exemption to this individual.

Conclusion

Based upon its evaluation of the 30 exemption applications, FMCSA exempts, David E. Balboni, Mark S. Berkheimer, Rodney H. Bridges, James D. Broadway, Wesley M. Creamer, Charles M. Dunn, Tony K. Ellis, Leonard J. Ferrin, Paul A. Giarrusso, Jerry L. Gibson, Rici W. Giesseman, George R. House, Michael A. Jabro, Thomas L. Jashurek, Jr., Michael M. Martinez, Robert L. McClain, Daniel E. Miller, Buddy W. Myrick, James L. Okonek, Aaron L. Paustian, Alan J. Reynaldos, Kenneth R. Riener, Charles L. Rill, Sr., Jules M. Sancho, Jr., Robert Smiley, Rogers L. Sulfridge, Christopher M. Vincent, Derik T. Winebrenner, Curtis L. Wolff and Robert L. Zebrowski, from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 29, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–19592 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

IntelliDrive℠ [1] Performance Measurement and Performance-Based Management Demonstrations; Request for Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice is a Request for Information (RFI) and comments that will be used to help refine the plans for one or more demonstrations focused on the use of IntelliDrive℠ data sources for performance measurement and performance-based management. The FHWA is issuing this RFI in collaboration with and on behalf of other agencies within the DOT, specifically the Federal Transit Administration, the Federal Motor Carrier Safety Administration, and the Research and Innovative Technology Administration. Feedback and comments on any aspect of the RFI are welcomed from all interested public, private, and academic entities. While all feedback is welcomed, DOT is particularly interested in feedback on the questions provided in the last section of this RFI.

RFI Guidelines: Responses to this RFI should be submitted by 11:59 p.m. Eastern Time on September 8, 2010. Responses to this RFI should be delivered electronically as an e-mail or as an attachment to an e-mail sent to *DMAdemo@dot.gov.*

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the government for program planning on a non-attribution basis. If you wish to submit any information under a claim of confidentiality, you should submit via e-mail to the address given below under **FOR FURTHER INFORMATION CONTACT**, your complete submission, including the information you claim to be confidential commercial information. When you submit information containing information identified as confidential commercial information, you should include a cover letter setting forth the reasons you believe the information qualifies as "confidential commercial information." (49 CFR 7.13(c)(4) and 7.17) If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552), but we

[1] IntelliDrive is a service mark of the U.S. Department of Transportation.

will process the request in accordance with the procedures found in 49 CFR 7.17.

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Mr. Robert Rupert, Transportation Information Management Team, FHWA Office of Operations, (202) 366–2194, *robert.rupert@dot.gov.* For legal questions, interpretations and counsel, please contact Sheryl Williams, Office of the Chief Counsel, (202) 366–0618, *sheryl.williams@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *e.t.,* Monday through Friday, except Federal holidays. Additional information about the IntelliDrive℠ initiative is at *http://www.its.dot.gov/intellidrive/.*

SUPPLEMENTARY INFORMATION: The DOT IntelliDrive℠ program is a multimodal initiative that aims to enable safe, interoperable networked wireless communications among vehicles, the infrastructure, and travelers' personal communications devices. IntelliDrive℠ research is being sponsored by the DOT and others to leverage the potentially transformative capabilities of wireless technology to make surface transportation safer, smarter, and greener. One component of this initiative is the Dynamic Mobility Applications program. This program seeks to identify, develop, and deploy applications that leverage the full potential of connected vehicles, travelers, and infrastructure in order to enhance current operational practices and transform future surface transportation systems management.

The Dynamic Mobility Applications program will include one or more field demonstrations of applications that integrate IntelliDrive℠ data to support multi-modal performance measurement and performance-based management. The applications are envisioned to include support for both real-time and non real-time decisionmaking and operations. The intent is to conduct one or more demonstrations that include mobility and productivity performance measurement as a cornerstone element of the demonstration plan. Demonstrations selected in this effort will focus on the data collection and processing to produce performance metrics in one, or preferably more, of the following areas:

- Productivity.
- Mobility, including impact on freight movements.
- Livability/Accessibility (accessibility is defined as the ability to reach goods, services and activities).
- Environment/fuel use.
- Pavement conditions (*e.g.,* snow or ice cover, surface roughness, pothole detection).

The DOT seeks comments and innovative ideas from the public sector, private sector, and academic communities concerning the demonstration program described in this RFI. While comments are welcomed on any area of the RFI, the DOT is particularly interested in responses to the questions listed at the end of this RFI.

Dynamic Mobility Applications Demonstration Program Description

This program envisions one or more demonstrations beginning in 2011. The intent of these near-term demonstrations is to begin work with private companies, States, transit agencies, and commercial vehicle operators or freight shippers to develop applications utilizing data captured from multiple sources (*e.g.,* vehicles, travelers, infrastructure) across all elements of the surface transportation system (*i.e.,* transit, freeway, arterial, parking facilities and tollways) to support performance measurement and performance-based management. This demonstration effort aims to leverage existing operational capabilities or to spur innovation among early adopters of innovative performance measurement and mobility applications. The limited number of resources and the short lead time for this effort precludes the large-scale deployment of new in-vehicle or roadside technologies. Therefore, unless a site already has a deployed Dedicated Short Range Communications (DSRC) infrastructure, it is anticipated that any required mobile communications will use existing commercial wireless services.

The performance measurement demonstration(s) should address the following research questions:

- Can system productivity and traveler mobility be characterized in innovative and meaningful new ways by integrating emerging data sources (*i.e.,* vehicles and mobile devices as data sources)?
- To what extent can IntelliDrive℠ be used to support real-time performance-based management of roadways, transit systems, and freight carriers?
- What are the institutional, legal, and technical issues that may help or hinder the use of IntelliDrive℠ to improve performance-based management?
- What wireless and other communications media can be combined to make large-scale data capture and mobility applications cost effective?
- How can diverse data sources be efficiently integrated and utilized?
- Can customer satisfaction with demonstrated applications be identified?

Proposed Performance Measurement Demonstration Program Requirements

All candidate sites and prospective partners will be required to address the following fundamental aspects of the Performance Measurement Demonstration vision, including:

- *Performance measurement.* Well-defined, quantitative performance measures and a clear strategy for evaluating these impacts must be a part of any candidate demonstration. Preliminary thinking on possible measures of interest is provided later in this RFI. More specific guidance will be included in the solicitation. System productivity measures will quantify the efficient movement of travelers and goods under periods of peak demand. Traveler mobility measures will quantify travel delay and improved travel reliability. This specifically includes mobility or accessibility assessments for travelers who utilize transit as a component of end-to-end trip-making. Other measures will characterize the reliability of freight/goods movement within the system. Additional performance areas such as accessibility, environment/fuel use, and pavement conditions should also be considered.
- *Multi-source data capture.* Demonstrations should feature frequent capture and systematic integration of data from a broad range of sources. Desired sources should include multiple types of infrastructure-based sensors, transit vehicle systems (bus and rail), a full range of vehicle types acting as mobile probes (including freight carriers and transit vehicles), and travelers moving between modes as they complete trips.
- *Innovative decision support applications.* These applications should exploit the value of integrated multisource performance data. Applications selected for demonstration should fully and cost effectively leverage captured data to provide innovative services to multiple users. The primary focus is on providing decision support tools (both real-time and non real-time) to traffic managers and transit operators. As a secondary objective, demonstrations may also provide mobility applications targeted at system users, including freight carriers and multimodal travelers. To the greatest extent possible, it is the

intent of the Dynamic Mobility Applications Program to make algorithms and source code associated with new applications or application enhancements funded as a part of these demonstrations to be made freely available under open source agreements.

• *Critical mass demonstration.* Demonstrations should be scoped to be conducted in operational multifacility, multimodal transportation networks spanning urban areas or in interurban corridors. Demonstrations set in laboratory or closed facility test environments are precluded from consideration. Preference will be shown to demonstration proposals combining data drawn from large contemporaneous populations of vehicles or travelers with mobile devices participating as mobile probes concurrently with fixed infrastructure-based sensor systems.

• *Complex Environment.* System performance in each demonstration will be characterized in complex networks containing multiple facility types (*e.g.,* freeway, arterial, parking, transit bus, and rail), considering both the quantity and quality of travelers and goods movement supported by the system in end-to-end trip-making across multiple facilities and modes.

• *No driver distraction effects.* Demonstrated applications will involve collection of information from moving vehicles. The information collection must be conducted in a manner that will not distract drivers or compromise safety. This demonstration will not include applications that require driver interaction while a vehicle is in motion. *See http://www.distraction.gov* for additional information on distracted driving.

• *Data sharing.* A required element of the demonstration(s) is the systematic collection of data (from both mobile and fixed sources). It is the intent to provide open access to these data through the IntelliDrive℠ Data Capture and Management program. These data may be made available as the demonstration is conducted, or made available shortly after the conclusion of the demonstration. These data are intended to support research activity and mobility application development in later phases of the Dynamic Mobility Applications program. If necessary, data may be transformed or aggregated to protect privacy, and the Government will consider allowing transformation or aggregation to protect intellectual property rights.

• *Independent Evaluation.* Demonstrations must contain an impacts evaluation and target user satisfaction assessment for each tested application. An independent evaluation contractor will assist in planning and executing an evaluation plan and will author a national evaluation report.

• *Use of Standards.* Demonstration projects shall make appropriate use of ITS standards for information exchange.

The demonstration(s) should collect the data and implement applications that can calculate the following types of performance metrics and, where appropriate, include applications for acting on the real-time measurement information.

Mode-Independent Overall System Measures. A key element of the demonstration will be the characterization and quantitative measurement of the performance of the overall surface transportation system. This includes the assessment of system performance based on the collective experience of travelers within the system and the ability of the system to efficiently transport people and goods. Measures of interest at the system level include:

• System Delay is travel time in excess of some subjective minimum travel time, or the trip-weighted average delay for corridor, region, or system.

• System Travel Time Reliability represented by the Planning Time Index which is the ratio of the 95th percentile travel time to the travel time under zero-delay conditions, by origin/destination pair, by time period, weighted by trip volume.

• System Throughput is intended to quantify the total number of people and goods transported reliably through the system over a period of peak transportation demand. While there are well established point measures, there is no consensus on a system-wide measure; therefore, innovative ideas for system-wide measures are sought.

Trip-based travel time will likely be a key data element required for all of these measures of interest.

Traffic Measures. Traffic measures of interest characterize performance in a range of conditions, from key bottlenecks, to specific facilities, in freeway/arterial corridors, and in subnetworks (*e.g.,* an arterial grid or freeway network). Both real-time and non real-time measures are sought, including:

• Congested Hours.
• Delay.
• Travel Time Reliability, including the Travel Time Index and the Planning Time Index
• Throughput.
• Speed.

While measures based on road segment are of interest, trip-based measures are of particular interest since such information cannot be easily collected today.

Transit Measures. Real-time and non real-time measures are sought for transit, including measures that apply to fixed-route bus, paratransit, and rail systems:

• Ridership.
• Mode share.
• Passenger throughput.
• Travel time/speed.
• Travel time variability.
• Schedule/headway adherence.
• Delay.
• Station/stop dwell time.
• Miles between transit vehicle failures.
• Revenue miles per vehicle.
• Revenue hours per vehicle.
• Passengers per revenue vehicle-mile.
• Passenger wait time for pickup.
• Passenger and driver no shows.
• Cost per passenger trip.
• Cost per passenger mile.

Freight Measures. Freight and goods movement measures include:

• Planning time index and travel time variance, as described under Traffic Measures, but measured specifically for freight trips.

• Point to point travel times on selected freight-significant routes.

• Hours of delay per 1,000 vehicle miles on selected freight-significant routes.

• Number of bobtail truck trips (*i.e.,* empty truck without a load).

• Truck travel time between origin and destination.

• Truck emissions.

• Idle time at terminals.

Other Measures. Other measures of interest include:

• Accessibility or livability measures on a region-wide basis that may include metrics such as the percentage of population with total commute times less than a set parameter, both by travel mode and overall. Comments and input are sought for appropriate measures.

• Environmental measures, such as fuel use per passenger mile or ton-mile of freight and greenhouse gas emissions per passenger mile or ton-mile of freight.

• Pavement conditions such as snow or ice cover, slippery conditions, surface roughness, or pothole detection.

• Weather-related transportation management such as time to restore to bare pavement, or time to return to pre-event travel speeds after a weather event.

Summary of Questions

A summary of the specific questions posed in this notice follows. Responders are reminded that feedback or

comments on any aspect of this notice is welcomed from all interested public, private, and academic entities. While all feedback is welcomed, the DOT is particularly interested in feedback on the following questions. Respondents may respond, to some, all, or none of these specific questions.

1. Based on the nature of the performance measurement demonstration(s), DOT believes that a multimodal cooperative effort involving both private sector and public sector organizations will be required. The DOT currently envisions awarding one or more contracts to private sector organization(s) as the lead organization(s) in partnership with public transportation agencies and other entities appropriate to develop and conduct the demonstration(s). An alternative would be to conduct a competitive grant program and award one or more grants to public sector organization(s) as the lead(s) organization, engaging and involving other entities as appropriate. Academic institutions are welcomed as team members; however, DOT does not envision an academic institution serving as the lead. Feedback is requested on these procurement options and issues including the challenges in forming the teams as either a lead organization or as a partner or other participant. What forms or demonstrations of commitment by the participants are reasonable and appropriate requirements of respondents to a solicitation for the performance measurement demonstration program?

2. The DOT envisions the demonstration(s) awarded and commencing in early 2011, with the demonstration's(s') applications beginning operations approximately 6 months of preparation and development. The operational period, results analysis, and publication of final results are anticipated to occur over a period that does not exceed 18 months. Is this schedule too cautious, too ambitious, or about right?

3. Are the identified performance metrics the right ones to focus on? Are there metrics or applications that you would add or delete?

4. The goals of this near-term dynamic mobility demonstration program are to demonstrate the use of IntelliDrive℠ to improve the collection of performance measurement information, and to demonstrate the use of this information to support performance-based management, *e.g.,* through the use of decision support tools. To what extent can the real-time or near real-time collection of performance measures be demonstrated, and to what extent can real-time or near real-time performance-based management applications or tools be demonstrated?

5. There are important advantages to conducting a single demonstration, including concentration of resources and funding, ease of management, and demonstration of integrated applications running in a common environment. At the same time, the breadth of envisioned applications and the desire for a diverse operating environment argue for conducting a small number of smaller demonstrations. Is it feasible to address a majority (if not all) of the goals and environments in a single demonstration project? Can multiple meaningful, smaller demonstrations be conducted if the funding per demonstration is $1,000,000 or less?

6. It is the intent to provide open access to the data collected as part of this demonstration through the IntelliDrive℠ Data Capture and Management program.

a. Do you see value in broadly sharing these data with other researchers?

b. Will such data sharing inhibit participation in the demonstration? If so, what mitigation actions do you recommend to encourage participation?

7. To the greatest extent possible, it is the intent of the Dynamic Mobility Applications Program to make algorithms and source code associated with new applications or applications enhancements funded as a part of these demonstrations to be made freely available under open source agreements.

a. Do you see value in making algorithms and application source code funded by this demonstration program broadly available?

b. Will an open source focus inhibit participation in the demonstration? If so, what mitigation actions do you recommend to encourage participation?

Issued on: August 2, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–19534 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Dubois Regional Airport, Reynoldsville, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Dubois Regional Airport, Reynoldsville, Pennsylvania under the provisions of Section 47125(a) of Title 49 United States Code (U.S.C.).

DATES: Comments must be received on or before September 8, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the following address:

Robert W. Shaffer, Manager, Dubois Regional Airport, 377 Aviation Way, Reynoldsville, PA 15851.

and at the FAA Harrisburg Airports District Office:

Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner, Harrisburg Airports District Office location listed above.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Dubois Regional Airport under the provisions of Section 47125(a) of Title 49 U.S.C. On July 30, 2010, the FAA determined that the request to release property at the Dubois Regional Airport submitted by the Clearfield-Jefferson Counties Regional Airport Authority (Authority) met the procedural requirements.

The following is a brief overview of the request:

The Authority requests the release of real property totaling 0.22 acre, of non-aeronautical airport property to Joseph and Rosemary Barber. Also, Joseph and Rosemary Barber desire to transfer real property totaling 0.02 acre to the Authority. The land was originally purchased with Federal funds in 1958, C.A.A Project 9–36–037–5801. The purpose for the change is to transfer land that was airport property but was used as Right-Of-Way (ROW) for State Route (SR) 830. SR 830 was relocated and one half of the ROW width was turned back to the Authority and the other half was turned back to Joseph and Rosemary Barber. The ROW continues to be needed by Joseph and Rosemary Barber to access SR 830 from their property. Therefore, the Authority desires to convey their half of the former ROW to Joseph and Rosemary Barber. Additionally, Joseph and Rosemary Barber wish to convey the small portion of land they obtained when SR 830 was relocated, back to the Authority. The property is located on the north-west

side of the airport and is bordered by the former airport access road and the Barber property. The subject land does not serve an aeronautical purpose and is not needed for airport development, as shown on the Airport Layout Plan. Any proceeds from the sale of property are to be used for the capital development of the airport.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, on August 2, 2010.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2010–19535 Filed 8–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8893

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 8893, Election of Partnership Level Tax Treatment.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election of Partnership Level Tax Treatment.

OMB Number: 1545–1912.

Form Number: 8893.

Abstract: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedure. Form 8893 will allow IRS to better track these elections by providing a standardized format for this election.

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.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hours, 27 minutes.

Estimated Total Annual Burden Hours: 227.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19491 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

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 3911, Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft or destruction of a tax refund, and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

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: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10,000.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19495 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–111583–07, (T.D. 9405) (Final)

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 temporary and final regulations (REG–111583–07) (T.D. 9405), Employment Tax Adjustments.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employment Tax Adjustments.

OMB Number: 1545–2097.

Form Number: REG–111583–07 (T.D. 9405) (final).

Abstract: This document contains temporary or final regulations relating to employment tax adjustments and employment tax refund claims. These regulations modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and Federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code).

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: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 15,000,000.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19496 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–SF

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 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

OMB Number: 1545–1394.

Form Number: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

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.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 26 hours, 31 minutes.

Estimated Total Annual Burden Hours: 26,310.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19497 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–399–88 (T.D. 8261) (T.D. 8434) (T.D. 9315)].

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 final regulation, INTL–399–88 [T.D. 8261; T.D. 8434; T.D. 9315], Treatment of Dual Consolidated Losses (§ 1.1503–2).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Dual Consolidated Losses.

OMB Number: 1545–1083.

Regulation Project Number: [INTL–399–88], [T.D. 8261; T.D. 8434; T.D. 9315].

Abstract: Internal Revenue Code section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. This regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 3 hrs., 14 minutes.

Estimated Total Annual Burden Hours: 1,620 minutes.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19493 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13818—The Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check

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 the Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check.

OMB Number: 1545–2024.

Form Number: Form–13818.

Abstract: This form is used by taxpayers for completing a claim against the United States for the proceeds of an Internal Revenue refund check.

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, Businesses and other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19494 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–125628–01; (TD 9243)(Final)]

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 final and temporary regulations, REG–125628–01, (TD 9243) Revision of Income Tax Regulations under Sections 358, 367, 884, and 6038B Dealing with Statutory Mergers or Consolidations Under Section 368(a)(1)(A) Involving One or More Foreign Corporations.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: REG–125628–01 (TD 9243)(final) Revision of Income Tax Regulations under Sections 358, 367, 884, and 6038B Dealing with Statutory Mergers or Consolidations Under Section 368(a)(1)(A) Involving One or More Foreign Corporations.

OMB Number: 1545–1925.

Regulation Project Number: [REG–125628–01] (TD 9243)(final).

Abstract: The final regulation provides rules regarding the merger or consolidation of domestic or foreign corporations. This collection of information is necessary to preserve U.S. income taxation on gain of certain stock.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 50.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19501 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105344–01; T.D. 9036 (final)]

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 final regulation, REG–105344–01 (TD 9036) Disclosure of Returns and Return Information by Other Agencies (§ 301.6103(p)(2)(B)–1).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Returns and Return Information by Other Agencies.

OMB Number: 1545–1757.

Regulation Project Number: REG–105344–01 (T.D. 9036)(final).

Abstract: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to re-disclose returns and return information based on a written request and the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Federal, estate, local or tribal governments.

Estimated Number of Respondents: 11.

Estimated Time per Respondent: 1 hour.

Estimate Total Annual Burden Hours: 11.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19504 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–3–95]

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 final regulation, INTL–3–95 (TD 8687), Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction (§§ 1.863–1 and 1.863–3).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.

OMB Number: 1545–1476.

Regulation Project Number: INTL–3–95 (TD 8687).

Abstract: This regulation provides rules for allocating and apportioning income from sales of natural resources or other inventory produced in the United States and sold outside the United States or produced outside the United States and sold in the United States. The information provided is used by the IRS to determine on audit whether the taxpayer has properly determined the source of its income from export sales.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 425.

Estimated Time per Respondent: 2 hrs., 30 minutes.

Estimated Total Annual Burden Hours: 1,063 hours.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19508 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–54–94]

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 final regulation, PS–54–94 (TD 8668), Environmental Settlement Funds-Classification (Section 301.7701–4).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Environmental Settlement Funds-Classification.

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94 [T.D. 8668 (final)].

Abstract: This regulation provides guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws. Section 301.7701–4(e)(3) of the regulation provides that the trustee of an environmental remediation trust must furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 minutes.

Estimated Total Annual Burden Hours: 2000.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19506 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–152354–04]

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 final regulation, REG–152354–04, Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, 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 Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).

OMB Number: 1545–1931.

Regulation Project Number: REG–152354–04.

Abstract: These regulations provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements under section 401(k). The IRS needs this information to insure compliance with section 401(k) and (m) and section 402A.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and State, local or Tribal governments.

Estimated Number of Respondents: 157,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 157,500.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19502 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–56

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 Revenue Procedure 2001–56, Demonstration Automobile Use.

DATES: Written comments should be received on or before October 8, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Demonstration Automobile Use.

OMB Number: 1545–1756.

Revenue Procedure Number: Revenue Procedure 2001–56.

Abstract: Revenue Procedure 2001–56 provides optional simplified methods for determining the value of the use of demonstration automobiles provided to employees by automobile dealerships.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100,000.

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: July 30, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–19500 Filed 8–6–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Bayside Savings Bank, Port St. Joe, FL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Bayside Savings Bank, Port St. Joe, Florida, (OTS No. 17957) on July 30, 2010.

Dated: August 2, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–19364 Filed 8–6–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two Entities and Seven Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of two newly-designated entities and seven individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13224, is effective on August 3, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On July 29, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two entities and seven individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. IMAM KHOMEINI RELIEF COMMITTEE (LEBANON BRANCH) (a.k.a. COMITE ISLAMIQUE DAIDES ET DE BIEM LIBAN; a.k.a. EMDAD ASSISTANCE FOUNDATION; a.k.a. EMDAD COMMITTEE FOR ISLAMIC

CHARITY; a.k.a. IMAM KHOMEINI EMDAD COMMITTEE; a.k.a. IMAM KHOMEINI FOUNDATION; a.k.a. IMAM KHOMEINI IMDAD COMMITTEE; a.k.a. IMAM KHOMEINI RELIEF ORGANIZATION; a.k.a. IMAM KHOMEINI SUPPORT COMMITTEE; a.k.a. IMAM KHOMEINY AID COMMITTEE; a.k.a. IMDAD ASSOCIATION OF THE ISLAMIC PHILANTHROPIC COMMITTEE; a.k.a. IMDAD COMMITTEE FOR ISLAMIC CHARITY; a.k.a. IMDAD ISLAMIC ASSOCIATION COMMITTEE FOR CHARITY; a.k.a. ISLAMIC CHARITY EMDAD; a.k.a. ISLAMIC CHARITY EMDAD COMMITTEE; a.k.a. ISLAMIC EMDAD CHARITABLE COMMITTEE; a.k.a. KHOMEINI CHARITABLE FOUNDATION; a.k.a. KHOMEINI SOCIAL HELP COMMITTEE; a.k.a. KOMITE EMDAD EMAM; a.k.a. "AL–IMDAD"), P.O. Box 25–211 Beirut AiRabi' Building, 2nd Floor, Mokdad Street, Haret Hreik, Beirut, Lebanon; P.O. Box 25/221 El Ghobeiry, Beirut, Lebanon [SDGT]

2. IRANIAN COMMITTEE FOR THE RECONSTRUCTION OF LEBANON (a.k.a. IRANIAN COMMISSION FOR REBUILDING SOUTHERN LEBANON; a.k.a. IRANIAN COMMISSION IN LEBANON; a.k.a. IRANIAN COMMITTEE FOR REBUILDING LEBANON; a.k.a. IRANIAN COMMITTEE FOR THE CONTRIBUTION IN THE RECONSTRUCTION OF LEBANON; a.k.a. IRANIAN COMMITTEE TO RECONSTRUCT LEBANON; a.k.a. IRANIAN CONTRIBUTORY ORGANIZATION FOR RECONSTRUCTING LEBANON; a.k.a. IRANIAN HEADQUARTERS FOR THE RECONSTRUCTION OF LEBANON; a.k.a. IRANIAN ORGANIZATION FOR REBUILDING LEBANON; a.k.a. IRANIAN ORGANIZATION FOR RECONSTRUCTION IN LEBANON; a.k.a. IRAN'S HEADQUARTERS FOR THE RECONSTRUCTION OF LEBANON), Near Iranian Embassy, Brazilia Building, 1st Floor, Lebanon [SDGT]

3. ALLAHDAD, Hushang (a.k.a. ALLAHDADI, Hushang; a.k.a. GOLZARI, Sa'id); Passport A0022791; alt. Passport 08550695 (individual) [SDGT]

4. KHOSHNEVIS, Hessam (a.k.a. KHOSH, Hussam; a.k.a. KHOSH–NEVIS, Hesaam; a.k.a. KHOSHNEVIS, Hesam; a.k.a. KHOSH–NEVIS, Hesam; a.k.a. KHOSHNEVIS, Hussam; a.k.a. KHOSHNVIS, Hassan; a.k.a. KHOUCHNOYESS, Hussam); nationality Iran; Passport A0023862 (Iran) (individual) [SDGT]

5. MORTEZAVI, Hasan (a.k.a. MORTEZAVI, Ali Hassan; a.k.a. MORTEZAVI, Majid; a.k.a. MORTEZAVI, Majid Mirali; a.k.a. "ALI, Hassan"); DOB 28 Apr 1961; POB Ghazvin, Iran; citizen Iran; Passport 7572775 (Iran) (individual) [SDGT]

6. MUSAVI, Hossein; DOB 23 Oct 1960; POB Neishabour, Iran; nationality Iran; Passport A0016662 (Iran) issued 29 Oct 2002 (individual) [SDGT]

7. MUSAVI, Razi (a.k.a. MUSAVI, Hosein Razi), Damascus, Syria; DOB 1964 (individual) [SDGT]

8. ZAHEDI, Mohammad Reza (a.k.a. MAHDAVI, Reza; a.k.a. MAHDAWI, Hasan; a.k.a. ZAHDI, Mohammad Riza; a.k.a. ZAHEDI, Ali Reza), Beirut, Lebanon; DOB 1944; POB Esfahan, Iran; nationality Iran (individual) [SDGT]

9. ZURAIK, Ali Hasan (a.k.a. ZRAIQ, Ali; a.k.a. ZREIK, Ali; a.k.a. ZREIK, Ali Hassan; a.k.a. ZURAYQ, Ali); DOB 1952; POB Al Khiyam, Lebanon; Passport RL0266714 (Lebanon); alt. Passport 1082625 (Lebanon) (individual) [SDGT]

Dated: August 3, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–19618 Filed 8–6–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2010–0005]

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket OTS–2010–0006]

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Report to the Congressional Committees.

SUMMARY: The OCC, the FRB, the FDIC, and the OTS (the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate describing differences between the capital and accounting standards used by the agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

OCC: Paul Podgorski, Risk Expert, Capital Policy (202–874–4755), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FRB: John F. Connolly, Manager, Risk Policy and Guidance (202–452–3621) or Kevin H. Wilson, Senior Financial Analyst (202–452–2362), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert F. Storch, Chief Accountant (202–898–8906), Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Christine A. Smith, Project Manager (202–906–5740), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) ("the federal banking agencies" or "the agencies") must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

The agencies are submitting this joint report, which covers differences existing as of December 31, 2009, pursuant to

Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. The capital differences described in this report are the same as those presented in recent years. Prior to the agencies' first joint annual report, Section 37(c) required a separate report from each agency.

Since the agencies filed their first reports on accounting and capital differences in 1990, the agencies have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directed the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be "consistent with the principles of safety and soundness, statutory law and policy, and the public interest." In recent years, the agencies have revised their capital standards to address changes in credit and certain other risk exposures within the banking system and to align the amount of capital institutions are required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible and practicable to minimize interagency differences.

While the differences in capital standards have diminished over time, a few differences remain. Some of the remaining capital differences are statutorily mandated. Others were significant historically but now no longer affect in a measurable way, either individually or in the aggregate, institutions supervised by the federal banking agencies.

In addition to the specific differences in capital standards noted below, the agencies may have differences in how they apply certain aspects of their rules. These differences usually arise as a result of case-specific inquiries that have only been presented to one agency. Agency staffs seek to minimize these occurrences by coordinating responses to the fullest extent reasonably practicable. Furthermore, while the agencies work together to adopt and apply generally uniform capital standards, there are wording differences in various provisions of the agencies' standards that largely date back to each agency's separate initial adoption of these standards before 1990.

The federal banking agencies have substantially similar capital adequacy standards. These standards employ a common regulatory framework that establishes minimum leverage and risk-based capital ratios for all banking organizations (banks, bank holding companies, and savings associations). The agencies view the leverage and risk-based capital requirements as minimum standards, and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

Furthermore, in December 2007, the federal banking agencies issued a new common risk-based capital adequacy framework, "Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II." [1] The final rule requires some qualifying banking organizations, and permits other qualifying banking organizations, to use an advanced internal ratings-based approach to calculate regulatory credit risk capital requirements and advanced measurement approaches to calculate regulatory operational risk capital requirements. It describes the qualifying criteria for banking organizations required or seeking to operate under the new framework and the applicable risk-based capital requirements for banking organizations that operate under the framework. Because the agencies adopted a joint final rulemaking establishing a common framework, there are no differences among the agencies' Basel II rules.

The risk-based capital differences described below have arisen under the agencies' Basel I-based risk-based capital standards.

The OCC, the FRB, and the FDIC, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Consolidated Reports of Condition and Income (Call Reports) for all insured commercial banks and state-chartered savings banks. The OTS requires each OTS-supervised savings association to file the Thrift Financial Report (TFR). The reporting standards for recognition and measurement in the Call Reports and the TFR are consistent with U.S. generally accepted accounting principles (GAAP). Thus, there are no significant differences in regulatory accounting standards for regulatory reports filed with the federal banking agencies. In 2009, the OTS eliminated the only minor difference remaining between the accounting standards of the OTS and those of the other federal banking agencies, and that difference related to push-down accounting, as more fully explained below.

[1] 72 FR 69288, December 7, 2007.

With regard to the capital difference pertaining to covered assets discussed below, the OTS will clarify in the TFR instructions that its capital rule that allows a zero percent risk-weight for covered assets applies only to those assets initially covered by the Federal Savings and Loan Insurance Corporation (FSLIC), regardless of any successor agency.

Differences in Capital Standards Among the Federal Banking Agencies

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA) establishes the framework for financial subsidiaries of banks.[2] GLBA amends the National Bank Act to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 121(a) of the GLBA (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including specifying the treatment that applies for regulatory capital purposes. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

State member banks may have financial subsidiaries subject to all of the same restrictions that apply to national banks.[3] State nonmember banks may also have financial subsidiaries, but they are subject only to a subset of the statutory requirements that apply to national banks and state

[2] A national bank that has a financial subsidiary must satisfy a number of statutory requirements in addition to the capital deduction and deconsolidation requirements described in the text. The bank (and each of its depository institution affiliates) must be well capitalized and well managed. Asset size restrictions apply to the aggregate amount of the assets of all of the bank's financial subsidiaries. Certain debt rating requirements apply, depending on the size of the national bank. The national bank is required to maintain policies and procedures to protect the bank from financial and operational risks presented by the financial subsidiary. It is also required to have policies and procedures to preserve the corporate separateness of the financial subsidiary and the bank's limited liability. Finally, transactions between the bank and its financial subsidiary generally must comply with the Federal Reserve Act's (FRA) restrictions on affiliate transactions and the financial subsidiary is considered an affiliate of the bank for purposes of the anti-tying provisions of the Bank Holding Company Act. *See* 12 U.S.C. 5136A.

[3] *See* 12 U.S.C. Section 335 (state member banks subject to the "same conditions and limitations" that apply to national banks that hold financial subsidiaries).

member banks.[4] Finally, national banks, state member banks, and state nonmember banks may not establish or acquire a financial subsidiary or commence a new activity in a financial subsidiary if the bank, or any of its insured depository institution affiliates, has received a less than satisfactory rating as of its most recent examination under the Community Reinvestment Act.[5]

The OCC, the FDIC, and the FRB adopted final rules implementing their respective provisions of Section 121 of GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001. GLBA did not provide new authority to OTS-supervised savings associations to own, hold, or operate financial subsidiaries, as defined.

Subordinate Organizations Other Than Financial Subsidiaries

Banks supervised by the OCC, the FRB, and the FDIC generally consolidate all significant majority-owned subsidiaries other than financial subsidiaries for regulatory capital purposes. For subsidiaries other than financial subsidiaries that are not consolidated on a line-for-line basis for financial reporting purposes, joint ventures, and associated companies, the parent banking organization's investment in each such subordinate organization is, for risk-based capital purposes, deducted from capital or assigned to the 100 percent risk-weight category, depending upon the circumstances. The FRB's and the FDIC's rules also permit the banking organization to consolidate the investment on a pro rata basis in appropriate circumstances.

Under the OTS's capital regulations, a statutorily mandated distinction is drawn between subsidiaries, which generally are majority-owned, that are engaged in activities that are permissible for national banks and those that are engaged in activities "impermissible" for national banks. Where subsidiaries engage in activities that are impermissible for national banks, the OTS requires the deduction of the parent's investment in these subsidiaries from the parent's assets and capital for regulatory capital purposes. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent on a line-for-line basis. If a subordinate organization, other than a subsidiary, engages in impermissible activities, the OTS will generally deduct investments in and loans to that organization for regulatory capital purposes.[6] If such a subordinate organization engages solely in permissible activities, the OTS may, depending upon the nature and risk of the activity, either assign investments in and loans to that organization to the 100 percent risk-weight category or require full deduction of the investments and loans.

Collateralized Transactions

The FRB and the OCC assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or the central governments of other countries that are members of the Organization for Economic Cooperation and Development (OECD). The OCC and the FRB rules require the collateral to be marked to market daily and a positive margin of collateral protection to be maintained daily. The FRB requires qualifying claims to be fully collateralized, while the OCC rule permits partial collateralization.

The FDIC and the OTS assign a zero percent risk weight to claims on qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or other OECD central governments. The FDIC and the OTS accord a 20 percent risk weight to such claims on other parties.

Noncumulative Perpetual Preferred Stock

Under the federal banking agencies' capital standards, noncumulative perpetual preferred stock is a component of Tier 1 capital. The capital standards of the OCC, the FRB, and the FDIC require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and to provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

As a result of these requirements, if a bank supervised by the OCC, the FRB, or the FDIC issues perpetual preferred stock and is required to pay dividends in a form other than cash, e.g., stock, when cash dividends are not or cannot be paid, the bank does not have the option to waive or eliminate dividends, and the stock would not qualify as noncumulative. If an OTS-supervised savings association issues perpetual preferred stock that requires the payment of dividends in the form of stock when cash dividends are not paid, the stock may, subject to supervisory approval, qualify as noncumulative.

Equity Securities of Government-Sponsored Enterprises

The FRB, the FDIC, and the OTS apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs), other than the 20 percent risk weighting of Federal Home Loan Bank stock held by banking organizations as a condition of membership. The OCC applies a 20 percent risk weight to all GSE equity securities.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The OCC, the FRB, and the FDIC limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to 50 percent of Tier 1 capital. The OTS does not prescribe such a restriction. The OTS does, however, limit the amount of Tier 2 capital to 100 percent of Tier 1 capital, as do the other agencies.

In addition, for banking organizations supervised by the OCC, the FRB, and the FDIC, at the beginning of each of the last five years of the life of a subordinated debt or limited-life preferred stock instrument, the amount that is eligible for inclusion in Tier 2 capital is reduced by 20 percent of the original amount of that instrument (net of redemptions). The OTS provides thrifts the option of using either the discounting approach used by the other federal banking agencies, or an approach which, during the last seven years of the instrument's life, allows for the full inclusion of all such instruments, provided that the aggregate amount of such instruments maturing in any one year does not exceed 20 percent of the thrift's total capital.

Tangible Capital Requirement

Savings associations supervised by the OTS, by statute, must satisfy a 1.5 percent minimum tangible capital

[4] The applicable statutory requirements for state nonmember banks are as follows. The bank (and each of its insured depository institution affiliates) must be well capitalized. The bank must comply with the capital deduction and deconsolidation requirements. It must also satisfy the requirements for policies and procedures to protect the bank from financial and operational risks and to preserve corporate separateness and limited liability for the bank. Further, transactions between the bank and a subsidiary that would be classified as a financial subsidiary generally are subject to the affiliate transactions restrictions of the FRA. *See* 12 U.S.C. Section 1831w.

[5] *See* 12 U.S.C. Section 1841*(l)*(2).

[6] *See* 12 CFR Section 559.2 for the OTS's definition of subsidiary and subordinate organization.

requirement. Other subsequent statutory and regulatory changes, however, imposed higher capital standards rendering it unlikely, if not impossible, for the 1.5 percent tangible capital requirement to function as a meaningful regulatory trigger. This statutory tangible capital requirement does not apply to institutions supervised by the OCC, the FRB, or the FDIC.

Market Risk Rule

In 1996, the OCC, the FRB, and the FDIC adopted rules requiring banks and bank holding companies with significant exposure to market risk to measure and maintain capital to support that risk. The OTS did not adopt a market risk rule because no OTS-supervised savings association engaged in the threshold level of trading activity addressed by the other agencies' rules. As the nature of many savings associations' activities has changed since 1996, market risk has become an increasingly more significant risk factor to consider in the capital management process. Accordingly, the OTS joined the other agencies in proposing a revised market risk rule in 2006.[7] The Basel Committee on Banking Supervision published its "Revisions to the Basel II Market Risk Framework" in July 2009, which the agencies are currently working to implement in the U.S.

Pledged Deposits, Nonwithdrawable Accounts, and Certain Certificates

The OTS's capital regulations permit mutual savings associations to include in Tier 1 capital pledged deposits and nonwithdrawable accounts to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods. The OTS also permits the inclusion of net worth certificates, mutual capital certificates, and income capital certificates complying with applicable OTS regulations in savings associations' Tier 2 capital. In the aggregate, however, these deposits, accounts, and certificates are only a negligible amount, if any, of the Tier 1 or Tier 2 capital of OTS-supervised savings associations. The OCC, the FRB, and the FDIC do not expressly address these instruments in their regulatory capital standards, and they generally are not recognized as Tier 1 or Tier 2 capital components.

Covered Assets

The OCC, the FRB, and the FDIC generally place assets subject to guarantee arrangements by the FDIC or the former FSLIC in the 20 percent risk-weight category. The OTS has placed certain "covered assets" in the zero percent risk-weight category.[8] In the aggregate, the amount of assets originally covered by the FSLIC that are reported by OTS-supervised savings associations is negligible. In the second quarter of 2010, the OTS will revise the instructions to the TFR regulatory capital schedule to specify that only that portion of assets that were fully covered against capital loss and/or by yield maintenance agreements initially by the FSLIC, regardless of any later successor agency such as the FDIC, may receive a zero percent risk weight. The federal banking agencies issued a Joint Statement, *Clarification of the Risk Weight for Claims on or Guaranteed by the FDIC,* on February 26, 2010, that clarifies the risk weights for claims on or guaranteed by the FDIC for purposes of banking organizations' risk-based capital requirements. Recent loss-sharing agreements entered into by the FDIC with acquirers of assets from failed institutions are considered conditional guarantees for risk-based capital purposes due to contractual conditions that acquirers must meet. The guaranteed portion of assets subject to an FDIC loss-sharing agreement may be assigned a 20 percent risk weight. Any covered assets reported by a savings association other than those meeting 12 CFR Section 567.6(a)(1)(i)(F) may similarly receive a 20 percent risk weight.

Differences in Accounting Standards Among the Federal Banking Agencies

Push-Down Accounting

Push-down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of the institution becoming substantially wholly owned. Under push-down accounting, when a depository institution is acquired in a purchase, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution, as well as in any consolidated financial statements of the institution's parent.

The OCC, the FRB, and the FDIC require the use of push-down accounting for regulatory reporting purposes when an institution's voting stock becomes at least 95 percent owned by an investor or a group of investors acting collaboratively. The OTS had required the use of push-down accounting when an institution's voting stock became at least 90 percent owned by an investor or investor group. In 2009, the OTS adopted the same push-down threshold as the OCC, the FRB, and the FDIC, eliminating this accounting difference. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

Dated: July 12, 2010.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 30, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of June 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: June 2, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–19499 Filed 8–6–10; 8:45 am]

BILLING CODE 6720–01–P 6219–01–P 6714–01–P 6720–01–P

[7] 71 FR 55958 (September 25, 2006). This NPR was not finalized.

[8] *See* 12 CFR 567.6(a)(1)(i)(F).

Federal Register

Monday,
August 9, 2010

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Cranes and Derricks in Construction; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID–OSHA–2007–0066]

RIN 1218–AC01

Cranes and Derricks in Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is revising the Cranes and Derricks Standard and related sections of the Construction Standard to update and specify industry work practices necessary to protect employees during the use of cranes and derricks in construction. This final standard also addresses advances in the designs of cranes and derricks, related hazards, and the qualifications of employees needed to operate them safely. Under this final rule, employers must determine whether the ground is sufficient to support the anticipated weight of hoisting equipment and associated loads. The employer is then required to assess hazards within the work zone that would affect the safe operation of hoisting equipment, such as those of power lines and objects or personnel that would be within the work zone or swing radius of the hoisting equipment. Finally, the employer is required to ensure that the equipment is in safe operating condition via required inspections and that employees in the work zone are trained to recognize hazards associated with the use of the equipment and any related duties that they are assigned to perform.

DATES: This final rule will become effective November 8, 2010.

The incorporation by reference of specific publications listed in this final rule is approved by the Director of the Federal Register as of November 8, 2010.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), the Agency designates Joseph M. Woodward, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries.* Contact Ms. Jennifer Ashley, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999 or fax (202) 693–1634.

• *Technical inquiries.* Contact Mr. Garvin Branch, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020 or fax (202) 693–1689.

• *Copies of this* **Federal Register** *notice.* Available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888.

• *Electronic copies of this notice.* Go to OSHA's Web site (*http://www.osha.gov*), and select "Federal Register," "Date of Publication," and then "2010."

SUPPLEMENTARY INFORMATION: *Availability of Incorporated Standards.* The standards published by the American National Standards Institute (ANSI), the American Society of Mechanical Engineers (ASME), the American Welding Society (AWS), the British Standards Institution (BSI), the International Organization for Standardization (ISO), the Power Crane and Shovel Association (PCSA), and the Society of Automotive Engineers (SAE) required in subpart CC are incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the editions specified in subpart CC, the Occupational Safety and Health Administration (OSHA) must publish a notice of change in the **Federal Register** and the material must be available to the public.

All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, the material is available for inspection at any OSHA Regional Office or the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone 202–693–2350 (TTY number: 877–889–5627)).

I. General

A. Table of Contents

The following Table of Contents identifies the major preamble sections in this notice and the order in which they are presented:

II. Background

A. History

The Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651 *et seq.*) (the OSH Act) authorizes the Secretary of Labor to adopt safety and health standards to reduce injuries and illnesses in American workplaces. Pursuant to that authority, the Secretary adopted a set of safety and health standards applicable to the construction industry, 29 CFR part 1926. Initially, standards for the construction industry were adopted under the Construction Safety Act, 40 U.S.C. 333. Under the Construction Safety Act, those standards were limited to employers engaged in Federally-financed or Federally-assisted construction projects. The Secretary subsequently adopted them as OSHA standards pursuant to Sec. 6(a) of the OSH Act, 29 U.S. C. 655(a), which authorized the Secretary to adopt established Federal standards as OSH Act standards within the first two years the OSH Act was effective (*see* 36 FR 25232, Dec. 30, 1971). Subpart N of 29 CFR part 1926, entitled "Cranes, Derricks, Hoists, Elevators, and Conveyors," was originally adopted through this process.

The section of subpart N of 29 CFR part 1926 that applied to cranes and derricks was former § 1926.550. That section relied heavily on national consensus standards that were in effect in 1971, in some cases incorporating the consensus standards by reference. For example, former § 1926.550(b)(2) required crawler, truck, and locomotive cranes to meet applicable requirements for design, inspection, construction, testing, maintenance, and operation prescribed in ANSI B30.5–1968, "Crawler, Locomotive and Truck Cranes." Similarly, former § 1926.550(e)

required derricks to meet applicable requirements for design, construction, installation, inspection, testing, maintenance, and operation prescribed in ANSI B30.6–1969, "Derricks." Until today, former § 1926.550 was amended substantively only twice. In 1988, former § 1926.550(g) was added to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes and derricks (*see* 53 FR 29116, Aug. 2, 1988). In 1993, former § 1926.550(a)(19) was added to require that all employees be kept clear of lifted and suspended loads.

Considerable technological advances have been made since the 1971 OSHA standard was issued. For example, hydraulic cranes were rare at that time, but are now prevalent. In addition, the construction industry has updated the consensus standards on which the original OSHA standard was based. For example, the industry consensus standard for derricks was most recently updated in 2003, and that for crawler, locomotive and truck cranes in 2007.

In recent years, a number of industry stakeholders asked the Agency to update subpart N's cranes and derrick requirements. They were concerned that accidents involving cranes and derricks continued to be a significant cause of fatal and other serious injuries on construction sites and believed that an updated standard was needed to address the causes of these accidents and to reduce the number of accidents. They emphasized that the considerable changes in both work processes and technology since 1971 made much of former § 1926.550 obsolete.

In response to these requests, in 1998 OSHA's Advisory Committee for Construction Safety and Health (ACCSH) established a workgroup to develop recommended changes to the subpart N requirements for cranes and derricks. The workgroup developed recommendations on some issues and submitted them to the full committee in a draft workgroup report. (ID–0020.) In December 1999, ACCSH recommended to OSHA that the agency consider using a negotiated rulemaking process as the mechanism to update subpart N. (OSHA–ACCSH1999–4–2006–0187–0035.)

B. The Cranes and Derricks Negotiated Rulemaking Advisory Committee (C–DAC)

In July 2002, OSHA announced plans to use negotiated rulemaking under the Negotiated Rulemaking Act (NRA), 5 U.S.C. 561 *et seq.,* to revise the cranes and derricks standard. The Agency made this decision in light of the stakeholder interest in updating subpart N, the constructive discussions and work of the ACCSH workgroup, ACCSH's recommendation, a positive assessment of the criteria listed in the NRA (5 U.S.C. 563(a)) for the use of negotiated rulemaking, and the Department of Labor's policy on negotiated rulemaking (*see* "Notice of Policy on Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor," 57 FR 61925, Dec. 29, 1992). The Agency published a Notice of Intent to Establish a Cranes and Derricks Negotiated Rulemaking Advisory Committee ("C–DAC" or "the Committee")) (*see* 67 FR 46612, Jul. 16, 2002).

Negotiated rulemaking is a process by which a proposed rule is developed by a committee comprised of members who represent the interests that will be significantly affected by the rule. Section 562 of the NRA defines "interest" as follows:

> "[I]nterest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.

By including different viewpoints in the negotiation process, the members of a negotiated rulemaking committee learn the reasons for different positions on the issues as well as the practical effect of various approaches. Each member of the committee participates in resolving the interests and concerns of other members. Negotiation allows interested parties, including members who represent the interests of employers subject to the prospective rule and the employees who will benefit from the safer workplaces the rule will produce, to become involved at an earlier stage of the rulemaking process. As a result, the rule that OSHA proposes would receive close scrutiny by affected parties at the pre-proposal stage.

The goal of the negotiated rulemaking process is to develop a proposed rule that represents a consensus of all the interests. The NRA defines consensus as unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee itself unanimously agrees to use a different definition of consensus. As discussed below, C–DAC agreed by unanimous vote to a different definition: A consensus would be reached on an issue when not more than two non-Federal members dissented on that issue.

In the July 2002 **Federal Register** notice announcing negotiated rulemaking on cranes and derricks mentioned earlier, the Agency listed key issues that it expected the negotiations to address, and the interests that OSHA tentatively identified as being significantly affected by the rulemaking. The key interests were:

—Crane and derrick manufacturers, suppliers, and distributors.
—Companies that repair and maintain cranes and derricks.
—Crane and derrick leasing companies.
—Owners of cranes and derricks.
—Construction companies that use cranes and derricks.
—General contractors.
—Labor organizations representing construction employees who operate cranes and derricks.
—Labor organizations representing construction employees who work in conjunction with cranes and derricks.
—Owners of electric power distribution lines.
—Civil, structural and architectural engineering firms and engineering consultants involved with the use of cranes and derricks in construction.
—Training organizations.
—Crane and derrick operator testing organizations.
—Insurance and safety organizations, and public interest groups.
—Trade associations.
—Government entities involved with construction safety and with construction operations involving cranes and derricks.

In the **Federal Register** notice, OSHA asked for public comment on whether interests other than those listed would be significantly affected by a new rule. It also solicited requests for membership on the Committee. OSHA also urged interested parties form coalitions to support individuals identified for nomination to the Committee.

The Agency noted that the need to limit the Committee's membership to a number that could conduct effective negotiations may result in some interests not being represented on the Committee. OSHA further noted that interested persons had means other than Committee membership available to participate in the Committee's deliberations, including attending meetings and addressing the Committee, providing written comments to the Committee, and participating in Committee workgroups (*see* 67 FR 46612, 46615, Jul. 16, 2002).

In response to its request for public input, the Agency received broad support for using negotiated rulemaking, as well as 55 nominations for committee membership. To keep membership to a reasonable size, OSHA tentatively listed 20 potential committee members, and asked for public comment on the proposed list (*see* 68 FR 9036,

Feb. 27, 2003). In response to the comments, OSHA added three members to the committee—individuals from the mobile crane manufacturing industry, the Specialized Carriers & Rigging Association, and the outdoor advertising industry (*see* 68 FR 39879, Jul. 3, 2003).

The members of the Committee, the organizations and interests they represent, and a summary of their qualifications at the time the Committee was formed are in Table 1 below:

TABLE 1—THE QUALIFICATIONS OF C–DAC MEMBERS

Stephen Brown, International Union of Operating Engineers (labor)
Title: Director of Construction Training, International Union of Operating Engineers.
Organizations/interests represented: Organized construction employees who operate cranes and derricks, and work with such equipment.
Experience: Worked in numerous positions in the construction industry over 28 years, including Equipment Operator, Mechanic, and Training Director.

Michael Brunet, Manitowoc Cranes, Inc. (manufacturers and suppliers)
Title: Director of Product Support for Manitowoc Cranes.
Organizations/interests represented: Crane manufacturers, suppliers, and distributors.
Experience: Extensive engineering experience in crane engineering; participated in development of SAE and ISO standards for cranes.

Stephen P. Chairman, Viacom Outdoor, Inc. (employer users)
Title: Vice President (New York) of Viacom Outdoor Group.
Organizations/interests represented: Billboard construction.
Experience: Over 43 years' experience with the construction industry, including specialized rigging.

Joseph Collins, Zachry Construction Corporation (employer users)
Title: Crane Fleet Manager.
Organizations/interests represented: Highway and railroad construction.
Experience: Over 30 years' experience with the construction industry in a variety of positions including crane operator, mechanic, and rigger.

Noah Connell, U.S. Department of Labor, Occupational Safety and Health Administration (government)
Title: Director, Office of Construction Standards and Guidance.
Organization/interests represented: Government.
Experience: 22 years' experience with government safety and health programs.

Peter Juhren, Morrow Equipment Company, L.L.C. (manufacturers and suppliers)
Title: National Service Manager.
Organization/interests represented: Tower crane distributors and manufacturers.
Experience: 22 years' experience with Morrow Equipment Company, L.L.C.

Bernie McGrew, Link-Belt Construction Equipment Corp. (manufacturers and suppliers)
Title: Manager for Crane Testing, Product Safety, Metal Labs and Technical Computing.
Organization/interests represented: Mobile crane manufacturers.
Experience: Extensive engineering experience in crane engineering.

Larry Means, Wire Rope Technical Board (manufacturers and suppliers)
Title: Rope Engineer.
Organization/interests represented: Wire rope manufacturing industry.
Experience: 36 years' wire rope engineering experience.

Frank Migliaccio, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (labor organization)
Title: Executive Director for Safety and Health.
Organization/interests represented: Organized construction employees who operate cranes and derricks, and work with such equipment.
Experience: 31 years' experience in the ironworking industry, including 10 years as Director of Safety and Health Training for the Ironworker's National Fund.

Brian Murphy, Sundt Corporation (employer users)
Title: Vice President and Safety Director.
Organization/interests represented: General contractors; crane owners and users.
Experience: Over 35 years' experience in the construction industry, most of them with Sundt Corp.

George R. "Chip" Pocock, C.P. Buckner Steel Erection (employer users)
Title: Safety and Risk Manager.
Organization/interests represented: Steel erection crane users and employers.
Experience: Over 22 years' experience in the construction and steel erection industry.

David Ritchie, St. Paul Companies (trainer and operator testing)
Title: Crane and Rigging Specialist.
Organization/interests represented: Employee training and evaluation.
Experience: Over 31 years' experience in the construction industry.

Emmett Russell, International Union of Operating Engineers (IUOE) (labor)
Title: Director of Safety and Health.
Organization/interests represented: Organized construction employees who operate cranes and derricks, and work with such equipment.
Experience: Over 32 years' experience in the crane and construction industry, including 10 years in the field as well as over 20 years with IUOE.

Dale Shoemaker, Carpenters International Training Center (labor)
Organization/interests represented: Labor organizations representing construction employees who operate cranes and derricks and who work with cranes and derricks.
Experience: Became a crane operator in 1973; served as a rigging trainer for labor organizations since 1986.

William Smith, Maxim Crane Works (lessors/maintenance)
Title: Corporate Safety/Labor Relations Manager.
Organization/interests represented: Crane and derrick repair and maintenance companies.
Experience: 24 years' experience in the crane, rigging, and construction industry, both public and private sectors.

Craig Steele, Schuck & Sons Construction Company, Inc. (employer users)
Title: President and CEO.
Organization/interests represented: Employers and users engaged in residential construction.
Experience: 30 years' experience in the construction industry with Schuck & Sons Construction Company, Inc.

TABLE 1—THE QUALIFICATIONS OF C–DAC MEMBERS—Continued

Darlaine Taylor, Century Steel Erectors, Inc. (employer users)
Title: Vice President.
Organization/interests represented: Steel erection and leased crane users.
Experience: 19 years' with Century Steel Erectors, over 12 years' in the construction safety field.
Wallace Vega III, Entergy Corp. (power line owners)
Organization/interests represented: Power line owners.
Experience: 35 years' experience in the power line industry.
William J. "Doc" Weaver, National Electrical Contractors Association (employer users)
Organization/interests represented: Electrical contractors engaged in power line construction.
Experience: Over 53 years' electrical construction experience, 37 of which spent in management positions.
Robert Weiss, Cranes, Inc. and A.J. McNulty & Company, Inc. (employer users)
Title: Vice President and Project Manager for Safety.
Organization/interests represented: Employers and users engaged in precast concrete erection.
Experience: 20 years' experience in the precast and steel erection industry.
Doug Williams, C.P. Buckner Steel Erection (employer users)
Title: President.
Organization/interests represented: Buckner Heavy Lift Cranes.
Experience: 32 years' experience in the construction industry.
Stephen Wiltshire, Sports and Public Assembly Group, Turner Construction Corp. (employer users)
Title: National Safety Director.
Organization/interests represented: Employers and users of owned and leased cranes.
Experience: 28 years' experience in construction safety.
Charles Yorio, Acordia (Wells Fargo) (insurance)
Title: Assistant Vice President.
Organization/interests represented: Insurance.
Experience: 17 years' experience in loss prevention and regulatory compliance.

As this summary of qualifications shows, the Committee members had vast and varied experience in cranes and derricks in construction, which gave them a wealth of knowledge in the causes of accidents and other safety issues involving such equipment. The members used this knowledge to identify issues that required particular attention and to devise regulatory language that would address the causes of such accidents. Their extensive practical experience in the construction industry and the other industries represented on the Committee helped them to develop revisions to the current subpart N requirements.

C–DAC was chaired by a facilitator, Susan L. Podziba of Susan Podziba & Associates, a firm engaged in public policy mediation and consensus building. Ms. Podziba's role was to facilitate the negotiations by: (1) Chairing the Committee's meetings in an impartial manner; (2) Assisting the members of the committee in conducting discussions and negotiations; and (3) Ensuring minutes of the meetings were taken, and relevant records retained; (4) Performing other responsibilities such as drafting meeting summaries to be reviewed and approved by C–DAC members.

C–DAC first met from July 30 to August 1, 2003. Before addressing substantive issues, the Committee developed ground rules (formally approved on September 26, 2003) that would guide its deliberations. (OSHA–S030–2006–0663–0373.) In addition to procedural matters, the ground rules addressed the Committee's decision-making process. C–DAC agreed that it would make every effort to reach unanimous agreement on all issues. However, if the facilitator determined that unanimous consent could not be achieved, the Committee would consider consensus to be reached when not more than two non-Federal members (*i.e.,* members other than the OSHA member) dissented; no consensus could be achieved if OSHA dissented.

This consensus process reflects the non-Federal members' view that Agency support of the Committee's work was essential. The non-Federal members believed that, if OSHA dissented, the Committee's work product likely would not be included in the final rule. Therefore, the Committee members would make every effort to resolve the Agency's concerns using the negotiation process.

Under the ground rules, if C–DAC reached final consensus on some or all issues, OSHA would use the consensus-based language in its proposed standard, and C–DAC members would refrain from providing formal written negative comment on those issues in response to the proposed rule.

The ground rules provided that OSHA could only depart from the consensus-based language by (1) reopening the negotiated rulemaking process, or (2) providing the C–DAC members with a detailed statement of the reasons for revising the consensus-based language, and do so in a manner that would allow the C–DAC members to express their concerns to OSHA before it published the proposed rule. The Committee members also could provide negative or positive comments in response to these revisions during the public-comment phase of the rulemaking. (OSHA–S030–2006–0663–0373.)

A tentative list of issues for the Committee to address was published along with the final list of Committee members (68 FR at 39877, Jul. 3, 2003). At its initial meeting, the Committee reviewed and revised the issue list, adding several issues. (OSHA–S030–2006–0663–0372.) The Committee met 11 times between July 30, 2003 and July 9, 2004. As the meetings progressed, the Committee reached consensus agreement on various issues and, at the final meeting, reached consensus agreement on all outstanding issues.

The Committee's work product, which was the Committee's recommended regulatory text for the proposed rule, is referred to in this notice as the "C–DAC Document." (OSHA–S030–2006–0663–0639.) On October 12, 2006, ACCSH adopted a resolution supporting the C–DAC Document and recommending that OSHA use it as the basis for a proposed standard. (OSHA–ACCSH2006–1–2006–0198–0021.)

OSHA issued a proposed rule based on the C–DAC Document on October 9, 2008 (73 FR 59713, Oct. 9, 2008). In reviewing the C–DAC Document and drafting the proposed rule, OSHA identified several problems in the C–DAC Document. These problems ranged from misnumbering and other typographical and technical errors, to

provisions that appeared to be inconsistent with the Committee's purpose, or that were worded in a manner that required clarification. The proposed rule deviated from the C–DAC Document when revisions were clearly needed to validly represent the Committee's purpose or to correct typographical and technical errors. With respect to substantive revisions, the Agency identified and explained these revisions in the portions of the preamble to the proposed rule that addressed the affected provisions. OSHA also prepared a draft of the proposed regulatory language identifying each instance in which the proposed rule differed from the C–DAC Document. In accordance with the ground rules, prior to publication of the proposed rule in the **Federal Register**, OSHA provided the draft showing the revisions to the C–DAC Document, along with its draft of the summary and explanation of the proposed rule, to the C–DAC members.

Additionally, the Agency identified other instances in which the regulatory text drafted by the Committee did not appear to conform to the Committee's purpose, or instances in which a significant issue did not appear to have been considered by C–DAC. In these instances, OSHA retained the regulatory language used in the C–DAC Document, but asked for public comment on whether specific revisions should be made to the proposed regulatory language in the final rule.

The proposed rule set a deadline of December 8, 2008, for the public to submit comments on the proposal. At the request of a number of stakeholders, this deadline was subsequently extended to January 22, 2009 (73 FR 73197, Dec. 2, 2009). On March 17, 2009, OSHA convened a public hearing on the proposal, with Administrative Law Judge John M. Vittone presiding. The hearing lasted four days, closing on March 20. In addition to Judge Vittone, Administrative Law Judge William S. Colwell presided during the last part of the hearing. At the close of the hearing, Judge Colwell established a posthearing comment schedule. Participants were given until May 19, 2009 to supplement their presentations and provide data and information in response to questions and requests made during the hearing, make clarifications to the testimony and record that they believed were appropriate, and submit new data and information that they considered relevant to the proceeding. Participants also were given until June 18, 2009, to comment on the testimony and evidence in the record, including testimony presented at the hearing and material submitted during the first part of the posthearing comment period.

C. Hazards Associated With Cranes and Derricks in Construction Work

OSHA estimates that 89 crane-related fatalities occur per year in construction work. The causes of crane-related fatalities were recently analyzed by Beavers, *et al.* (*See* J.E. Beavers, J.R. Moore, R. Rinehart, and W.R. Schriver, "Crane-Related Fatalities in the Construction Industry," 132 Journal of Construction Engineering and Management 901 (Sept. 2006) (ID OSHA–2007–0066–0012 [1]).) The authors searched OSHA's Integrated Management Information System (IMIS) database for all fatal accidents for 1997–2003 investigated by OSHA involving cranes in the construction industry. By searching the database for cases using the key words "crane," "derrick," or "boom," they identified 381 IMIS files for the covered year in the Federal program states, which include states with about 57% of all workers throughout the country. The authors requested the case files from OSHA so that they could confirm that a crane or derrick was involved in the fatality. Of the 335 case files that OSHA provided, the authors identified 125 (involving 127 fatalities) as being crane or derrick related. From these files, they determined the percentages of fatalities caused by various types of incidents (*see* Table 2 below).

TABLE 2—THE CAUSES OF FATALITIES DURING THE PERFORMANCE OF HOISTING ACTIVITIES

Struck by load (other than failure of boom/cable)	32%
Electrocution	27%
Crushed during assembly/disassembly	21%
Failure of boom/cable	12%
Crane tip-over	11%
Struck by cab/counterweight	3%
Falls	2%

A study by Suruda *et al.* examined the causes of crane-related deaths for the 1984–1994 period. (*See* A. Suruda, M. Egger, and D. Liu, "Crane-Related Deaths in the U.S. Construction Industry, 1984–94," The Center to Protect Workers' Rights (Oct. 1997) (ID–0013).) The authors examined OSHA IMIS data to identify the number of fatal accidents involving cranes, and determined their causes. For the years in question, they found 479 accidents involving 502 fatalities. In the worst year, 1990, 70 deaths occurred. The authors noted some limitations in the data they examined: Data for California, Michigan, and Washington State were not available for 1984–1989; the proportion of fatal accidents investigated by OSHA and states having OSHA-approved State plans is unknown; and some of the investigation reports were not sufficiently detailed to allow the authors to determine the cause of the accident or the type of crane involved.

The Suruda study determined the number and the percentage of fatalities from various causes (*see* Table 3 below).

TABLE 3—THE CAUSES OF CRANE INCIDENTS

Electrocution	198 (39%)
Crane assembly/disassembly	58 (12%)
Boom buckling/collapse	41 (8%)
Crane upset/overturn	37 (7%)
Rigging failure	36 (7%)
Overloading	22 (4%)
Struck by moving load	22 (4%)
Accidents related to manlifts	21 (4%)
Working within swing radius of counterweight	17 (3%)
Two-blocking	11 (2%)
Hoist limitations	7 (1%)
Other causes	32 (6%)

This final standard addresses the major causes of the equipment-related fatalities identified in the Beavers and Suruda studies. The following synopsis identifies the sections in the final standard that address the major causes of equipment-related fatalities.

Electrocution hazards are addressed by §§ 1926.1407–1926.1411, which deal with power-line safety. These sections contain requirements to prevent equipment from contacting energized power lines. The final standard delineates systematic, reliable procedures and methods that employers must use to prevent a safe clearance distance from being breached. If maintaining the safe clearance distance is infeasible, additional protections are required, including grounding the equipment, covering the line with an insulating sleeve, and using insulating links and nonconductive tag lines.

These procedures and methods are supplemented by requirements for training the operator and crew in power-line safety (*see* § 1926.1408(g)), and requirements for operator qualification and certification in § 1926.1427. C–DAC concluded that compliance with these training and certification requirements will not only reduce the frequency of power-line contact, but will give the

[1] The term "ID" refers to the column labeled "ID" under Docket No. OSHA–2007–0066 on the Federal eRulemaking Portal, *http://www.regulations.gov.* This column lists individual records in the docket. Hereafter, this notice will identify each of these records only by the last four digits of the record. Records from dockets other than OSHA–2007–0066 are identified by their full ID number.

workers the knowledge they need to help avoid injury in the event such contact occurs.

Fatalities that involve employees being struck or crushed during assembly/disassembly are addressed in §§ 1926.1403–1926.1406. These sections require employers to follow specific safe-practice procedures, and to address a list of specific hazards. Also, assembly and disassembly of a crane must be supervised by an individual who is well qualified to ensure that these requirements of these provisions are properly implemented.

As the above-mentioned studies show, and the Committee's experience confirms, many disassembly accidents occur when sections of lattice booms unexpectedly move and strike or crush an employee who is disassembling the boom. The final standard addresses this hazard in § 1926.1404(f) by prohibiting employees from being under the boom when pins are removed unless special precautions are taken to protect against boom movement.

Accidents resulting from boom or cable failure are addressed in a number of provisions. For example, the standard includes requirements for: proper assembly procedures (§ 1926.1403); boom stops to prevent booms from being raised too far and toppling over backwards (§ 1926.1415, *Safety devices*); a boom-hoist limiting device to prevent excessive boom travel, and an anti two-block device, which prevents overloading the boom from two-blocking (§ 1926.1416, *Operational aids*). Also, the inspection requirements (§ 1926.1412) detect and address structural deficiencies in booms before an accident occurs. Cable failure will be avoided by compliance with sections such as § 1926.1413, *Wire rope—inspection,* and § 1926.1414, *Wire rope—selection and installation criteria.*

Crane tip-over is caused by factors such as overloading, improper use of outriggers and insufficient ground conditions. Section 1926.1417, *Operations,* includes provisions to prevent overloading. This section prohibits the equipment from being operated in excess of its rated capacity, and includes procedures for ensuring that the weight of the load is reliably determined and within the equipment's rated capacity. Section 1926.1404(q) has requirements for outrigger/stabilizer use that will ensure that outriggers and stabilizers provide stability when a load is lifted. Section 1926.1402 contains requirements to ensure sufficient ground conditions, which will prevent crane tip-over.

The provisions addressing operator training, qualification, and certification also will prevent tip-over accidents by ensuring that the operator is sufficiently knowledgeable and skilled to recognize situations when the crane may be overloaded.

Fatalities that result from workers being struck by the cab or counterweights will be avoided under § 1926.1424, *Work area control.* That section requires that workers who are near equipment with a rotating superstructure be trained in the hazards involved, that employers mark or barricade the area covered by the rotating superstructure, and that the operator be notified whenever a worker must enter that area, and instructed not rotate the superstructure until the area is clear. Protection against being struck by a counterweight during assembly or disassembly is provided by § 1926.1404(h)(9), which requires the assembly/disassembly supervisor to address this hazard and take steps when necessary to protect workers against that danger.

The final rule addresses a number of equipment failures that can result in the load striking a worker. Such accidents are directly addressed by § 1926.1425, *Keeping clear of the load,* and § 1926.1426, *Free fall/controlled load lowering.* In addition, improved requirements in §§ 1926.1419–1926.1422 for signaling will help avoid load struck-by accidents caused by miscommunication.

Improper operation, including failure to understand and compensate for the effects of factors such as dynamic loading, can also cause workers to be struck by a load. Such incidents will be reduced by compliance with § 1926.1427, *Operator qualification and certification* and § 1926.1430, *Training.* Other provisions, such as those for safety devices and operational aids (§§ 1926.1415 and 1926.1416), and the requirement for periodic inspections in § 1926.1412, will also reduce these accidents.

Protection against falling from equipment is addressed by § 1926.1423, *Fall protection.* That section requires that new equipment provide safe access to the operator work station, using devices such as steps, handholds, and grabrails. Some new lattice-boom equipment must be equipped with boom walkways. The final standard also contains fall-protection provisions tailored to assembly and disassembly work, and to other work. Section 1926.1431, *Hoisting personnel,* addresses fall protection when employees are being hoisted.

OSHA has investigated numerous crane accidents that resulted in fatalities. Below are examples from OSHA's IMIS investigation reports that describe accidents that compliance with this final standard would prevent.

1. February 16, 2004: four fatalities, four injuries. A launching gantry collapsed and fatally injured four workers and sent four other workers to the hospital. The launching gantry was being used to erect pre-cast concrete segments span by span. The manufacturer required that the rear legs and front legs be properly anchored to resist longitudinal and lateral forces that act on the launching gantry. The legs of the launching gantry were not properly anchored. (ID–0017.)

OSHA believes that this type of accident will be prevented by compliance with the provisions of this final standard for assembling equipment. Section 1926.1403 requires that equipment be assembled in compliance with the manufacturer's procedures, or with alternative employer procedures (*see* § 1926.1406) to prevent the equipment from collapsing. In addition, under § 1926.1404, assembly must be conducted under the supervision of a person who understands the hazards associated with an improperly assembled crane and is well-qualified to understand and comply with the proper assembly procedures.

2. January 30, 2006. One fatality. An employee was crushed by the lower end section of the lattice boom on a truck-mounted crane while working from a position underneath the boom to remove the 2nd lower pin. When the 2nd lower pin was removed, the unsecured/uncribbed boom fell on the employee. (ID–0017.1.)

Section 1926.1404(f) will prevent this type of accident by generally prohibiting employees from being under the boom when pins are removed. In situations in which site constraints require that an employee be under the boom when pins are removed, the employer must implement other procedures, such as ensuring that the boom sections are adequately supported, to prevent the sections from falling on the employee.

3. July 23, 2001: One fatality. Employee failed to extend the outriggers before extending the boom of a service-truck crane to lift pipes. As the employee extended the boom, the crane tipped over on its side, and another employee standing near the truck was struck on the head by the hook block. (ID–0017.10.)

This type of accident will be prevented by compliance with § 1926.1404(q), which contains several provisions to ensure that outriggers and stabilizers are deployed properly before lifting a load. In addition, the operator

qualification and certification requirements of § 1926.1427, which ensure that operators understand and follow the safety-requirements for the equipment they are operating, will help prevent this type of accident.

4. March 8, 1999. One fatality. Employees were using a mobile crane to maneuver a load of steel joists. The crane contacted a 7,200-volt overhead power line, electrocuting an employee who was signaling and guiding the load. The crane operator jumped clear and was not injured. (ID–0017.11.)

Section 1926.1408 includes provisions that will prevent this type of accident. This section requires the use of "encroachment prevention" measures to prevent the crane from breaching a safe clearance distance from the power line. It also requires that, if tag lines are used to guide the load, the lines must be non-conductive. Finally, if maintaining the normal clearance distance is infeasible, a number of additional measures must be implemented, one of which is the use of an insulating link between the end of the load line and the load.

These measures protect employees guiding the load in several ways, including: reducing the chance that a crane would contact a power line; employees using tag lines to guide a load from being electrocuted should the load become energized.

5. August 21, 2003. Three fatalities. A crane operator and two co-workers were electrocuted when a truck crane's elevated boom contacted a 7,200 volt uninsulated primary conductor 31 feet above the ground. When the operator stepped from the cab of the truck, a conduction pathway to the ground was established through the operator's right hand and right foot, resulting in electrocution. A co-worker attempted to revive the incapacitated crane operator with cardio-pulmonary resuscitation ("CPR"), while a third co-worker contacted 911, and then returned to the incident location. When the third co-worker simultaneously touched the energized truck crane and the back of the co-worker performing CPR, the resulting pathway conducted the electrical charge through the workers, electrocuting them all. (ID–0017.12.)

The final standard will avoid this type of accident. Section 1926.1408 ensures that a minimum safe distance from the power line is maintained, which prevents equipment from becoming energized. Also, when working closer than the normal minimum clearance distance, the crane must be grounded, which reduces the chance of an electrical pathway through the workers.

In addition, § 1926.1408(g) requires that the operator be trained to remain inside the cab unless an imminent danger of fire or explosion is present. The operator also must be trained in the hazards associated with simultaneously touching the equipment and the ground, as well as the safest means of evacuating the equipment. The crane's remaining crew must be trained to avoid approaching or touching the equipment. The required training is reinforced by the electrocution warnings that must be posted in the cab and on the outside of the equipment.

6. September 28, 1999: One fatality. A 19-year old electrical instrument helper was at a construction site that was on a manufacturing company's property. A contractor positioned a 50-ton hydraulic crane in an open area that consisted of compacted fill material. This area was the only location that the crane could be situated because the receiving area for the equipment was too close to the property border.

The crane's outriggers were set, but matting was placed only under one of the outrigger pads. As the crane was moving large sections of piping to a new location, the ground collapsed and the crane overturned, striking the helper. (ID–0017.13.)

Section 1926.1402, *Ground conditions,* will prevent this type of accident. Under that section, employers must ensure that the surface on which a crane is operating is sufficiently level and firm to support the crane in accordance with the manufacturer's specifications. In addition, § 1926.1402 imposes specific duties on both the entity responsible for the project (the controlling entity) and the entity operating the crane to ensure that the crane is adequately supported. It places responsibility for ensuring that the ground conditions are adequate on the controlling entity, while also making the employer operating the crane responsible notifying the controlling entity of any deficiency in the ground conditions, and having the deficiency corrected before operating the crane.

7. June 17, 2006: One fatality. A spud pipe, used to anchor a barge, was being raised by a crane mounted on the barge when the hoisting cable broke, causing the headache ball and rigging to on an employee. (ID–0017.3.)

This type of accident can have various causes: an improperly selected wire rope (one that has insufficient capacity); a damaged or worn wire rope in need of replacement; or two-blocking, in which the headache ball is forced against the upper block, causing the wire rope to fail. The provisions of §§ 1926.1413 and 1926.1414 address wire rope inspection, selection, and installation, and will ensure that appropriate wire rope is installed, inspected and removed from service when continued use is unsafe. Section 1926.1416, *Operational aids,* contains provisions to protect against two-blocking.

8. July 13, 1999: Three fatalities. Three employees were in a personnel basket 280 feet above the ground. They were in the process of guiding a large roof section, being lifted by another crane, into place. Winds gusting to 27 miles per hour overloaded the crane holding the roof section; that crane collapsed, striking the crane that was supporting the personnel basket, causing the boom to fall. All three employees received fatal crushing injuries. (ID–0018.)

This type of accident will be prevented by § 1926.1417(n), which requires the competent person in charge of the operation adjust the equipment and/or operations to address the effect of wind and other adverse weather conditions on the equipment's stability and rated capacity. In addition, § 1926.1431, *Hoisting personnel,* requires that, when wind speed (sustained or gust) exceeds 20 mph, employers must not hoist employees by crane unless a qualified person determines it is safe to do so.

9. November 7, 2005: One fatality. A construction worker was crushed between the outrigger and the rotating superstructure of a truck crane. The worker apparently was trying to retrieve a level and a set of blueprints located horizontal member of one of the outriggers when the operator began to swing the boom. (ID–0017.5.)

Section 1926.1424, *Work area control,* will prevent this type of accident. This section generally requires that employers erect barriers to mark the area covered by the rotating superstructure to warn workers of the danger zone. However, workers who must work near equipment with a rotating superstructure must be trained in the hazards involved. If a worker must enter a marked area, the crane operator must be notified of the entry, and must not rotate the superstructure until the area is clear.

10. March 19, 2005: Two fatalities and one injury. During steel-erection operations, a crane was lifting three steel beams to a parking garage. The crane tipped over and the boom collapsed. The boom and attached beams struck concrete workers next to the structure, killing two workers and injuring one worker. The accident apparently occurred because the crane was overloaded. (ID–0017.6.)

Overloading a crane can cause it to tip over, causing the load or crane structure to strike and fatally injure workers in the vicinity of the crane. Section 1926.1417, *Operations,* includes provisions to prevent overloading. This section prohibits employers from operating equipment in excess of its rated capacity, and includes procedures for ensuring that the weight of the load is reliably determined and within the equipment's rated capacity.

The provisions of the final standard addressing operator training, certification, and qualification (§ 1926.1427) will also prevent this type of accident by ensuring that operators recognize conditions that would overload the crane.

11. December 7, 2005. One fatality. Two cranes were used to lower a concrete beam across a river. During the lowering process, one end of the beam dropped below the other end, causing the load's weight to shift to the lower end; this shift in weight overloaded the crane lifting the lower end, and it tipped over. The lower end of the beam fell into the river, while the higher end landed on a support mat located on the bank of the river, causing a flagger to be thrown into the beam. (ID–0017.7.)

Section 1926.1432, *Multiple crane/derrick lifts—supplemental requirements,* will prevent this type of accident. This section specifies that, when more than one crane is supporting a load, the operation must be performed in accordance with a plan developed by a qualified person. The plan must ensure that the requirements of this final standard are met, and must be reviewed by all individuals involved in the lifting operation. Moreover, the lift must be supervised by an individual who qualifies as both a competent person and a qualified person as defined by this final standard. For example, in the accident just described, the plan must include a determination of the degree of level needed to prevent either crane from being overloaded. In addition, the plan must ensure proper coordination of the lifting operation by establishing a system of communications and a means of monitoring the operation.

12. May 7, 2004: One fatality. An employee, a rigger/operator-in-training, was in the upper cab of a 60-ton hydraulic boom-truck crane to set up and position the crane boom prior to a lift. The crane was equipped with two hoists—a main line and auxiliary. The main hoist line had a multi-sheave block and hook and the auxiliary line had a 285 pound ball and hook. When the employee extended the hydraulic boom, a two-block condition occurred with the auxiliary line ball striking the auxiliary sheave head and knocking the sheave and ball from the boom. The employee was struck in the head by the falling ball. (ID–0017.8.)

This type of accident will be prevented by § 1926.1416, *Operational aids,* which requires protection against two-blocking. A hydraulic boom crane, if manufactured after February 28, 1992, must be equipped with a device that automatically prevents two-blocking.

Also, the final rule, under § 1926.1427(a) and (f), prohibits an operator-in-training from operating a crane without being monitored by a trainer, and without first having sufficient training to enable the operator-in-training to perform the assigned task safely.

13. April 26, 2006: One fatality. A framing crew was installing sheathing for a roof. A crane was hoisting a bundle of plywood sheathing to a location on the roof. As the crane positioned the bundle of sheathing above its landing location, the load hoist on the crane free spooled, causing an uncontrolled descent of the load. An employee was under the load preparing to position the load to its landing spot when the load fell and crushed him. (ID–0017.9.)

Section 1926.1426, *Free fall and controlled load lowering,* will prevent this type of accident. This section prohibits free fall of the load-line hoist, and requires controlled lowering of the load when an employee is directly under the load.

As discussed later in the section titled, *Executive Summary of the Final Economic Analysis; Final Regulatory Flexibility Analysis,* OSHA finds that construction workers suffer 89 fatal injuries per year from the types of equipment covered by this final standard. Of that number, OSHA estimates that 21 fatalities would be avoided by compliance with the final standard. In addition, OSHA estimates that the final standard would prevent 175 non-fatal injuries each year. Based on its review of all the available evidence, OSHA finds that construction workers have a significant risk of death and injury resulting from equipment operations, and that the risk would be substantially reduced by compliance with this final standard.

The OSH Act requires OSHA to make certain findings with respect to standards. One of these findings, specified by Section 3(8) of the OSH Act, requires an OSHA standard to address a significant risk and to reduce this risk substantially. (*See UAW* v. *OSHA,* 37 F.3d 665, 668 (DC Cir. 1994) ("LOTO").) As discussed in Section II of this preamble, OSHA finds that crane and derrick operations in construction constitute a significant risk and estimates that the final standard will prevent 22 fatalities and 175 injuries annually. Section 6(b) of the OSH Act requires OSHA to determine if its standards are technologically and economically feasible. As discussed in Section V of this preamble, OSHA finds that this final standard is economically and technologically feasible.

The Regulatory Flexibility Act (5 U.S.C 601, as amended) requires that OSHA determine whether a standard will have a significant economic impact on a substantial number of small firms. As discussed in Section V, OSHA examined the small firms affected by this standard and certifies that the final standard will not have a significant impact on a substantial number of small firms.

Executive Order 12866 requires that OSHA estimate the benefits, costs, and net benefits of its standards. The table below summarizes OSHA's findings with respect to the estimated costs, benefits, and net benefits of this standard. As is clear, the annual benefits are significantly in excess of the annual costs. However, it should be noted that under the OSH Act, OSHA does not use the magnitude of net benefits as decision-making criterion in determining what standards to promulgate.

ANNUAL BENEFITS, COSTS, AND NET BENEFITS, 2010 DOLLARS

Annualized Costs*:	
Crane Assembly/Disassembly	$16.3 million.
Power Line Safety	68.2 million.
Crane Inspections	16.5 million.
Ground Conditions	2.3 million.
Operator Qualification and Certification	50.7 million.
Total Annualized Costs	154.1 million.

ANNUAL BENEFITS, COSTS, AND NET BENEFITS, 2010 DOLLARS—Continued

Annual Benefits:	
Number of Injuries Prevented	175.
Number of Fatalities Prevented	22.
Property Damage from Tipovers Prevented	7 million.
Total Monetized Benefits	$209.3 million.
Annual Net Benefits (Benefits minus Costs)	$55.2 million.

Source: OSHA Office of Regulatory Analysis.
*Costs with 7% discount rate. Total costs with 3% discount rate: $150.4 million annually.

During the SBREFA process, several Small Entity Representatives expressed concern that the C–DAC Document was so long and complex that small businesses would have difficulty understanding it and complying with it. The SBREFA Panel recommended that OSHA solicit public comment on how the rule could be simplified and made easier to understand. In the proposal, OSHA requested public comment on this issue. The Agency did not receive any comments objecting to the length or clarity of the overall rule, or any comment on how to simplify the final rule. Some commenters recommended that specific provisions be clarified, and these comments are addressed later in this preamble.

III. The SBREFA Process

Before proceeding with a proposed rule based on the C–DAC Document, OSHA was required to comply with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.* (SBREFA). This process required OSHA to draft an initial regulatory flexibility analysis that would evaluate the potential impact of the rule on small entities (defined as small businesses, small governmental units, and small nonprofit organizations) and identify the type of small entities that may be affected by the rule. In accordance with SBREFA, OSHA then convened a Small Business Advocacy Review Panel ("Panel") composed of representatives of OSHA, the Office of Management and Budget, and the Office of Advocacy of the Small Business Administration. Individuals who were representative of affected small entities (*i.e.,* Small Entity Representatives, or "SERs") were identified for the purpose of obtaining advice and recommendations regarding the potential impacts of the proposed rule.

OSHA provided the SERs with the C–DAC Document and the draft Regulatory Flexibility Analysis, and requested that they submit written comments on these documents. The Agency also drafted questions asking for their views on the specific aspects of the C–DAC Document that OSHA believed may be of concern to small entities.

The Panel conducted two conference calls with the SERs in which the SERs presented their views on various issues. After reviewing the SERs' oral and written comments, on October 17, 2006, the Panel submitted its report summarizing the requirements of the C–DAC proposal and the comments received from the SERs, and presenting its findings and recommendations. (OSHA–S030A–2006–0664–0019.) In its findings and recommendations, the Panel identified issues that it believed OSHA should address in the proposal (1) through further analysis, and (2) by soliciting public comment. In the proposed rule, OSHA addressed each of the Panel's findings and recommendations in the section pertaining to the issue involved, and also solicited public comment on the issues raised by the Panel. The following table lists the recommendations made by the Panel, and OSHA's responses to these recommendations.

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES

SBREFA Panel Recommendation	OSHA Response
The Panel recommends that OSHA provide full documentation for how it estimated the number of affected small entities and all other calculations and estimates provided in the PIRFA.	OSHA has developed a full preliminary economic analysis (PEA) for the proposal which explains all assumptions used in estimating the costs and benefits of the proposed standard. The Final Economic Analysis (FEA) also explains the changes made to the analysis as a result of comments on the proposed rule, and OSHA's responses to these comments.
The Panel recommends that OSHA reexamine its estimate of crane use in home building, the coverage of crane trucks used for loading and unloading, and the estimates of the number of jobs per crane. Changes in these estimates should be incorporated into the estimates of costs and economic impacts.	OSHA included homebuilding industries in the "Own but Do Not Rent" and "Crane Lessees" industrial profile categories. OSHA has also made a number of additions to the industrial profile to cover firms in general industry that sometimes use cranes for construction work, and has added costs for these sectors.
The Panel recommends that OSHA review its estimates for the direct costs of operator certification and seek comment on these cost estimates.	OSHA sought comments on the estimates and methodology. As a result of these comments, OSHA has increased its estimate of the unit costs of certification.
The Panel recommends that OSHA carefully examine certain types of impact that could result from an operator certification requirement, including reports of substantial increases in the wages of operators; the possibility of increased market power for firms renting out cranes; and loss of jobs for existing operators due to language, literacy, or knowledge problems; and seek comment on these types of impacts. The Panel also recommends studying the impacts of the implementation of operator certification in CA.	OSHA sought public comment on all aspects (including economic impacts, wages, number of operators, demand, *etc.*) of the operator certification requirements, specifically as it pertains to the State of California. OSHA has included 2 hours of travel time per operator into the unit costs for operator certification. OSHA also increased the unit costs of operator certification as a result of comments. However, based on comments, OSHA also reduced the OSHA percentage of crane operators still needing certification.

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

SBREFA Panel Recommendation	OSHA Response
	The Agency reviewed data on wage rates for operators in California immediately before and after operator certification was required (Employment Development Department, Labor Market Information Division, State of California, 2007). The data did not show much change in operators' wages. OSHA also evaluated the changes in crane related fatality rates in California and found these had significantly declined after the California certification requirements were put into place.
The Panel recommends that OSHA reexamine its estimates for the amount of time required to assess ground conditions, the number of persons involved in the assessment, and the amount of coordination involved; clarify the extent to which such assessments are currently being conducted and what OSHA estimates as new costs for this rule represent; and seek comments on OSHA's cost estimates.	OSHA sought comment on the methodology used to calculate all of the costs in the PEA, which includes the costs for assessing ground conditions. As a result of these comments, OSHA has added costs for examination of ground conditions. This addition of costs does not change OSHA's conclusion that this standard is economically feasible.
The Panel recommends that OSHA carefully review the documentation requirements of the standard, including documentation that employers may consider it prudent to maintain; estimate the costs of such requirements; seek ways of minimizing these costs consistent with the goals of the OSH Act; and solicit comment on these costs and ways of minimizing these costs.	The Agency describes the documentation requirements, along with cost estimates, in the section of this preamble entitled "OMB Review Under the Paperwork Reduction Act of 1995."
The Panel recommends that OSHA examine whether the inspection requirements of the proposed rule require procedures not normally conducted currently, such as lowering and fully extending the boom before the crane can be used, and removing non-hinged inspection plates during the shift inspection, estimate the costs of any such requirements, and seek comment on these issues.	As explained in the discussion of § 1926.1412, *Inspections,* OSHA's former standard at former § 1926.550 requires inspections each time the equipment is used, as well as thorough annual inspections. In addition, national consensus standards that are incorporated by reference include additional inspection requirements. This final standard would list the inspection requirements in one place rather than rely on incorporated consensus standards. This final standard does not impose significant new requirements for inspections. OSHA received comments on the issue of lowering and fully extending the boom before the crane can be used. However, OSHA concludes that the comments were based on a general misunderstanding of the requirements. Section 1926.1413(a) explicitly says that booming down is not required for shift (and therefore monthly) inspections. Similarly, OSHA stated in the proposed preamble (73 FR 59770, Oct. 9, 2008) that it does not believe inspection of any of those items would require removal of non-hinged inspection plates. In the discussion of proposed § 1926.1412, OSHA requested public comment on this point. OSHA finalized § 1926.1412 as proposed because comments did not confirm that non-hinged plates needed to be removed to meet the requirements of a shift inspection.
The Panel recommends that OSHA consider the costs of meeting the requirements for original load charts and full manuals, and solicit comments on such costs.	Previous subpart N, at former § 1926.550(a)(2), required load charts; this is not a new cost. Subpart N did not require manuals. OSHA concludes that most crane owners and operators have and maintain crane manuals, which contain the load charts and other critical technical information about crane operations and maintenance. The Agency determined that the cost of obtaining a copy of a manual should be modest and solicited comment on how many owners or operators do not have full manuals for their cranes or derricks. Few commenters saw this as a major problem.
The Panel recommends that OSHA provide full documentation for its analysis of the benefits the proposed rule are expected to produce and assure that the benefits analysis is reproducible by others.	The Agency placed additional materials in the rulemaking docket to aid in the reproduction of the benefits analysis. The Agency also developed a full benefits analysis (sec. 4 of the FEA) which includes the methodology and data sources for the calculations.
The Panel recommends that OSHA consider and solicit public comment on whether the scope language should be clarified to explicitly state whether forklifts that are modified to perform tasks similar to equipment (cranes and derricks) modified in that manner would be covered.	In the discussion of proposed § 1926.1400(c)(8), OSHA requested public comment on this issue.
The Panel recommends that there be a full explanation in the preamble of how responsibility for ensuring adequate ground conditions is shared between the controlling entity, and the employer of the individual supervising assembly/disassembly and/or the operator.	OSHA explained in the discussion of proposed § 1926.1402(e) how the various employers, including the controlling entity, the employer whose employees operate the equipment, and the employer of the A/D director share responsibility for ensuring adequate ground conditions. OSHA did not receive any significant comments on this issue and, therefore, considers this matter resolved.
The Panel recommends that OSHA restate the applicable corrective action provisions (which are set forth in the shift inspection) in the monthly inspection section.	OSHA addressed this recommendation in the discussion of proposed § 1926.1412(e) and requested public comment on the issue. Based on these comments, OSHA concludes that the requirements were clear as proposed, and repeating the provisions will create confusion. Therefore, OSHA did not restate the corrective actions in § 1926.1412(e).

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

SBREFA Panel Recommendation	OSHA Response
The Panel recommends that OSHA solicit public comment on whether, and under what circumstances, booming down should be specifically excluded as a part of the shift inspection, and whether the removal of non-hinged inspection plates should be required during the shift inspection.	OSHA addressed this recommendation in the discussion of proposed § 1926.1412(d) and requested public comment on the issues raised in the recommendation.
The Panel recommends that OSHA solicit public comment on whether to include an exception for transportation systems in proposed § 1926.1412(a), which requires an inspection of equipment that has had modifications or additions that affect its safe operation, and, if so, what the appropriate terminology for such an exception would be.	OSHA solicited comments on this issue, but the Agency did not receive any significant comments supporting an exception for transportation systems. Based on the analysis of comments received about § 1926.1412(a), OSHA concludes that the inspections of modifications as required by the final rule are sufficient to ensure that safe equipment is used. Therefore, OSHA did include the recommended exclusion in the final rule.
The Panel recommends that OSHA explain in the preamble that the shift inspection does not need to be completed prior to each shift but may be completed during the shift.	In the explanation of § 1926.1412(d)(1) of the proposed rule, OSHA explained that the shift inspection may be completed during the shift. OSHA finalized § 1926.1412(d)(1) as proposed because the comments did not demonstrate how it was safer to deviate from the rule as proposed.
The Panel recommends that OSHA solicit public comment about whether it is necessary to clarify the requirement of proposed § 1926.1412(d)(1)(xi) that the equipment be inspected for "level position.".	OSHA requested public comment on this issue and revised the regulatory text of § 1926.1412(d)(1)(xi) to provide more clarity, in response to the comments the Agency received.
The Panel recommends that OSHA solicit comment on whether proposed § 1926.1412(f)(2)(xii)(D) should be changed to require that pressure be inspected "at the end of the line," as distinguished from "at each and every line," and if so, what the best terminology would be to meet this purpose. (An SER indicated that proposed § 1926.1412(f)(2)(xiv)(D) should be modified to "checking pressure setting," in part to avoid having to check the pressure at "each and every line" as opposed to "at the end of the line.").	There is no requirement to check the pressure "at each and every line." The provision simply states that relief valves should be checked for failure to reach correct pressure. If this can be done at one point for the entire system, then that would satisfy the requirement.
The Panel recommends that OSHA solicit public comment on whether proposed § 1926.1412(f)(2)(xx) should be deleted because an SER believes that it is not always appropriate to retain originally-equipped steps and ladders, such as in instances where they are replaced with "attaching dollies.".	Section 1926.1412(f)(2)(xx) of the final rule does not require the corrective action to which the SER refers. If an inspection under § 1926.1412(f) reveals a deficiency, a qualified person must determine whether that deficiency is a safety hazard requiring immediate correction. If the inspection reveals that original equipment, such as stairs and ladders, have been replaced with something equally safe, there would be no safety hazard and no requirement for corrective action.
The Panel recommends that OSHA solicit public comment on the extent of documentation of monthly and annual/comprehensive inspections the rule should require.	In the discussion of proposed § 1926.1412(f)(7), OSHA requested public comment on this issue. OSHA finalized § 1926.1412(f)(7) as proposed because the comments did not demonstrate a need to modify the extent of required documentation.
The Panel recommends that OSHA solicit public comment on whether the provision for monthly inspections should, like the provision for annual inspections, specify who must keep the documentation associated with monthly inspections.	In the discussion of proposed § 1926.1412(e), OSHA requested public comment on this issue. In response to these comments, OSHA has explained in the final preamble that the employer who performs the inspection must maintain documentation. If another employer wants to rely on this inspection, but cannot ensure completion and documentation of the inspection, then that employer must conduct a monthly inspection.
The Panel recommends that OSHA consider ways to account for the possibility that there may sometimes be an extended delay in obtaining the part number for an operational aid for older equipment and solicit public comment on the extent to which this is a problem.	OSHA addressed this recommendation in the discussion of proposed § 1926.1416(d), and requested public comment on the issue. The Agency did not receive any significant comments.
The Panel recommends that the provision on fall protection (proposed § 1926.1423) be finalized as written and that OSHA explain in the preamble how and why the Committee arrived at this provision.	Except for a minor change to § 1926.1423(h), which was made for clarity purposes, OSHA has finalized § 1926.1423 as proposed. OSHA explained the Committee's rationale in the proposed preamble discussion of § 1926.1423.
The Panel recommends that OSHA consider the potential advantages of and solicit public comment on adding provisions to proposed § 1926.1427 that would allow an operator to be certified on a particular model of crane; allow tests to be administered by an accredited educational institution; and allow employers to use manuals that have been re-written to accommodate the literacy level and English proficiency of operators.	OSHA addressed these recommendations in the discussion of proposed § 1926.1427, and requested public comment on the issues raised by the Panel. Based on these comments, OSHA is not permitting certification on a particular crane model because the body of knowledge and skills required to be qualified/certified on a particular model of crane is not less than that needed to be qualified/certified for that model's type and capacity. OSHA is not allowing an institution accredited by the Department of Education (DOE) to certify crane operators solely on the basis of DOE accreditation; such institutions would, like other operator-certification entities used to fulfill Option (1), be accredited by a "nationally recognized" accrediting body. Finally, OSHA is permitting employers to re-write manuals to accommodate the literacy level and English proficiency of operators.

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

SBREFA Panel Recommendation	OSHA Response
The Panel recommends that OSHA clarify in the preamble how the proposed rule addresses an SER's concern that his crane operator would not be able to pass a written qualification/certification exam because the operator has difficulty in taking written exams.	In the discussion of proposed § 1926.1427(h), OSHA proposed to allow the oral administration of tests if two prerequisites are met. None of the comments explained why the rule as proposed was not effective for evaluating the knowledge of the candidate.
The Panel recommends soliciting public comment on whether the phrase "equipment capacity and type" in proposed § 1926.1427(b)(1)(ii)(B) needs clarification, suggestions on how to accomplish this, and whether the categories represented in Figures 1 through 10 contained in ANSI B30.5–2000 (*i.e.,* commercial truck-mounted crane—telescoping boom; commercial truck-mounted crane—non-telescoping boom; crawler crane; crawler crane—telescoping boom; locomotive crane; wheel-mounted crane (multiple control station); wheel-mounted crane—telescoping boom (multiple control station); wheel-mounted crane (single control station); wheel-mounted crane—telescoping boom (single control station)) should be used.	OSHA received public comments on this issue. In the final preamble discussion of § 1926.1427(b)(1)(ii)(B), OSHA explains that the Agency added a definition of "type" in response to public comment. The Agency also references ANSI crane categories to illustrate the meaning of "type" in this standard.
The Panel recommends that OSHA ask for public comment on whether the rule needs to state more clearly that § 1926.1427(j)(1)(i) requires more limited training for operators of smaller capacity equipment used in less complex operations as compared with operators of higher capacity, more complex equipment used in more complex situations.	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c), and explained that § 1926.1427(j)(1)'s requirement for operator training in "the information necessary for safe operation of the specific type of equipment the individual will operate" addressed the SERs' concern. However, the Agency sought public comment on this issue. OSHA finalized § 1926.1427(j)(1) as proposed because the comments failed to explain how the hazards related to the operation of smaller equipment differed from larger equipment. OSHA then concluded that the comments also were not persuasive as to why operators of smaller capacity equipment should be allowed limited training.
The Panel recommends that OSHA consider and ask for public comment on whether a more limited training program would be appropriate for operations based on the capacity and type of equipment and nature of operations.	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c) requested public comment on the issue. The comments failed to explain how the hazards related to smaller equipment were any different from larger equipment. OSHA then concluded that the comments also were not persuasive as to why operators of smaller capacity equipment should be allowed limited training.
The Panel recommends that OSHA consider and ask for public comment as to whether the supervisor responsible for oversight for an operator in the pre-qualification period (§ 1926.1427(f)) should have additional training beyond that required in the C–DAC document at § 1926.1427(f)(2)(iii)(B).	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c). and requested public comment on the issue. In the proposed preamble, OSHA stated that, where a supervisor is not a certified operator, "he/she must be certified on the written portion of the test and be familiar with the proper use of the equipment's controls; the supervisor is not required to have passed a practical operating test." OSHA finalized this requirement without substantive change in § 1926.1427(f)(3)(ii) as proposed because none of the comments demonstrated a need to require additional training for this qualified individual.
The Panel recommends OSHA solicit comment on whether there are qualified persons in the field with the necessary expertise to assess how the rated capacity for land cranes and derricks used on barges and other flotation devices needs to be modified as required by proposed § 1926.1437(n)(2).	In the discussion of proposed § 1926.1437(n)(2), OSHA requested public comment on this issue. Based on these comments, OSHA has concluded that there are qualified persons with dual expertise, and that the requirement in § 1926.1437(n)(2) is necessary for safety when equipment is engaged in duty cycle work.
The Panel also recommends that OSHA solicit comment on whether it is necessary, from a safety standpoint, to apply this provision to cranes used only for duty cycle work, and if so, why that is the case, and how "duty cycle work" should be defined.	
The Panel recommends that OSHA consider and ask for comment on whether it would be appropriate to exempt from the rule small sideboom cranes incapable of lifting above the height of a truck bed and with a capacity of not more than 6,000 pounds.	In the discussion of proposed § 1926.1440(a), OSHA requested public comment on this issue. These comments did not provide any specific reason for exempting these small sideboom cranes and, therefore, OSHA has not provided a small capacity sideboom crane exemption from this standard.
The Panel recommends that OSHA solicit public comment on how the proposed rule could be simplified (without creating ambiguities) and made easier to understand. (Several SERs believed that the C–DAC document was so long and complex that small businesses would have difficulty understanding it and complying with it.).	The length and comprehensiveness of the standard is an issue for this rulemaking. In the proposed preamble Introduction, OSHA requested public comment on this issue; however, the Agency did not receive any comments objecting to the length or clarity of the overall rule or offer any suggestions as to how it could be simplified.
The Panel recommends that OSHA consider outlining the inspection requirements in spreadsheet form in an Appendix or developing some other means to help employers understand what inspections are needed and when they must be done.	OSHA will consider developing such an aid as a separate guidance document.

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

SBREFA Panel Recommendation	OSHA Response
The Panel recommends that OSHA consider whether use of the words "determine" and "demonstrate" would mandate that the employer keep records of such determinations and if records would be required to make such demonstrations.	Some SERs requested clarification as to when documentation was required, believing that the document implicitly requires documentation when it states that the employer must "determine" or "demonstrate" certain actions or conditions. OSHA notes that it cannot cite an employer for failing to have documentation not explicitly required by a standard. *See also* the discussion under proposed § 1926.1402(e).
The Panel recommends soliciting public comment on whether the word "days" as used in §§ 1926.1416(d) and 1926.1416(e) should be clarified to mean calendar days or business days.	In the discussion of proposed § 1926.1416(d), OSHA requested public comment on this issue. As a clarification in response to the comments received, OSHA determines that the term "days" refers to calendar days.
The Panel recommends that OSHA carefully discuss what is included and excluded from the scope of this standard.	OSHA proposed a scope section, § 1926.1400, and discussed in detail the types of machinery proposed to be included and excluded under this standard. OSHA received public comments on this proposed scope, analyzed the comments, and provided more discussion of the scope section in the final preamble.
The Panel recommends that OSHA gather data and analyze the effects of already existing certification requirements.	OSHA obtained and evaluated a study by the Construction Safety Association of Ontario showing that Ontario's certification requirement led to a substantial decrease in crane-related fatalities there. OSHA also examined both economic data of crane operator wage rates before and after the certification requirements, and fatality rates before and after the certification requirements. This data shows that costs disruptions were minimal, and that crane fatalities were significantly reduced as a result of the California certification standard.
The Panel recommends that OSHA consider excluding and soliciting comment on whether equipment used solely to deliver materials to a construction site by placing/stacking the materials on the ground should be explicitly excluded from the proposed standard's scope.	In the discussion of proposed § 1926.1400(c), OSHA requested public comment on this issue. Based on the analysis of the comments received, OSHA recognized an exclusion for delivery materials that should exclude most true deliveries, while avoiding creating a loophole to the standard that would allow materials-delivery firms to engage in extensive construction activities.
The Panel recommends that OSHA should consider the information and range of opinions that were presented by the SERs on the issue of operator qualification/certification when analyzing the public comments on this issue.	The information and opinions submitted by the SERs are part of the record for this rulemaking, and OSHA considered them along with the other public comments on the proposed rule.
The Panel recommends that OSHA consider and solicit public comment on expanding the levels of certification so as to allow an operator to be certified on a specific brand's model of crane.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427, and requested public comment on the issue. Based on these comments, OSHA is not permitting certification on a particular crane model because the body of knowledge and skills required to be qualified/certified on a particular model of crane is not less than that needed to be qualified/certified for that model's type and capacity.
The Panel recommends that OSHA consider and solicit public comment on expanding the levels of operator qualification/certification to allow an operator to be certified for a specific, limited type of circumstance. Such a circumstance would be defined by a set of parameters that, taken together, would describe an operation characterized by simplicity and relatively low risk. The Agency should consider and solicit comment on whether such parameters could be identified in a way that would result in a clear, easily understood provision that could be effectively enforced.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427(j)(1), and requested public comment on this issue. Though several commenters were in favor of this option, they did not explain how these lifts could objectively be distinguished from lifts generally. Several other commenters indicated that the types of hazards present and the knowledge needed to address those hazards, remained the same, regardless of the capacity of the crane involved or the "routine" nature of the lift (*see* discussion of § 1926.1427(a)). Based on these comments, the Agency has not promulgated such a provision.
The Panel recommends that OSHA consider and solicit public comment on allowing the written and practical tests described in Option (1) to be administered by an accredited educational institution.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427(b)(3), and requested public comment on the issue. Several comments were submitted in favor of allowing this option; however, they did not establish that Department of Education (DOE) accreditation would guarantee the same efficacy in certification as accreditation as a personnel certification entity. The hearing testimony of Dr. Roy Swift explained the difference in the types of accreditation and the reasons why DOE accreditation would not adequately address operator certification issues. Therefore, OSHA has finalized this provision as it was proposed.
The Panel recommends that OSHA solicit public comment on making it clear that: (1) an employer is permitted to equip its cranes with manuals re-written in a way that would allow an operator with a low literacy level to understand the material (such as substituting some text with pictures and illustrations), and (2) making it clear that, when the cranes are equipped with such re-written manuals and materials, the "manuals" and "materials" referred to in these literacy provisions would be the re-written manuals.	In the discussion of proposed § 1926.1427(h)(1), OSHA requested public comment on this issue. Based on the analysis of the comments received, OSHA concludes that these manuals may not be re-written as recommended because it could cause information important for safety to be omitted.

TABLE 4—SBREFA PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

SBREFA Panel Recommendation	OSHA Response
The Panel recommends that OSHA explain in a Small Business Compliance Guide that the certification/qualification test does not need to be administered in English but can be administered in a language that the candidate can read; and that while the employee would also need to have a sufficient level of literacy to read and understand the relevant information in the equipment manual, that requirement would be satisfied if the material is written in a language that the employee can read and understand.	OSHA will issue a Small Business Compliance Guide after the final rule is issued, and will explain these points in the Guide.

IV. Summary and Explanation of the Rule

Authority Citations

For all subparts affected by this rulemaking, the authority citations have been amended to refer to the documentation that permits the promulgation of this rule.

Removal of § 1926.31 and Addition of § 1926.6—Incorporation by Reference

Section 1926.31 of 29 CFR part 1926 provided information about locating documents incorporated by reference into all of the construction standards in that part. The Agency is removing this section and relocating the majority of its text to new 29 CFR 1926.6 for several reasons. First, the change in the location of the section from § 1926.31 to § 1926.6 is for organizational purposes. New § 1926.6 is within 29 CFR part 1926 subpart A ("General"), which is a more logical placement than § 1926.31, which is within subpart C ("General Safety and Health Provisions"), and is the same section number (6) as the incorporation reference section for general industry standards: 29 CFR 1910.6. Second, OSHA is relocating the list of all documents incorporated by reference into 29 CFR part 1926 from its previous location in the "Finding Aids" of the CFR to § 1926.6 because the **Federal Register** is no longer publishing the list in the hardcopy versions of the CFR.[2]

The Agency is restructuring the text previously located in § 1926.31 to make § 1926.6 parallel 29 CFR 1910.6, which lists the documents incorporated by reference into the general industry standards in 29 CFR part 1910. OSHA is not including the text formerly in 29 CFR 1926.31(b), which could be read as implying that OSHA intended to incorporate into its standards, without following the procedures specified in 1 CFR part 51, revised versions of documents previously incorporated by reference.

[2] The list will still be available online at *http://www.gpoaccess.gov/ecfr* from the link to "Incorporated by Reference."

OSHA determined that the addition of § 1926.6 and the removal of § 1926.31 are not subject to the procedures for public notice and comment specified by sec 4 of the Administrative Procedures Act (5 U.S.C. 553), sec. 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), and 29 CFR part 1911. New § 1926.6, like the § 1926.31 it replaces, is a rule of agency organization, procedure, or practice within the meaning of 5 U.S.C. 553(b)(3)(A), and the addition of § 1926.6 constitutes a technical amendment that does not affect or change any existing rights or obligations. No member of the regulated community is likely to object to it. In conclusion, OSHA finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

In addition to relocating the list of documents from the Finding Aids list, OSHA is adding to the list of documents incorporated by reference those documents that are newly incorporated by reference in these final rules. The **Federal Register** approved these documents, which are listed as follows, for incorporation by reference as of November 8, 2010: *ANSI B30.5–1968; ASME B30.2–2005; ASME B–30.5–2004; ASME B30.7–2001; ASME B30.14–2004; AWS D1.1/D1.1M:2002; ANSI/AWS D14.3–94; BS EN 13000:2004; BS EN 14439:2006; ISO 11660–1:2008(E); ISO 11660–2:1994(E); ISO 11660–3:2008(E); PCSA Std. No. 2 (1968); SAE J185 (May 2003); SAE J987 (Jun. 2003); and SAE J1063 (Nov. 1993).*

Subpart L—Scaffolds

Amendments to § 1926.450

The agency is removing the reference to former § 1926.550(g) from this section because former § 1926.550(g) has been redesignated and reserved by this rulemaking. Section 1926.450(a) explains that this section applies to all scaffolds used in work covered by subpart L. Prior to the promulgation of this final rule, it referenced former § 1926.550(g) to explain that § 1926.450 did not apply to crane- or derrick-suspended personnel platforms. Prior to the promulgation of this final rule, former § 1926.550(g)(2) regulated crane- or derrick-suspended personnel platforms. Personnel platforms suspended by cranes or derricks are now regulated by § 1926.1431. This change does not affect the requirements of § 1926.450(a), does not change any existing rights or obligations, and no member of the regulated community is likely to object to it. OSHA, therefore, finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

Subpart M—Fall Protection

Amendments to § 1926.500

Prior to the promulgation of this final rule, § 1926.500(a)(2)(ii) stated that subpart N set forth the workplaces, conditions, operations, and circumstances for which fall protection must be provided for employees working on "certain cranes and derricks." Because subpart CC now provides comprehensive requirements for the provision of fall protection to workers on equipment covered by subpart CC, the Agency amended § 1926.500(a)(2)(ii) by replacing the reference to subpart N with a reference to subpart CC and deleting the word "certain."

Section 1926.500(a)(3) provided that the requirements for the installation, construction, and proper use of fall protection for construction workers were set forth in § 1926.502 of subpart M, with certain exceptions. OSHA amended § 1926.500(a)(3) to provide an exception for steps, handholds, ladders, and grabrails/guardrails/railings required by subpart CC because the criteria for those forms of fall protection are provided in subpart CC. This exception, § 1926.500(a)(3)(v), also clarifies that §§ 1926.502(a), (c)–(e), and (i) apply unless otherwise stated in subpart CC, and that no other paragraphs of § 1926.502 apply to subpart CC. The exception reduces the

extent to which § 1926.502 applies to work covered under subpart CC, and clarifies that subpart CC generally sets forth the criteria for the fall protection systems required under subpart CC.

Section 1926.500(a)(4) stated that § 1926.503 sets forth the requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities. The Agency added the phrase "and the use of equipment covered by subpart CC" at the end of the exception to make clear that the fall protection training requirements in § 1926.503 of subpart M do not apply to fall protection systems when used to comply with subpart CC. Training for fall protection systems required by subpart CC is governed by § 1926.1423(k).

Subpart N—Helicopters, Hoists, Elevators, and Conveyors

The heading of subpart N has been changed to "Helicopters, Hoists, Elevators, and Conveyors." The revision of the heading reflects both the equipment that is now regulated by subpart N and the removal of sections regulating cranes and derricks from subpart N to subpart CC.

Amendments to § 1926.550

Cranes and derricks used in construction had been regulated by § 1926.550. Subpart CC is now the applicable standard for regulating the use of cranes and derricks in construction. Section 1926.550 has been redesignated as § 1926.1501 and reserved.

Amendments to § 1926.553

OSHA revised § 1926.553 to include a new provision, § 1926.553(c). This section explains that § 1926.553 does not apply to base-mounted drum hoists used in conjunction with derricks. Instead, base-mounted drum hoists used with derricks must conform to the requirements of § 1926.1436. This change was made in response to a request by a commenter who wanted to clarify that the requirements for base-mounted drum hoists used with derricks could be found in new subpart CC. (ID–0130.1.) No information was submitted to the record that indicates OSHA should not make the revision to § 1926.553.

OSHA determined that the revision addresses the commenter's concerns regarding the applicability of § 1926.553 and enhances the clarity of the final rule. This revision ensures that base-mounted drum hoists used in the design of derricks meet the updated requirements of ASME B30.7–2001, which is referenced in § 1926.1436. The older ANSI B30.7–1968, which is referenced in § 1926.553, continues to apply to all base-mounted drum hoists not used in conjunction with derricks.

Subpart O—Motorized Vehicles, Mechanical Equipment, and Marine Operations

Amendments to § 1926.600

This section regulates motor vehicles, mechanized equipment, and marine operations. Prior to the promulgation of this final rule, § 1926.600(a)(6) referenced § 1926.550(a)(15), which has been redesignated and reserved. Because the Agency inadvertently did not propose any revision of § 1926.600(a)(6), OSHA is preserving the same requirements imposed by former § 1926.550(a)(15) pursuant to this section by incorporating language substantively identical to that of former § 1926.550(a)(15) into revised § 1926.600(a)(6). The revision of § 1926.600(a)(6) does not alter any of the substantive requirements of that section, does not change any existing rights or obligations, and no member of the regulated community is likely to object to it. OSHA, therefore, finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 533(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

Subpart R—Steel Erection

Amendments to § 1926.753 Hoisting and Rigging

With the exception of former § 1926.550(g)(2), § 1926.753(a) applied all of the provisions of former § 1926.550 to hoisting and rigging during steel erection. Similarly, § 1926.753(c)(4) allowed cranes and derricks to hoist workers on a personnel platform in accordance with all of former § 1926.550 except former § 1926.550(g)(2). Because former § 1926.550 has been redesignated and reserved, § 1926.753 has been revised to avoid changing the requirements of that section. Section 1926.753(a) applies all of subpart CC except § 1926.1431(a) to hoisting and rigging, and § 1926.753(c)(4) applies all of § 1926.1431 except § 1926.1431(a). These two paragraphs of § 1926.753 reference § 1926.1431(a) because the requirement formerly found in § 1926.550(g)(2) is now contained in § 1926.1431(a) of subpart CC.

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air

Amendments to § 1926.800

This section regulates hoisting unique to underground construction. Prior to the promulgation of this final rule, § 1926.800(t) of this section referenced former § 1926.550(g), which has been redesignated § 1926.1501(g). The Agency intended that the reference to former § 1926.550(g) be replaced by a reference to new subpart CC, but inadvertently omitted that action from the **Federal Register** notice for the proposed rule. To avoid any potential notice issues that might arise if the Agency substituted a reference to subpart CC in place of the prior reference to former § 1926.550(g), the Agency has instead elected to redesignate § 1926.550 as § 1926.1501 in new subpart DD, which has been created for this purpose. The Agency intends to revisit this issue in the near future.

References to former § 1926.550(g) have been replaced with references to § 1926.1501(g). This redesignation of § 1926.550 and the replacement of references do not alter any of the substantive requirements of § 1926.800(t), do not change any existing rights or obligations, and no member of the regulated community is likely to object to it. OSHA, therefore, finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

Subpart T—Demolition

Amendments to §§ 1926.856 and 1926.858

These sections regulate the use of cranes and in demolition work. Prior to the promulgation of this final rule, §§ 1926.856(c) and 1926.858(b) referenced subpart N, part of which (former § 1926.550) has been redesignated as § 1926.1501. The Agency intended for the reference to subpart N in § 1926.856(c) to be supplemented with a reference to new subpart CC, and intended that the reference to subpart N in § 1926.858(b) be replaced by a reference to new subpart CC, but inadvertently omitted that action from the **Federal Register** notice for the proposed rule. To avoid any potential notice issues that might arise if the Agency substituted a reference to new subpart CC in place of the prior reference to subpart N, the Agency has instead elected to redesignate § 1926.550 as § 1926.1501 in

a new subpart DD which has been created for this purpose. The Agency intends to revisit this issue in the near future.

References to subpart N in §§ 1926.856(c) and 1926.858(b) have been supplemented or replaced with references to § 1926.1501. This redesignation of § 1926.550 and the replacement of references do not alter any of the substantive requirements of §§ 1926.856(c) and 1926.858(b), do not change any existing rights or obligations, and no member of the regulated community is likely to object to it. OSHA, therefore, finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

Subpart V—Power Transmission and Distribution

Amendment to § 1926.952

The subpart V provisions have been changed to reflect the terminology used in the scope section of this standard and its new subpart designation. Accordingly, § 1926.952(c), which referenced subpart N with respect to derrick trucks and cranes, has been revised to reference subpart CC. Prior to this final rule, §§ 1926.952(c)(1)(i) and (ii) addressed minimum clearance distances. Because §§ 1926.1407 through 1926.1411 address minimum clearance distances when clearance distances in Table V–1 would apply to derrick trucks and cranes used in subpart V work, §§ 1926.952(c)(1)(i) and (ii) have been deleted.

In conformance with language in § 1926.1400(c)(4), the agency is adding new § 1926.952(c)(2) into subpart V. It states that digger derricks used for augering holes for electrical poles, placing and removing the poles, or handling associated materials to be installed or removed from the poles must comply with 29 CFR 1910.269. This provision ensures comparable safety requirements exist for digger derricks performing electrical pole work.

What was § 1926.952(c)(2) prior to the promulgation of this final rule has been redesignated § 1926.952(c)(3). Former §§ 1926.952(c)(2)(i) and (ii) listed precautions for operating mechanical equipment closer to energized power lines than allowed by § 1926.950(c). The precautions (using an insulated barrier and grounding the equipment) that were specified in §§ 1926.952(c)(2)(i) and (ii) are now required under § 1926.1410(d) when equipment used in subpart V work is operated closer than the Table V–1 clearances. Since these precautions are now required by § 1926.1410(d), OSHA is deleting them from subpart V. As a result of that deletion, former §§ 1926.952(c)(2)(iii) and (iv) are redesignated §§ 1926.952(c)(3)(i) and (ii).

OSHA is also adding a note after new § 1926.952(c)(3) to cross-reference the safe harbor in § 1926.1400(g), which provides that employers performing subpart V work have the option of complying with 29 CFR 1910.269(p) in lieu of the requirements in §§ 1926.1407 through 1926.1411 of new subpart CC. For additional information, *see* the discussion of § 1926.1400(g) in the preamble to this final rule.

Subpart X—Stairways and Ladders

Amendment to § 1926.1050 Scope, Application, and Definitions Applicable to This Subpart

This section applies the provisions of subpart X to all stairways and ladders used in construction. However, C–DAC concluded that the OSHA requirements of subpart X did not account for the characteristics of the equipment that would be regulated by subpart CC. OSHA agreed with the committee and, accordingly, is amending § 1926.1050(a) to explain that subpart X does not apply to integral components of equipment covered by subpart CC. It further explains that only subpart CC establishes the circumstances when ladders and stairways must be provided on equipment covered by subpart CC. This revision is also discussed in the preamble section for § 1926.1423(c).

Appendix A to Part 1926 Designations for General Industry Standards Incorporated Into Body of Construction Standards

OSHA modified Appendix A to part 1926. Before the promulgation of this final rule, Appendix A referred to former § 1926.550(a)(19), which has been redesignated and reserved. Therefore, the reference to this section and the reference to the general industry standard it incorporated, § 1910.184(c)(9), have been deleted. This deletion is a technical and conforming change, does not change any existing rights or obligations, and no member of the regulated community is likely to object to it. OSHA, therefore, finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5

29 CFR Part 1926 Subpart CC

The Agency is promulgating Subpart CC for regulating the use of cranes and derricks in construction. Cranes and derricks used in construction had been regulated by § 1926.550. Accordingly, § 1926.550 has been redesignated and reserved.

Section 1926.1400 Scope

As explained in the proposed rule, C–DAC decided to describe the scope of the rule with both a functional description ("power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load") together with a non-exclusive list of the types of existing equipment that are covered.[3] By defining the scope in this way, C–DAC tried to provide the clearest possible notice as to the equipment that is covered by the standard while also including new and/or other existing equipment that is similar to the listed examples.

One commenter objected to this approach, believing that the approach does not provide the regulated community with clear notice of the bounds of the regulated equipment. (ID–0286.1.) This commenter recommended that OSHA avoid this perceived notice problem by limiting the scope of the standard to equipment described in ASME B30 standards. It recommended adding the words "and is described in American Society of Mechanical Engineers ASME B30 standards" at the end of the first sentence of proposed paragraph (a) of this section.

OSHA disagrees with this commenter that paragraph (a), when read together with the list of exclusions in paragraph (c) of this section, does not provide clear notice as to what equipment is covered and what is excluded. As explained earlier, paragraph (a) is designed to make clear the types of existing equipment that are covered while also covering newly-developed equipment that is similar to the listed examples. The approach suggested by the commenter would limit any coverage of newly developed equipment to any such equipment that might be included in an unspecified future ASME B30 standard, without the opportunity for OSHA to assess that equipment to determine whether its exemption from subpart CC would be appropriate. OSHA concludes that this approach may unduly limit the scope of subpart CC. In addition, it would contradict the intent of C–DAC with respect to several specific types of equipment. For example, at least three

[3] The scope of the standard with respect to some of the listed equipment is further delineated in the section of the standard that specifically relates to that equipment (for example, § 1926.1436, *Derricks* and § 1926.1438, *Overhead & Gantry Cranes*).

types of covered equipment that meet the functional definition in paragraph (a), dedicated pile drivers,[4] digger derricks (*see* the discussion of digger derricks below under paragraph (c)(4)), and straddle cranes are not covered in ASME B30 standards, while the ASME B30 standards include equipment (*e.g.,* stacker cranes) not covered under this standard. Thus, adopting the commenter's suggestion would exclude certain equipment that C–DAC intended to include and would introduce ambiguity over whether certain types of equipment that C–DAC intended to exclude are included. Where the commenter has not made a compelling argument as to why the standard would be improved by adopting the ASME standards, OSHA defers to C–DAC's expertise on this issue.

A commenter objected to defining the scope of the standard in terms of types of equipment, saying that it represented an unexplained departure from OSHA's practice of describing the scope of construction standards in terms of conditions and practices. (ID–0203.1.) Contrary to this commenter's belief, OSHA has often defined construction standards in terms of equipment. *See, e.g.,* subpart L, "Scaffolds." Indeed, this rule for cranes and derricks replaces a previous rule for cranes and derricks at former § 1926.550, the scope of which was also defined in terms of types of equipment.

Several commenters asked OSHA to clarify the meaning of "construction" as it is used in paragraph (a) of this section. (ID–0147.1; –0165.1; –0214.1; –0235.1.) Some of these comments asked OSHA to clarify whether the use of lifting equipment to deliver materials to a construction site is covered under the standard. That issue is addressed below and is clarified in a new § 1926.1400(c)(17). One commenter noted that OSHA draws a distinction between construction work and routine maintenance and asked for examples of activities that fall under "construction" and under "maintenance." (ID–0147.1.) OSHA notes that considerable guidance on this distinction is already available. Several interpretive documents that discuss the distinction between construction and maintenance in the context of specific inquiries and issues are available on OSHA's Web site. *See, e.g.,* November 18, 2003, Letter of Interpretation to Raymond V. Knobbs, Minnotte Contracting Corporation, available at *http://www.osha.gov;* February 1, 1999, Letter of Interpretation to Randall A. Tindell, Williams Power Company, available at *http://www.osha.gov;* August 11, 1994, Memorandum from James W. Stanley, Deputy Assistant Secretary, available at *http://www.osha.gov.*

Two commenters objected to the inclusion of overhead and gantry cranes on the basis that such cranes are rarely used in construction and that a number of the most significant provisions of the standard, such as those covering ground conditions and proximity to power lines, do not apply to overhead and gantry cranes. (ID–0122.0; –0191.1.) OSHA agrees that overhead and gantry cranes that are installed in general industry workplaces and used only incidentally for construction work in such facilities should be covered under the general industry standard. This final standard accommodates this objective by providing, in § 1926.1438, that overhead and gantry cranes that are permanently installed in a facility are covered by the general industry standard even though used in construction work, such as renovating the facility in which they are installed. However, under § 1926.1438, overhead and gantry cranes that are not permanently installed in a facility, such as a launching gantry used in the construction of a bridge, are covered by this standard. Such cranes are intended to be used for construction work, present many of the same hazards as other equipment used in construction work, and are properly regulated under this construction standard.

No other comments were received objecting to the inclusion of items on the non-exclusive list in paragraph (a).

Several commenters asked that construction work performed in certain industries be excluded from the standard. The industries making such requests include railroads (ID–0170.1; –0176.1); shipbuilders (ID–0195.1); electric utilities (ID–0203.1; –0215.1); and companies that install signs in buildings under construction (ID–0189.1). For all of these industries, the commenters identify what they believe are specific problems in applying the standard to their activities and suggest that the most direct way of solving those problems is to exclude them from the standard entirely. For the following reasons, OSHA declines to exempt construction work performed by employers in these industries from the scope of this standard.

Two commenters ask that work along railroad rights-of-way be excluded from the standard. (ID–0170.1; –0176.1.) They claim that a number of provisions in the proposed rule are not suitable for railroad operations, including: (1) The operator qualification/certification requirement because no current certifying organization tests for the type of cranes used by railroads; (2) the requirements for ground conditions, work area control, and level positioning; and (3) the requirement for a dedicated channel if electronic signals are used. They also say that most such work is maintenance rather than construction. OSHA concludes there is merit in some of the specific concerns raised by these commenters and addresses those concerns in the sections of the standard pertaining to them. However, OSHA sees no basis for excluding work along railroad rights-of-way from this rule. Some such work, such as the replacement or renovation of automotive bridges over railroads, is plainly "construction work" that is appropriately regulated under this construction standard.

Several commenters raised concerns with the effect that this rulemaking would have on electric utilities, including: (1) The limited exclusion for digger derricks used in the industry; (2) the proposed requirement that employers performing subpart V work show that it is infeasible to maintain the normal clearance from energized power lines before they can use the less restrictive clearances in subpart V; (3) application of the operator qualification/certification requirement to the industry; and (4) the duties imposed on utility employers when other employers operate equipment near power lines owned or operated by the utility employers. (ID–0201.1; –0203.1; –0215.1.) The commenters suggest that all of these issues can be resolved by excluding utilities entirely from the standard.

OSHA does not agree that this limited group of concerns justifies completely excluding utilities from this standard. The use of cranes in utility construction work has always been subject to the construction crane standards (*see* § 1926.952(c)), and these commenters have not advanced a persuasive argument to discontinue this practice. The specific issues addressed by these commenters with respect to the application of this rule to electric utilities will be addressed below in sections dealing with those issues.

A commenter that operates shipyards in three states asks that shipyards be excluded from the standard. (ID–0195.1.) This commenter states that it currently has an excellent crane safety program that is based on general industry and shipyard standards, and asserts that its program would be adversely affected by the need to

[4] The proposed rule explained in detail why C–DAC decided to include dedicated pile drivers under this rule even though they are not traditionally considered to be cranes or derricks (*see* 73 FR 59727, Oct. 9, 2008).

administer a separate program for the "small percentage of lifts" that would fall under the construction standard. The commenter notes that the proposed standard has partially addressed its concern by providing that overhead and gantry cranes that are permanently installed in a facility are subject to the general industry standard for such cranes rather than this proposed construction standard. It states that shipyards "could potentially" use other types of cranes to support construction activities at its sites.

OSHA finds that the proposed rule appropriately addressed this issue. Overhead and gantry cranes are one of the most common type of crane used in shipyards and, as the commenter notes, § 1926.1438 allows employers with permanently installed overhead and gantry cranes to continue to follow the general industry standard. Moreover, 29 CFR 1915.2(a), provides that the shipyard standards "apply to all ship repairing, shipbuilding and shipbreaking employments and related employments." Therefore, some work that would otherwise be considered construction work and subject to subpart CC is in fact included in such "related employments." Therefore, subpart CC will likely affect shipyards only to a limited extent.

While it is understandable that the commenter may find it more convenient to administer a single program addressing only the general industry and shipyard standards, it has not substantiated its claim that the integration of this standard into that program or implementation of an additional program addressing this standard would not improve safety. The Agency notes that the commenter's construction operations have historically been subject to part 1926 subpart N.

A representative of employers who install signs in buildings asks that sign erection be excluded from the standard. (ID–0189.1.) This commenter says that sign erection is low-risk work because most signs are relatively light (rarely exceeding 2,000 pounds) and the equipment used is "light duty" equipment with relatively simple operating controls. For heavier signs, it states that sign installers typically hire crane companies that employ certified and professional crane operators. The commenter notes that proposed § 1926.1441 would exempt equipment with a rated capacity of 2,000 pounds or less from the standard but says this would not provide the industry with relief because sign installers must use higher capacity cranes due to the reach needed to install signs. Although it asks for complete exclusion, the commenter makes clear that its objection pertains to the requirement for operator qualification/certification in § 1926.1427. It asks for less stringent requirements for its industry, such as employer self-certification and a broader range of training and certifying entities, such as accredited educational institutions.

OSHA declines to exempt sign installation from the standard. Using cranes for sign installation on construction sites involves the same hazards as when used for other purposes. Examples include installation of signs near power lines; operation of the crane at an extended radius due to the need for long reach, which can heighten the risk of tip-over; the risk to the sign installers of losing the load; failures due to poor equipment condition or miscommunication between the operator and signal person. Finally, the commenter's objections to the operator qualification/certification requirements for its industry parallels objections raised by others and will be addressed in the discussion of § 1926.1427.

A commenter representing the propane gas industry says that industry does not use cranes in "construction work" and asks OSHA to "affirm" this in the final rule. (ID–0198.1.) The commenter asserts that the industry installs propane storage tanks ranging from 120 to 5,000 gallons capacity using truck-mounted cranes to lift and place the tanks onto supports.

From this limited description of the industry's use of cranes, it is likely that at least some of the industry's work is construction work. If the site at which the tank is installed is a building under construction, installation of a propane tank would qualify as construction work, just as the installation of an air conditioning unit on that site would be construction work. At the other extreme, replacing a small tank at an existing site with a new tank of the same capacity would be considered general industry work. In sum, based on the information provided, it appears that some of the industry's work is construction work and some is general industry. OSHA therefore cannot "affirm" that the propane industry is excluded from the standard.

For the foregoing reasons, OSHA is promulgating paragraph (a) as proposed except for a grammatical correction to clarify that the standard applies to only equipment used for construction activities. Employers who use covered equipment for both general industry work and construction work would not be required to comply with subpart CC when the equipment is used for general industry work and not construction work.

Paragraph (b)

Proposed paragraph (b) of this section provided that equipment covered by paragraph (a) remains within the scope of the standard when used with attachments that are either "crane-attached or suspended." As defined in § 1926.1401, an "attachment" is "any device that expands the range of tasks that can be done by the equipment. Examples include, but are not limited to: an auger, drill, magnet, pile-driver, and boom-attached personnel platform." C–DAC decided to include such attachments, even though they might not use the crane's hoisting mechanism, to avoid the confusion that would result if the equipment moved in and out of coverage of the rule as attachments are put on and taken off. Furthermore, most of the operational characteristics and hazards of the equipment remain the same while the attachment is in use. No comments were received regarding this paragraph, and it is being promulgated as proposed.

Paragraph (c)

Proposed paragraph (c) of this section listed machinery that would be specifically excluded from the scope of the rule. As discussed below, several of these proposed exclusions generated public comment.

Proposed paragraph (c)(1) provided that machinery otherwise included under § 1926.1400(a) but "converted or adapted for non-hoisting/lifting use" is excluded. Power shovels, excavators and concrete pumps are listed as nonexclusive examples of such "conversions/adaptations" or modified machinery.

A commenter suggested that OSHA consider including concrete pumping trucks because they are configured as cranes and suspend loads over a distance. (ID–0178.1.) C–DAC considered this issue but decided not to include them. While a concrete pumping truck does pose some of the same hazards as a crane, its load (*i.e.,* the concrete being pumped) is carried in a piping system affixed to its boom, rather than being suspended. Consequently, it does not fit the functional definition in paragraph (a) of this section. This commenter noted that, like a crane, a concrete pumping truck may have outriggers or be located near a power line. However, this standard is designed to address the hazards that are specific to cranes and derricks rather than to address stability and power line

clearance issues for all types of construction equipment.

A commenter asked that a type of equipment for which it holds patent rights, the "Linemaster Robotic Arm," be excluded. (ID–0209.1.) According to the commenter, this equipment is a hydraulically powered, boom mounted, rotating and telescopic robotic arm that is used to separate live power lines from poles. The commenter states that crews using the robotic arm use a crane only as a non-hoisting support machine, and that the crane cannot be used to lift or haul materials because its winch line is removed. The commenter believes that such equipment should be excluded under paragraph (c)(1) because the crane has been converted to a non-hoisting use.

OSHA does not agree with this commenter. As discussed above, under paragraph (b) of this section, equipment otherwise covered by the standard remains covered when used with attachments that are either "crane-attached or suspended." The description of the robotic arm supplied by the commenter suggests that the robotic arm fits within paragraph (b). As explained above, paragraph (b) is designed to avoid having equipment move in and out of coverage as attachments are added and removed. Excluding a crane when a robotic arm is attached would be inconsistent with that objective. Moreover, as the preamble to the proposed rule stated, even when a crane is being used for a non-hoisting purpose, its hoisting capability is still present, and most of its operational characteristics and hazards remain the same while the attachment is in use.

For those reasons, and those explained in the preamble to the proposed rule, paragraph (c)(1) is promulgated as proposed (*see* 73 FR 59729, Oct. 9, 2008).

Proposed paragraph (c)(2) excluded power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders. It provided that such machinery is also excluded when used with chains, slings or other rigging to lift suspended loads. These types of material handling machinery were excluded even though, when used to lift suspended loads, they present hazards similar to those associated with equipment covered by the proposed rule. However, C–DAC proposed to exclude them because it determined that the differences between the equipment included in the standard and the material handling machinery that is excluded are such that one standard could not be readily designed to suit both. OSHA agrees. It should be noted that another construction standard, § 1926.602 in subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations, covers the material handling equipment that is excluded from this standard. No comments were received concerning paragraph (c)(2), and it is promulgated as proposed.

Proposed paragraph (c)(3) excluded automotive wreckers and tow trucks "when used to clear wrecks and haul vehicles" (*see* explanation at 73 FR 59729, Oct. 9, 2008). No comments were submitted on this paragraph, and it is promulgated as proposed for the reasons provided in the preamble to the proposed rule.

Proposed paragraph (c)(4) would have excluded service trucks with mobile lifting devices that are designed specifically for use in the power line and electric industries when those trucks are used either to auger holes to set power and utility poles or to handle associated materials that will be installed or removed from utility poles. A digger derrick, or radial boom derrick, is an example of such a truck.

This machinery is currently covered by subpart N, with the exception of certain provisions, by virtue of § 1926.952(c). We note that ASME B30.5–2004 excludes digger derricks and "cranes manufactured specifically for, or when used for, energized electrical line service" from the scope of that industry consensus standard.

Digger derricks are a specialized type of equipment designed to install utility poles. They are equipped with augers to drill holes for the poles and with a hydraulic boom to lift the poles and set them in the holes. The booms can also be used to lift objects other than poles, and electric utilities use them both to place objects on utility poles and for general lifting purposes at worksites such as utility substations. (ID–0139.1.) Digger derricks have rated capacities as high as 36,000 pounds. (ID–0369.1.) When electric utilities are finished with them, they sell them to other construction companies. (ID–0341.)

Since its promulgation in 1972, subpart V ("Power Transmission and Distribution") has excluded digger derricks from certain requirements of subpart N. C–DAC considered whether to continue special treatment of digger derricks used in subpart V work and proposed to exclude digger derricks used in Subpart V work from the standard to the extent they are used to auger holes and to handle associated materials to be installed on or removed from utility poles. C–DAC determined that such an exclusion was appropriate because of the "narrow, specialized range of activities and circumstances in which such trucks are used" (73 FR 59729, Oct. 9, 2008).

Most of the commenters on this issue favored an exclusion for digger derricks but asked that the proposed exclusion be broadened to all uses of digger derricks by electric utilities. (ID–0129.1; –0139.1; –0144.1; –0162.1; –0200.1; –0215.1; –0217.1; –0226.) Several noted that the proposed exclusion would lead to the incongruous result in that digger derricks would move in and out of coverage depending on the task they are performing. Noting that most of the exclusions developed by C–DAC applied to types of equipment rather than specific tasks, a commenter stated that C–DAC contradicts itself by proposing a task-related exclusion instead of an equipment-related exclusion. (ID–0200.1.) One commenter recommended that the proposed exclusion be extended to the setting and removal of poles. (ID–0209.1.) Another opposed any exclusion for digger derricks because digger derricks work in proximity to power lines. (ID–0092.20.)

Some commenters suggested that any exclusion for digger derricks should also apply to other industries. One stated that a similar exclusion should apply to digger derricks used to auger holes and set poles in the telecommunication industry. (ID–0234.) Another contended that it would be inconsistent to exclude a digger derrick used to set an electric utility pole but not a telecommunications pole. (ID–0129.1.) The same commenter also said that digger derricks are used to set poles for outdoor lighting along roadways and indicated that the exclusion should apply to such use. A commenter in the railroad industry said that the exclusion should apply to digger derricks used in the railroad industry to install utility and communication signal poles. (ID–0176.1.)

Certain commenters criticized the description of the equipment in proposed paragraph (c)(4), which described the equipment subject to the exclusion as "service trucks with mobile-lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks)." One objected to the limitation that the equipment be "designed specifically for use in the power line and electric service industries" on the basis that employers should not be required to show the purpose for which their equipment is designed. (ID–0215.1.) Another, a witness at the public hearing, stated that the term "service truck" used in the proposal has no commonly

understood meaning in the industry. (ID–0342.)

OSHA agrees with these commenters that the description of the excluded machinery should be clarified and is using the term "digger derrick" exclusively to describe the equipment that is subject to the exclusion. The term "digger derrick" is well understood in the industry and is the only term used to describe the equipment by the ANSI standard applicable to such equipment, ANSI/ASSE A10.31–2006, Safety Requirements, Definitions, and Specifications for Digger Derricks. Accordingly, OSHA concludes that using "digger derrick" without reference to the purpose for which the equipment is designed or synonyms such as "service truck" is the clearest way to describe the exclusion. The Agency notes that despite its name, a "digger derrick" is not a "derrick" as defined in § 1926.1436(a). Thus, the additional requirements applicable to derricks in § 1926.1436 do not apply to digger derricks, and the exception from operator certification requirements in § 1926.1427(c) for derrick operators does not apply to operators of digger derricks included within the scope of § 1926 subpart CC.

OSHA also agrees with the majority of commenters who argued that the exclusion should be broadened so that it encompasses all digger derrick work on electric utility poles. Digger derricks are specifically intended to be used for augering holes for utility poles, placing the poles in the holes (and removing them when necessary), and handling materials being installed on or removed from the poles. Excluding all of these uses will minimize the incongruous result of having digger derricks move in and out of coverage while they are being used for their intended purposes at the same worksites. OSHA also agrees with those commenters who argued that the exclusion should encompass similar work on poles carrying telecommunication lines, since the rationale described above is equally applicable.

In addition, OSHA has drafted the exclusion in the final rule so that it is based on the type of work done with the digger derrick, rather than the industry classification of the employer performing the work. For example, digger derricks used by a railroad to install poles for telecommunication lines would be excluded.

When digger derricks are used in the operation and maintenance of existing electric power lines, they are subject to the general industry standard at § 1910.269. OSHA is currently conducting another rulemaking designed to avoid inconsistencies between subpart V of the construction standards, which applies to power line construction work, and § 1910.269 (*see* 70 FR 34821, Jun. 15, 2005). Pending the completion of that rulemaking, digger derricks excluded from this rule will be subject to the same requirements regardless of whether they are used for work subject to subpart V or work subject to § 1910.269. To ensure that digger derricks excluded from this rule (Subpart CC) are subject to appropriate safety requirements, OSHA is including language in § 1926.1400(c)(4), and is amending subpart V, to explicitly state that the activities from which digger derricks are excluded from subpart CC are subject to applicable provisions of § 1910.269. Those rules include § 1910.269(p) (mechanical equipment), § 1910.269(a)(2) (training), and § 1910.269(l) (work on or near exposed energized parts).

Similarly, digger derricks used in general industry telecommunication work are subject to the general industry standard at § 1910.268. Section 1910.268 includes requirements for working near energized power lines and requirements pertaining to the operation of the equipment, such as the need to comply with manufacturer load ratings. The requirements applicable to digger derricks under the general industry telecommunications standard (§ 1910.268) are comparable to those in the general industry electric utility standard (§ 1910.269). Accordingly, to ensure that comparable safety requirements apply to digger derricks during pole work, OSHA is including language in final § 1926.1400(c)(4) stating that § 1910.268 applies when digger derricks are used in construction work for telecommunication service. Section 1910.268 includes requirements for working near energized power lines and requirements pertaining to the operation of the equipment, such as the need to comply with manufacturer load ratings.

In addition, § 1926.952(c)(2) is also being amended to conform subpart V to § 1926.1400(c)(4).

While OSHA agrees that the limited exclusion recommended by C–DAC should be broadened in this manner, the Agency does not agree that the exclusion should encompass all uses of digger derricks in electric utility construction work, as some commenters suggested. Digger derricks are specifically designed to be used to install and remove utility poles. However, their lifting ability is not limited to utility poles, and the record shows that they are used by electric utilities for general lifting work, such as setting transformers in substations.

Their use with utility poles falls within the "narrow, specialized range of activities and circumstances" that led C–DAC to develop the proposed exclusion (*see* 73 FR 59729, Oct. 9, 2008). But when digger derricks are used for general lifting purposes, the hazards are the same as when other equipment of similar capacity is used for general lifting, and the exclusion developed by C–DAC is not appropriate for such work. OSHA determines that an exclusion limited to augering holes, setting and removing poles from those holes, and handling associated material to be installed on or removed from the poles will provide employees with an appropriate level of protection while accommodating the unique uses for which digger derricks are designed. It will also minimize the practical problems associated with equipment moving in and out of coverage at the same worksite.

OSHA recognizes that excluding digger derricks only when they are used for pole work would mean that the same machinery might be excluded for some work but covered when it is used at different worksites. However, the general lifting work done at those other worksites would be subject to this standard if done by other types of lifting equipment, and the same standards should apply as apply to that equipment. OSHA concludes that excluding digger derricks only for the work for which they are primarily designed and used is a reasonable approach. It accommodates the considerations that led C–DAC to propose a partial exclusion while treating digger derricks used for other construction work the same as other, similar equipment used for such work.

OSHA also declines to extend the exclusion broadly to installation of all poles for outdoor lighting along roadways, as one commenter suggested. OSHA notes that some poles that carry electric and telecommunication lines also have street lights installed on them, and use of digger derricks to install such lights would qualify for the exclusion to the extent that the employer complies with either §§ 1910.268 or 1910.269. It is unclear whether, and to what extent, digger derricks are used to install other types of poles used for lighting alone which do not carry electric power lines or telecommunication lines. Many such poles are installed on aboveground concrete bases rather than set in holes in the ground, and it is unclear whether and to what extent digger derricks are used to install them. In this regard, OSHA notes that the commenter asking

for the exclusion to be extended to light poles represents equipment manufacturers, and no company that installs lighting poles suggested such an exclusion. To the extent that some light pole installation would not be covered by either §§ 1910.268 or 1910.269, extending the exclusion to such work would leave the excluded work without coverage by an appropriate general industry standard and leave workers without the protection they receive when performing electric utility or telecommunication work.

OSHA disagrees with the comment that digger derricks should not be excluded at all because of the danger of power line contact. As discussed above, the digger derrick exclusion is limited to situations in which certain general industry standards apply, and those general industry standards, both §§ 1910.268 and 1910.269, contain requirements for protecting against power line contact.

Proposed paragraph (c)(5) specifically excludes machinery originally designed as vehicle mounted aerial lifts and self-propelled elevating work platforms. The language of this provision reflects C–DAC's intent to differentiate between equipment with an attachment such as a personnel platform pinned to the boom, which is within the scope of the proposed rule, and machinery originally designed to be configured only as an aerial lift, which is excluded. Another standard, § 1926.453, addresses aerial lifts. The only comments to address this exclusion supported retaining it. (ID–0129.1; –0312.1.) Accordingly, paragraph (c)(5) is promulgated as proposed.

Proposed paragraph (c)(6) excluded telescopic/hydraulic gantry systems. C–DAC excluded this machinery because it presents hazards that differ in many respects from those presented by the equipment covered by this standard. As a result, many provisions of this standard would not be workable or needed for this equipment, and hazards unique to this type of machinery would not be addressed. In the proposed rule, OSHA noted that the Specialized Carriers & Rigging Foundation recently issued a voluntary consensus standard for telescopic/hydraulic gantry systems. (73 FR 59730, Oct. 9, 2008; ID–0027.) As no comments on this exclusion were received, paragraph (c)(6) is promulgated as proposed.

Under proposed paragraph (c)(7), stacker cranes were excluded. C–DAC noted that these cranes are rarely used in construction, and their configuration is too unlike other equipment covered by the proposed standard to warrant inclusion. No comments on this exclusion were received, and paragraph (c)(7) is promulgated as proposed.

Paragraph (c)(8) of the proposed rule excluded "powered industrial trucks (forklifts)." C–DAC proposed to exclude such machines because forklifts are mostly used in a manner that does not involve suspended loads and would often require different responses to the hazards presented than are provided in this standard.

OSHA solicited public comment on whether the scope language should be modified to explicitly state that forklifts modified to perform tasks similar to cranes are covered. Two commenters stated that the inclusion in paragraph (a) of this section of multi-purpose machines when configured to hoist and lower by means of a winch or hook would include forklifts that are modified to perform tasks similar to a crane. (ID–0205.1; –0213.1.) Several other commenters argued that forklifts should be excluded even if they are configured to perform tasks similar to cranes and suggested adding specific language to that effect. (ID–0187.1; –0231.1; –0232.1) These commenters noted that forklifts are regulated under a different section, § 1926.602(c), and believed that § 1926.602(c) was better suited to the hazards presented by such equipment than this standard. One commenter stated that the challenges facing modified forklift operators are fundamentally different from the challenges facing crane operators, thus the standards regulating them should also be fundamentally different. (ID–0231.1.)

The comments submitted on this issue highlight the need for greater clarity. This standard applies to equipment that can hoist, lower and horizontally move a suspended load. First, as a preliminary matter, the standard does not apply to forklifts used exclusively in their most traditional form: placing the forks underneath a load and using the forks to lift or lower the load. With a "suspended" load, the forks (or modified lifting device) would be above the load.

Second, OSHA has included paragraph (c)(8) to exclude forklifts when used to suspend a load from its forks. OSHA recognized that a forklift could technically meet the criteria of subpart CC coverage whenever it is used to suspend a load from its forks (such as by hanging the load from a chain wrapped around the forks), hoist it vertically by raising or lowering the forks, and move the load horizontally by moving the entire forklift. Under such a scenario the forks are used as the primary support for a load suspended directly from the forks, but OSHA concludes that these forklifts warrant an exception from the scope of this subpart CC because they do not utilize the components in the same manner as other equipment covered by this standard. In contrast, a piece of equipment covered by this standard manipulates suspended loads by utilizing components such as winches, booms, jibs, gantries, and trolleys. Outriggers and stabilizers are also often needed to stabilize the equipment while hoisting a load.

Third, OSHA is revising paragraph (c)(8) to clarify that the forklift exclusion applies only to forklifts that do not meet the definition of multi-purpose machines covered under subpart CC (those that are configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load). This standard covers multi-purpose machines because they are configured with the above-mentioned components (winches, booms, jibs, gantries, trolleys, stabilizers, *etc.*), even though they also have a dual function. OSHA recognizes that a powered industrial truck could be modified so that it would qualify as a multi-purpose machine, such as by adding an after-market boom and hook attachment in addition to the fork attachment. It is the Agency's intent that forklifts that are capable of multiple configurations are treated as multi-purpose machines and excluded from coverage of subpart CC only as set forth in § 1926.1400(a). A forklift with a boom attachment affixed to its forks that uses a hook to raise and lower the load like a crane would be covered by subpart CC. However, as noted in the preamble to the proposed rule, a forklift would be excluded from the coverage of subpart CC when its sole means of suspending a load is a chain wrapped around the forks.

Proposed paragraph (c)(9) excluded mechanics' trucks with hoisting devices when used in activities related to equipment maintenance and repair. One commenter stated that similar trucks are used in the power line industry for tasks such as installing transformers and suggested that such equipment should also be excluded. (ID–0144.1.) However, as explained in the proposed rule, this provision was not intended to exclude mechanics' trucks when used to hoist materials during construction work but only to provide a limited exception when they are used for equipment maintenance and repair activities. Their use in this manner is similar to the way automotive wreckers and tow trucks, which are excluded under paragraph (c)(3) of this section, are used. OSHA determines that this exclusion should be

limited in the manner stated in the proposed rule, and paragraph (c)(9) is promulgated as proposed.

In proposed paragraph (c)(10), machinery that hoists by using a come-a-long or chainfall was excluded for the reasons explained in the preamble to the proposed rule (*see* 73 FR 59730, Oct. 9, 2008). No comments were received on this provision, and it is promulgated as proposed.

Proposed paragraph (c)(11) excluded dedicated drilling rigs. This exclusion received substantial attention during the C–DAC negotiations and was discussed at length in the proposed rule (*see* 73 FR 59730, Oct. 9, 2008). OSHA requested public comment on issues related to this exclusion. No written comments were submitted but, in testimony at the public hearing, a trade association supported the proposed exclusion. (ID–0341.) Accordingly, paragraph (c)(11) is promulgated as proposed.

Proposed paragraph (c)(12) excluded "gin poles when used for the erection of communication towers." (*See* discussion at 73 FR 59730, Oct. 9, 2008). A commenter stated that this exclusion should be extended to also cover gin poles used to erect electrical transmission towers and lines, but gave no supporting rationale or information. (ID–0209.1.)

The use of gin poles for erecting communications towers is highly specialized; the communication tower industry has developed a detailed consensus standard that specifically addresses their use in that application.[5] However, the Agency is unaware of a similar degree of specialization and development of safe practices for gin poles used for erecting electrical transmission towers. Accordingly, OSHA lacks a basis for extending the exclusion to work other than that covered in proposed paragraph (c)(12); paragraph (c)(12) is promulgated as proposed with the addition of the word "when" before "used" to clarify that the exclusion does not apply when gin poles previously used to erect communication towers are used for other purposes.

Proposed paragraph (c)(13) excluded tree trimming and tree removal work from the scope of the proposed rule. One commenter favored the exclusion as written (ID–0040.1), but another suggested limiting the exclusion to tree trimming performed for maintenance and including tree trimming related to construction (ID–0172.1). The latter commenter stated that tree trimming related to construction is particularly dangerous because the weight of the pick is uncertain and the ground conditions to support the equipment may be inadequate.

C–DAC agreed to exclude tree trimming and removal because the vast majority of the tree care industry's work does not take place in construction and is therefore governed by general industry standards. OSHA continues to agree that this is a valid reason for the exclusion. OSHA is promulgating paragraph (c)(13) as proposed.

Proposed paragraph (c)(14) excluded anchor handling with a vessel or barge using an affixed A-frame. Two commenters suggested that the vessels to which this paragraph pertains should be excluded even when used for purposes other than anchor handling to avoid having the vessels move in and out of coverage depending on how they are used. (ID–0376.1; –0383.1.) These commenters stated that such vessels are sometimes used for dredging operations and suggested rewording the exclusion to state: "Anchor handling or dredge related operations with a vessel or barge using an affixed A-frame."

OSHA is adopting these commenters' suggestion and their recommended wording of paragraph (c)(14). As explained in the proposed rule, C–DAC agreed to the exclusion in proposed paragraph (c)(14) because its Cranes on Barges Work Group concluded that the requirements of this rule could not readily be applied to the specialized equipment listed in the exclusion. That rationale favors the broader exclusion recommended by the commenters.

Proposed paragraph (c)(15) excluded roustabouts because C–DAC concluded that the proposed standard was similarly unsuited to address these devices (*see* 73 FR 59731, Oct. 9, 2008). No commenters addressed this issue, and paragraph (c)(15) is promulgated as proposed.

Paragraph (c)(16) excludes helicopter cranes. Such cranes are regulated under § 1926.551 of subpart N, which is not affected by this final rule and continues in effect. C–DAC and OSHA did not intend to cover helicopter cranes under this subpart. However, such cranes fit the description in § 1926.1400(a) of the equipment covered by this rule in that they are power-operated equipment that can hoist, lower, and horizontally move a suspended load. To avoid any uncertainty over whether they are subject to this rule or to § 1926.551, OSHA is explicitly excluding them from this rule through paragraph (c)(16).

Paragraph (c)(17) Delivery of Material to Construction Sites

It is common for material that is to be used in construction work to be delivered to the construction site on a truck equipped with a lifting attachment that is used either to place the materials on the ground or to place them on the structure. For example, articulating/knuckle-boom truck cranes are often used to deliver bundles of drywall to the site and then move the bundles from the truck up to a floor of the building under construction. To the extent these cranes are used in "construction work," they fall within the scope of this final rule as defined in § 1926.1400(a).

OSHA has long taken the view that an employer who delivers materials to a construction site is not engaged in "construction work" if that employer's work once at the site is limited to simply placing/stacking the materials on the ground. OSHA requested comment from the public on whether the final rule should include an explicit exclusion to this effect (*see* 73 FR 59731, Oct. 9, 2008).

Most commenters on this issue favored such an exclusion to clarify that such equipment was not being used in construction. (ID–0145.1; –0147.1; –0165.1; –0184.1; –0206.1; –0218.1; –0232.1; –0233.1; –0235.1; –0299.1.) Certain commenters expressed the view that any such exclusion should also extend to delivery of materials onto structures at the construction site because, in their view, this was also not a construction activity. (*E.g.,* ID –0184.1; –0233.1; –0235.1.) Some of these commenters represented employers who deliver building materials such as lumber, drywall, and roofing materials. (*See, e.g.,* ID–0184.1; –0233.1.) Others represented employers in the heating, ventilation, air conditioning, and refrigeration (HVACR) industry. (ID–0165.1; –0235.1.) Several of the commenters pointed to the operator training and/or certification requirements in § 1926.1427 of the proposed rule as particularly burdensome given the distinctions between delivery activities and what they characterized as the more complex activities typically associated with the equipment covered by the proposed rule. (ID–0165.1; –0184.1; –0218.1; –0231.1; –0233.1; –0235.1.)

OSHA notes some commenter confusion regarding instances when the construction materials are not delivered to the curb or a stockyard but instead to a designated area on the construction site where the materials are staged/organized to facilitate hoisting activities. In these scenarios, OSHA construction

[5] *See* ANSI/TIA–1019 (2004), *Structural Standards for Steel Gin Poles Used for Installation of Antenna Towers and Antenna Supporting Structures,* which contains detailed provisions for installing and using gin poles to erect communication towers.

standards apply. *See, e.g.,* Letter to Johnson (2/6/08) (stacking of materials), Letter to Reynolds (1/5/01) (delivery of materials onto structure). When hoisting equipment is used to arrange the materials in a particular sequence for hoisting or to lift materials onto a structure that is under construction, it is being used to expedite work that is integral to the construction process and is, therefore, construction work. However, to remain consistent with existing compliance guidance, this final rule states that when lifting equipment is used solely to deliver building supply materials from a supplier to a construction site by placing/stacking the materials on the ground, without arranging the materials in a particular sequence for hoisting, OSHA does not regard the delivery process as a construction activity. OSHA believes that this limited and conditional exclusion will exclude this equipment when used to perform such deliveries and address the concerns of commenters who only deliver construction materials to the ground.

Construction typically consists of a process of assembling and attaching (or in some cases, disassembling) a vast variety of materials to form a building or other structure.[6] In building construction, those materials typically include small, individual items (a few examples include: nails, lumber, pipes, duct work sections, electrical items, sheet goods), large individual items (a few examples include: structural steel or precast concrete columns and beams), and prefabricated structural and building system components (a few examples include: roof trusses, precast concrete wall sections, and building machinery such as boilers, pumps, and air handling equipment). All of these items must be delivered to the jobsite and unloaded from the vehicle delivering them before they can be used in the building or structure.

C–DAC indicated that to facilitate the assembling or attaching of such items, cranes and derricks are often used to hoist and hold, support, stabilize, maneuver, or place them. Sometimes they are used to place items in a convenient location for subsequent use. For example, they are often used to place a bundle of steel decking sheets onto the structure for later "shaking out" (*i.e.,* after being landed on the structure, workers "break" the bundle and distribute the decking sheets for subsequent attachment). One of OSHA's construction standards contains specific requirements related to the landing and placing of such bundles (*see* § 1926.754(e)(1)).

Sometimes cranes and derricks are used to place an item in a specific location for immediate attachment. For example, cranes are typically used to precisely place steel columns on concrete footings, which involves aligning holes at the column's base with anchor rods/bolts in the footing so that the column can be secured to the footing. In building and bridge construction, cranes are often used to precisely place precast concrete members so that workers can attach them to other precast members (or sometimes to a structural steel frame).

Cranes are also used to place precast concrete components so that other items can be connected to them. For example, in utility and sewer construction, precast concrete manholes or vaults are placed for proper alignment with utility pipes; in residential construction, precast concrete septic systems are placed for proper location in an excavation. Clearly, such movement and placement of material by cranes and derricks is integral to the construction process, and the fact that this may be done by the vehicle that delivered the material to the site does not make it a non-construction activity.

Cranes are also commonly used to hoist building materials onto a structure for subsequent use. Although this is also a construction activity,[7] OSHA determines that a limited exclusion for articulating/knuckle-boom truck cranes used for such work is appropriate to minimize having this equipment move in and out of coverage of this rule.

The record shows that articulating/knuckle-boom truck cranes are often used to deliver sheet goods (*e.g.,* drywall), or packaged materials (*e.g.,* roofing shingles) to construction sites and that it is common for the delivery to be made onto the structure. Delivering material to a structure can pose a hazard that is typically not present when material is placed on the ground: when the boom is extended, as when lifting the material to an upper floor, the possibility of exceeding the crane's rated capacity, with the resultant possibility of boom collapse and crane tipover, is present. A representative of a material delivery trade association testified that articulating/knuckle-boom cranes are equipped with automatic safety systems that detect whether the crane is close to being overloaded and automatically prevent such overloading. (ID–0341; –0380.1; –0381.1.)

The representative described a test on a crane with a load of 2,900 pounds and a maximum extension of 78 feet, 11 inches, and said that the automatic device preventing the boom from extending beyond its maximum safe length for that load and angle of 46 feet. (ID–0341.) Thus, with a load that is typical of the loads that are often delivered, the hazard of the crane collapsing exists with the boom at far less than its maximum possible extension. Another representative of the material delivery industry, also noted the presence of such devices on the equipment used by its members and, while it asked for such equipment to be exempt completely from this rule, alternatively suggested an exemption for equipment with such devices installed. (ID–0184.1.)

OSHA is, to a large extent, adopting the commenter's suggestion. The overloading and subsequent collapse of cranes is one of the primary hazards this final rule seeks to address. The trade association witness's testimony shows that the potential for collapse is present when articulating/knuckle-boom cranes are used to deliver materials onto a structure. The industry has, however, addressed this hazard by equipping such cranes with automatic overload prevention devices. Therefore, OSHA is excluding articulating/knuckle-boom cranes used to deliver materials onto a structure from the final rule, but only when the cranes are equipped with properly functioning automatic overload prevention devices. Without such a device, the crane is subject to all provisions of this final rule. It should be noted that electrical contact with power lines is another serious hazard covered by the final rule. The limited exemption for articulating/knuckle-boom cranes used for certain construction operations also exempts this equipment from the requirements for operations near power lines contained in the final rule. When performing an exempt operation, this equipment (like must of the other exempt equipment and operations) will be covered by revised § 1926.600(a)(6).

OSHA is limiting this exclusion to the delivery of sheet goods and packaged materials including, but not limited to: sheets of sheet rock, sheets of plywood, bags of cement, sheets or packages of roofing shingles, and rolls of roofing felt. The placement of other materials on a structure under construction is the type of core construction activity this rule seeks to address, and excluding the

[6] Construction also includes the deconstruction or demolition of a portion, or all, of a structure.

[7] Moving building materials onto a structure for subsequent use is an integral part of the construction process. This is the case whether the materials are brought onto the structure by hand, with the aid of a crane after the materials had been previously delivered to the ground, or by the same equipment that brought them to the site. *See e.g.,* January 5, 2001, Letter of Interpretation to Mr. Jeff Reynolds, Division Safety Manager Pacific Supply, available at *http://www.osha.gov.*

hoisting and movement of other types of materials, such as precast concrete members, prefabricated building sections, or structural steel members, would severely reduce the rule's effectiveness. Moreover, equipment used to lift these types of materials on construction sites is rarely, if ever, used for non-construction activities on those sites and does not often present the problem of equipment moving in and out of coverage when used for different activities.

OSHA is also limiting the exclusion by making it clear that it does not apply when the crane is used to hold, support or stabilize the material to facilitate a construction activity, such as holding material in place while it is attached to the structure. For example, while placing a package of shingles onto the roof of a structure would fall within the exemption, suspending the shingles in the air and moving them to follow the progress of the roofer would not. When the crane is being used to facilitate the construction activity, it has exceeded the "delivery" of goods and is therefore engaged in a process that is more complex than the scenarios addressed by the commenters who supported an exclusion for materials delivery. OSHA is also concerned that exempting this activity would provide an incentive for employers to use materials delivery cranes for other purposes, thereby undermining the rationale for the materials delivery exclusion.

In particular, OSHA declines to exclude the handling of HVACR units, as some commenters urged. Using a crane to deliver HVACR equipment is an example of using a crane to hoist and position a component of the building's mechanical systems, which is an integral part of the construction process. According to one industry commenter, during a typical installation of a large commercial rooftop HVACR unit, a mobile crane delivers the equipment to its intended location on the roof, where an HVACR technician connects the equipment to the ventilation system. (ID–0165.1) Thus, unlike sheet goods and packaged materials, which are not placed in their location of final use by the delivery vehicle, delivery of HVACR equipment may be integral to its installation. Like the hoisting and movement of other building components, use of cranes and derricks to move HVACR equipment falls squarely within this rule.

OSHA also received a comment from a representative of the precast concrete industry requesting the exclusion of equipment used to deliver materials such as concrete manholes, septic tanks, burial vaults, concrete block, and concrete pipe. (ID–0299.1) This commenter stated that their portion of the precast concrete industry solely delivers materials to a construction site, and believed that they simply supply materials for a construction project but are not involved in actual construction. (ID–0299.1)

OSHA agrees that in circumstances where the equipment is used solely to deliver these types of concrete materials from a supplier to a construction site by placing/stacking the materials from the delivery vehicle to the ground in, for example, a storage or staging area, without arranging the materials in a particular sequence for subsequent hoisting, the equipment is not being used for a construction activity. However, if the equipment is used to hoist, hold, support, stabilize or place precast concrete material as part of the installation process, it is engaged in a construction activity and would be subject to this rule. For example, a truck-mounted articulating crane may be used to maneuver a precast component such as a vault or concrete pipe from the truck to its installation point in an excavation. As previously discussed, such use is a typical construction activity.

To summarize, when a delivery vehicle is used solely to deliver building supply materials from a supplier to a construction site by placing/stacking the materials on the ground, without arranging the materials in a particular sequence for hoisting, the equipment is not being used for a construction activity and is not subject to this rule. When an articulating/knuckle-boom truck crane that brings material to a site is used to transfer building supply sheet goods or building supply packaged materials from the vehicle onto a structure, the activity is a construction activity but the crane is excluded from this rule if it is equipped with a properly functioning automatic overload prevention device and satisfies the other requirements of the exception in § 1926.1400(c)(17). All other equipment that falls under § 1926.1400(a) is subject to this rule when delivering materials onto a structure.

OSHA is including in the final rule a new § 1926.1400(c)(17) to clarify the circumstances under which material delivery is subject to the rule. Paragraph (c)(17)(i) excludes from the scope of this standard an articulating/knuckle-boom truck crane that delivers material to a construction site when it is used to transfer materials from it to the ground, without arranging the materials in a particular sequence for hoisting.

Paragraph (c)(17)(ii) contains the exclusion for an articulating/knuckle-boom truck crane that delivers material to a site when it is used to transfer building supply sheet goods or building supply packaged materials from it onto a structure, using a fork/cradle at the end of the boom. This provision conditions this exclusion on the truck crane being equipped with a properly functioning automatic overload prevention device and lists examples of the sheet goods or packaged materials that qualify for the exclusion, stating that these include, but are not limited to: sheets of sheet rock, sheets of plywood, bags of cement, sheets or packages of roofing shingles, and rolls of roofing felt. These are typical building supply materials that pose a reduced risk of falling when being lifted by the truck crane because of their configuration and/or packaging, and because the truck crane was designed to safely handle this type of material.

Any delivery activities not excluded under paragraphs (c)(17)(i) and (ii) are subject to the standard. However, to avoid any possible ambiguity on this point, OSHA has included paragraph (c)(17)(iii). Paragraphs (c)(17)(iii)(A)–(C) list explicit activities for which the exclusion does not apply. Paragraph (c)(17)(iii)(D) is included to avoid any possible implication that paragraphs (c)(17)(iii)(A)–(C) represent an exclusive list of delivery activities that are subject to the final rule.

Paragraph (d)

Paragraph (d) of this section is included because there are some types of equipment for which only limited requirements apply, and others where there are special requirements that supplement, rather than displace, the other requirements in the rule. To avoid confusion, this paragraph establishes that all parts of the rule apply unless a provision specifically identifies other parts of the rule as inapplicable, or identifies the only provisions of the standard that are applicable. No comments were received on this paragraph, and it is promulgated as proposed except that "subpart CC" replaces the phrase "this standard" from the proposed rule.

Paragraph (e)

Proposed paragraph (e) of this section provided that the duties of controlling entities [8] are not limited to the duties specified in §§ 1926.1402(c), 1926.1402(e) and 1926.1424(b). The paragraphs referenced in this provision listed specific duties imposed on controlling entities under this rule.

[8] The definition of "controlling entity" is explained in the discussion of § 1926.1402(c).

Paragraph (e) was included to avoid any implication that the listing of certain duties placed on controlling entities by this rule displaces the duties placed on them under OSHA's multi-employer policy.

Several commenters questioned OSHA's authority to enforce its multi-employer policy against controlling entities as well as the provisions in the proposed rule that would impose specific duties on controlling entities. (ID–0166.1; –0197.1; –0214.1; –0232.1.) OSHA explained in detail in the proposed rule why it has such authority (*see* 73 FR 59731–59733, Oct. 9, 2008). Paragraph (e) is promulgated as proposed.

Paragraph (f)

Paragraph (f) requires that where a provision in the rule directs an operator, crewmember or other employee to take a specified action, it is the employer's responsibility to establish work rules to require the relevant employees to take that action, and to effectively communicate and enforce those work rules. This paragraph clarifies the employer's obligations with regard to such provisions. No comments on this paragraph were received, and it is being promulgated as proposed with only a minor grammatical correction.[9]

Paragraph (g)

Some commenters requested that OSHA provide a complete exemption from subpart CC for subpart V work. As discussed in § 1926.1410(k), OSHA has addressed their concerns through exclusions from specific requirements of the rule.

Most employers engaged in construction work under subpart V are also engaged in general industry work under § 1910.269, which covers the operation and maintenance of electric power generation, transmission, and distribution installations. The requirements for mechanical equipment in § 1910.269(p) are at least as protective as the requirements in §§ 1926.1407–1926.1411 of subpart CC. Therefore, OSHA determines it is appropriate to give employers doing subpart V work the option of complying with § 1910.269(p) in lieu of the requirements in §§ 1926.1407–1926.1411 of this final rule. This decision has been codified in paragraph (g) of this section and a note referencing this new paragraph has been added to § 1926.952(c)(3).

Paragraph (h)

Paragraph (h) notes that § 1926.1402, *Ground conditions,* does not apply to cranes used on railroad tracks that are part of a general railroad system that is regulated by the Federal Railroad Administration. OSHA added paragraph (h) to this section of the final rule to aid the public in finding this exception. (*See* discussion of this provision at § 1926.1402(f).)

Section 1926.1401 Definitions

OSHA includes a number of definitions to clarify the meaning of terms used in this subpart. Many of the defined terms are commonly used in the industry, and C–DAC in most instances relied on standard industry sources or its own understanding of how terms are used in the industry to help ensure that the definitions would be readily understood by employers and employees. Industry sources on which C–DAC relied include existing OSHA standards, consensus standards, and "A Glossary of Common Crane and Rigging Terms" (Specialized Carriers and Rigging Foundation 1997) ("SC&RF Handbook") (ID–0019.). OSHA includes other definitions to ensure that certain terms used in the proposed standard have a precise, unambiguous meaning.

One commenter noted that definitions as proposed were not identical to those in certain consensus standards and requested they be changed to match. (ID–0178.1.) The commenter cited to various consensus standards, including ANSI A10.31–2006, ANSI A10.28–1998, ANSI A10.33–1998, and ANSI Z359.0–2007. The commenter did not explain why the definitions as proposed were inappropriate nor how the change would improve safety. As noted above, consensus standards were utilized as a resource in developing the definitions for this subpart. OSHA disagrees with the commenter's position that the definition must match consensus standards. OSHA established definitions that would work in the framework of the equipment covered by this subpart, would coordinate with other OSHA standards and provide a foundation for enforcing the requirements of this subpart. As a result, OSHA is not making modifications to definitions based on this commenter's request.

A few definitions in this final rule have been modified from or added to those in the proposed rule. Those definitions are: A/D director; Assembly/Disassembly; Builder; Controlling entity; Digger derrick; Duty cycle; Freeboard; Hoist; Load moment (or rated capacity) indicator; Load moment (or rated capacity) limiter; Nationally recognized accrediting agency; Positioning device system; Range control limit device; Repetitive lift; Tower crane; Type; Upperworks; and Wire rope.

The reasons for these additions or modifications are discussed in the preamble at the location indicated in Table 5 below, with the exception of the definition for hoist, which is discussed below.

OSHA received one comment on the definition of "hoist" in the proposed rule. (ID–0122.0.) This commenter expressed concern that the proposed definition would exclude hoists that utilized wire rope or chains. To address this concern, OSHA modified the definition of "hoist" in the final rule to refer to "a line" rather than "rope." The use of the more general term "line" is intended to refer to any material (*e.g.,* rope, wire rope, chain, *etc.*) used to connect the hoist to that which is being hoisted.

Definitions that did not receive comment are adopted for the reasons set forth in the preamble of the proposed rule (*see* 73 FR 59733–59739, Oct. 9, 2008).

The preamble location for discussion of all definitions provided in § 1926.1401 can be found in Table 5 below.

TABLE 5—INDEX OF DEFINED TERMS

Term	Location of preamble discussion	Term	Location of preamble discussion
A/D director	§ 1926.1404(a)	Load	§ 1926.1401
Articulating crane	§ 1926.1401	Load moment (or rated capacity) indicator.	§ 1926.1416(e)(4)
Assembly/Disassembly	§ 1926.1403	Load moment (or rated capacity) limiter	§ 1926.1416(e)(4)
Assist crane	§ 1926.1404(h)(4)	Locomotive crane	§ 1926.1401

[9] For clarity, OSHA is substituting references to "shall" in the proposed rule with "must" in this final rule to remove any implication that the sentence is descriptive, rather than imperative.

TABLE 5—INDEX OF DEFINED TERMS—Continued

Term	Location of preamble discussion	Term	Location of preamble discussion
Attachments	§ 1926.1400(b)(2)	Luffing jib limiting device	§ 1926.1416(d)(2)
Audible signal	§ 1926.1419(b)	Marine hoisted personnel transfer device	§ 1926.1431(b)(2)(iii)
Blocking	§ 1926.1404(h)(2)	Marine worksite	§ 1926.1431(b)(2)(iii)
Boatswain's chair	§ 1926.1431(o)	Mobile cranes	§ 1926.1401
Bogie	§ 1926.1435	Moving point-to-point	§ 1926.1423(e)(1)
Boom (equipment other than tower crane).	§ 1926.1401	Multi-purpose machine	§ 1926.1400(a)
Boom (tower cranes)	§ 1926.1435(e)(5)(ii)	Nationally recognized accrediting agency.	§ 1926.1427(b)(1)(i)
Boom angle indicator	§ 1926.1416(d)(1)(i)(A)	Non-conductive	§ 1926.1407(b)(2)
Boom hoist limiting device	§ 1926.1416(d)(1)	Operational aids	§ 1926.1416
Boom length indicator	§ 1926.1416(e)(3)	Operational controls	§ 1926.1417(b)(2)
Boom stop	§ 1926.1416(a)(2)	Operator	§ 1926.1401
Boom suspension systems	§ 1926.1404(h)(7)	Overhead and gantry cranes	§ 1926.1438
Builder	§ 1926.1436(c)	Paragraph	§ 1926.1401
Center of gravity	§ 1926.1404(h)(6)	Pendants	§ 1926.1404(h)(8)
Certified welder	§ 1926.1431(e)(5)	Personal fall arrest system	§ 1926.1423*(g)*
Climbing	§ 1926.1435(b)(7)	Portal cranes	§ 1926.1415(a)(1)
Come-a-long	§ 1926.1400(c)(10)	Positioning device system	§ 1926.1423
Competent person	§ 1926.1401	Power lines	§ 1926.1407–1411
Controlled load lowering	§ 1926.1426(d)	Procedures	§ 1926.1401
Controlling entity	§ 1926.1402(c)	Proximity alarm	§ 1926.1407(b)(3)
Counterweight	§ 1926.1404(h)(9)	Qualified evaluator (not a third party)	§ 1926.1428(a)(2)
Crane/derrick	§ 1926.1400	Qualified evaluator (third party)	§ 1926.1428(a)(2)
Crawler crane	§ 1926.1401	Qualified person	§ 1926.1401
Crossover points	§ 1926.1413(a)(3)(iii)	Qualified rigger	§ 1926.1425(c)(3)
Dedicated channel	§ 1926.1420(b)	Range control limit device	§ 1926.1408(a)
Dedicated pile-driver	§ 1926.1439(a)	Range control warning device	§ 1926.1407(a)(3)
Dedicated spotter (power lines)	§ 1926.1407(b)	Rated capacity	§ 1926.1401
Digger derrick	§ 1926.1400(c)(4)	Rated capacity indicator	§ 1926.1416(e)(4)
Directly under the load	§ 1926.1425(e)(1)	Rated capacity limiter	§ 1926.1416(e)(4)
Dismantling	§ 1926.1405	Repetitive lift	§ 1926.1414(e)(2)
Drum rotation indicator	§ 1926.1416(e)(5)(ii)	Repetitive pickup points	§ 1926.1413(a)(3)(iii)
Duty cycle	§ 1926.1414(e)(2)	Running wire rope	§ 1926.1413(a)(2)(ii)(A)
Electrical contact	§ 1926.1407–1411	Runway	§ 1926.1431(k)(12)(ii)(A)
Employer-made equipment	§ 1926.1437(m)(4)	Section	§ 1926.1401
Encroachment	§ 1926.1407–1411	Side-boom crane	§ 1926.1440
Equipment	§ 1926.1400	Special hazard warnings	§ 1926.1417(c)(1)
Equipment criteria	§ 1926.1412(b)(1)(i)	Stability (flotation device)	§ 1926.1437(m)
Fall protection equipment	§ 1926.1423(e)	Standard Method	§ 1926.1419(c)
Fall restraint system	§ 1926.1423(d)–(e), (g)	Such as	§ 1926.1401
Fall zone	§ 1926.1425(b)	Superstructure	§ 1926.1424(a)(1)
Flange points	§ 1926.1413(a)(3)(iii)	Tag line	§ 1926.1407(b)(2)
Floating cranes/derricks	§ 1926.1437	Tender	§ 1926.1437(j)(3)
For example	§ 1926.1401	Tilt-up or tilt down operation	§ 1926.1425(e)
Free fall (of the load line)	§ 1926.1426(d)	Tower crane	§ 1926.1401
Free surface effect	§ 1926.1437(m)(5)(ii)	Travel bogie (tower cranes)	§ 1926.1435(d)(2)(iv)
Freeboard	§ 1926.1437(m)(2)	Trim	§ 1926.1437(e)(1)
Hoist	§ 1926.1401	Two blocking	§ 1926.1416(d)(3)
Hoisting	§ 1926.1401	Type	§ 1926.1427(b)(1)(ii)(B)
Include/including	§ 1926.1401	Unavailable procedures	§ 1926.1417(b)
Insulating link/device	§ 1926.1408(b)(4)(v)	Up to	§ 1926.1401
Jib stop	§ 1926.1415(a)(3)	Upperstructure	§ 1926.1424(a)(1)
Land crane/derrick	§ 1926.1437	Upperworks	§ 1926.1424(a)(1)
List	§ 1926.1437(e)(1)	Wire rope	§ 1926.1413

Section 1926.1402 Ground Conditions

The Committee determined that the failure to have adequate ground conditions is a significant crane safety problem. Adequate ground conditions are essential for safe equipment operations because the equipment's capacity and stability depend on such conditions being present. In the Committee's view, there are two key problems regarding ground conditions: (1) Equipment is commonly brought on site by a subcontractor, who typically has neither control over ground conditions nor knowledge of hidden hazards, and (2) the entity that usually does have such authority—the controlling entity—may not have the expertise to know what changes are needed to make the ground conditions suitable for equipment operations. This section is designed to address these problems so that ground conditions will be made sufficient for safe equipment operations.

One commenter asserted that, with respect to digger derricks, the ground conditions provision should be changed. In particular, the commenter stated that the Committee should incorporate by reference secs. 7 through 10 of ANSI/ASSE A10.31–2006, *Safety Requirements, Definitions, and*

Specifications for Digger Derricks; American National Standard for Construction and Demolition Operations. (ID–0178.1.) In addition, the commenter asserted that the ANSI/ASSE standard "addresses worksite selection that is clearer than what OSHA has proposed. For example, the proposed rule does not recognize the danger that ditches can have on placement, which is a common occurrence."

OSHA first notes that these suggestions apply only to digger derricks and thus interprets the comment as a recommendation that digger derricks be treated differently than other equipment under § 1926.1402. As we noted in the preamble to the proposed rule, the Committee determined that the failure to have adequate ground conditions is a significant safety problem. The Committee's determination that this safety problem exists for various types of equipment is underscored by the application of § 1926.1402 to nearly all equipment covered by this subpart. In addition, where the Committee intended for certain equipment to be exempted from § 1926.1402, it indicated that expressly (*see, e.g.,* § 1926.1440, *Sideboom Cranes*). OSHA defers to the expertise of the Committee on this issue.

Secondly, OSHA has reviewed ANSI/ASSE A10.31–2006 and found that it is substantively distinguishable from § 1926.1402. Specifically, the two standards differ in the assignment of responsibilities. ANSI/ASSE A10.31–2006 divides responsibilities among digger derrick dealers/installers, owners, users, and operators. Notably, controlling entities (who often do not fall into any of the ANSI/ASSE A10.31–2006 categories) are assigned no responsibility at all. Furthermore, the discussion of worksite conditions is included only in sec. 10, *Responsibilities of Operators.* ANSI/ASSE A10.31–2006 places the responsibility of examining ground conditions entirely on the operator. Also, ANSI/ASSE A10.31–2006 does not require that the ground condition requirements be met before the equipment is installed; it requires only that the worksite be surveyed before the digger derrick is used. In sum, OSHA concludes that § 1926.1402 is more effective than ANSI/ASSE A10.31–2006 and declines to incorporate ANSI/ASSE A10.31–2006 by reference.

The Agency disagrees with the commenter that § 1926.1402 fails to adequately address ditches. The hazard posed by a ditch is that the ground is less firm in the area adjacent to it. Under § 1926.1402, the ground must be sufficiently firm to provide "adequate support" for the equipment. The section as proposed therefore addresses this hazard.

Paragraph (a) Definitions

Paragraph (a) provides definitions of key terms used in this section. The term "ground conditions" is defined as the ability of the ground to support the equipment (including slope, compaction and firmness). The Committee determined that slope, compaction and firmness are the key factors that are involved in the ability of the ground to support the equipment.

"Supporting materials" is defined as meaning blocking, mats, cribbing, marsh buggies (in marshes/wetlands), or similar supporting materials or devices. Such materials typically help to distribute the load of the crane over a broad area and/or assist in leveling the equipment. The list in the definition of examples of such materials is nonexclusive—it includes similar materials and devices that would serve the same purpose(s).

The one comment that was received that referenced this provision is addressed in the discussion below of § 1926.1402(b). (*See* ID–0178.1.)

Paragraph (b)

Under paragraph (b) of this section, the equipment is prohibited from being assembled or used [10] unless ground conditions are firm, drained, and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the equipment manufacturer's specifications for adequate support and degree of level of the equipment are met. A crane's stability depends (in part) on the crane being level, and "degree of level" is a term used in the industry to describe the manufacturer's specification for how level the crane must be. The Agency determined that the text of the proposed rule did not make it clear that the drainage requirement did not apply to marshes/wetlands. Accordingly, the final rule's text has been modified to clearly state that this is the only exception. All other conditions related to have a stable surface for the equipment is applicable.

In the Committee's experience, crane tip-over incidents caused by inadequate ground conditions are a significant cause of injuries and fatalities. For example, on September 28, 1999, a 19 year old electrical instrument helper was killed by a crane that overturned because insufficient care was taken to ensure that the ground under the crane was firm and that the crane's outriggers were properly supported. (ID–0017.13.) Conditions that enhance the chance of such accidents include ground that is wet or muddy, poorly graded, or that is loose fill (or otherwise disturbed soil) that has not been compacted. The Committee determined that requiring adequate ground conditions will prevent many of these accidents. The exception for marshes and wetlands is included because the Committee was aware that, in many instances, the draining of marshes/wetlands is prohibited or restricted by environmental laws and there are devices available (such as marsh buggies) that are designed to provide adequate support to cranes in such areas.

One commenter suggested that the term "level" could be confusing and suggested that it be defined as "less than one degree of grade change or as required by the manufacturer." (ID–0178.1.) OSHA finds this comment unpersuasive. The suggested language is circular because it does not use the term "level" by itself; it refers to "the equipment manufacturer's specifications for * * * degree of level of the equipment." The reason the provision refers to the manufacturer's specification in this regard is that it is the manufacturer that establishes the load chart, and the load chart is valid only for the parameters, including degree of level, established by the manufacturer.

At the public hearing, a representative of the railroad industry raised an issue that OSHA determines could be the source of some confusion. The commenter indicated that the railroad industry regularly has to work in out-of-level conditions, since some sections of track are not level. (ID–0342.) The commenter explained that the manufacturers of track-mounted cranes provide specialized load charts which take into account these out-of-level conditions.

The manufacturers of these cranes apparently specify that the cranes can be used in certain out-of-level circumstances, as evidenced by their provision of load charts for those conditions. Therefore, the use of equipment in accordance with manufacturer specifications regarding degree of level would meet § 1926.1402(b)'s requirement because the provision permits use of the equipment in accordance with those specifications.

[10] Note that "used" is not limited to use of the equipment at a fixed location; it also includes when the equipment is traveling with a load.

Paragraph (c)

Under § 1926.1402(c), the controlling entity has several specific duties regarding ground conditions. OSHA's authority to impose these duties is discussed in detail in the preamble to the proposed rule (*see* 73 FR 59731–59732, Oct. 9, 2008), and the Agency re-asserts the same authority with respect to the final rule. As it did with respect to the proposed rule, the Agency is again stating that the duties imposed on the controlling entity through the promulgation of this final rule are supplemental to, and do not displace, controlling entity duties under OSHA's multi-employer policy. (*See* § 1926.1402(e), discussed below; 73 FR 59731, Oct. 9, 2008).

"Controlling entity" is defined in § 1926.1401 as "an employer that is a prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the construction of the project—its planning, quality and completion." This definition, which generally mirrors the definition of "controlling contractor" in the steel erection standard, 29 CFR part 1926, subpart R, reflects the core principle of general supervisory control over the construction site. In this final rule, OSHA is clarifying the definition to make it clear that the controlling entity must be an employer.

Section 1926.1402(c)(1) requires the controlling entity to ensure that ground preparations necessary to meet the requirements in paragraph (b) of this section are provided. The Committee determined that it is necessary to specify who will have ground condition responsibility because in many instances the parties are unable to agree on who will have (or has) that contractual responsibility, with the result that often no one corrects inadequate ground conditions.

In the Committee's view, the crane user and operator typically do not have the equipment or authority to make such preparations. In contrast, the controlling entity, due to its control of the worksite, has the requisite authority and is in the best position to arrange for adequate ground conditions. The Committee was concerned, however, that some controlling entities may lack the expertise to recognize when ground conditions are inadequate. To address this concern, the Committee developed § 1926.1402(e).

One commenter said that adequate site assessment requires defining ground bearing capacity compared to loading of the machine, along with soil testing and proper analysis for ground conditions. (ID–0143.1.) As explained in the preamble of the proposed rule, C–DAC considered, but rejected, including specification requirements regarding the soil conditions (*see* 73 FR 59739–59740, Oct. 9, 2008). This reflected the view that most sites and circumstances do not require sophisticated soil testing. In light of C–DAC's decision not to add new testing or soil specifications, the many variables that may affect ground conditions, and the existing body of law and OSHA guidance relating to testing duties under the Agency's multi-employer policy, the Agency concludes that it is appropriate to allow the controlling entity flexibility in the manner in which it satisfies its duties under § 1926.1402 and the multi-employer policy.

Under § 1926.1402(c)(2), the controlling entity is required to inform the user of the equipment and the equipment operator of the location of hazards beneath the equipment set-up area (such as voids, tanks, and utilities, including sewer, water supply, and drain pipes) that are identified in documents (such as site drawings, as-built drawings, and soil analyses) that are in the possession of the controlling entity. These underground hazards can compromise the ability of the ground above them to support the equipment. In the experience of members of the Committee, because of the hidden nature of these hazards, accidents have occurred when cranes have been set up above such hazards and a portion of the ground has given way.

In developing this provision, the Committee was mindful that the controlling entity often possesses documents obtained or developed during the ordinary course of business that identify the location of such hazards. Under the provision as proposed, if the controlling entity has such a document, whether at the site or at an off-site location, it is required to inform the equipment user and operator of the location of the hazard as identified in it. If the controlling entity does not possess the information, it is not required to obtain it from another source. The Committee concluded that requiring the controlling entity to obtain such information from other sources would, in effect, require it to arrange for testing. As explained above, the Committee determined such a duty would be unduly burdensome and unnecessary.

Some commenters indicated that clarification is needed regarding whether the controlling entity is required to possess particular documents. (ID–0166.1; –0214.1.) OSHA agrees that additional clarification is needed and is making two changes in the final text of paragraph (c)(2) of this section. Both of these clarifications are consistent with the rationale of the rule that the controlling entity need only share information that it possesses, and that the controlling entity has no obligation under § 1926.1402 to seek out additional information not in its possession.

First, OSHA is replacing the proposed phrase "available to the controlling entity" with "in the possession of the controlling entity, whether at the site or off-site." As explained in the preamble to the proposed rule,

> [i]n developing this proposed provision, the Committee was mindful that the controlling entity often has access to documents that may identify the location of such hazards. * * * Under this proposed provision, if the controlling entity has such a document, whether at the site or at an off-site location, it would be required to inform the equipment user and operator of the location of the hazard as identified in it. If the controlling entity does not possess such a document, it would not be required to obtain it from another source.

The phrase "available to" may be interpreted as including documents that the controlling entity does not already have in its possession but has the ability to obtain, *i.e.,* procure, from other entities. As is evident from the proposed rule explanation quoted above, the intent is to apply the duty only with respect to information that is already in the controlling contractor's possession, whether at the site or off-site.

Second, OSHA is revising the text of paragraph (c)(2) of this section to emphasize that the employer's existing responsibilities under OSHA's multi-employer policy are not changed by this new rule. As noted above and in the preamble to the proposed rule, the duties provided in § 1926.1402 supplement, and do not displace, the controlling entity's duties under the multi-employer policy.[11] The multi-employer policy reflects the Secretary's reasonable interpretation of the OSH

[11] The Agency anticipates that the majority of controlling entities will also be controlling employers for the purposes of the multi-employer policy. However, even to the extent that a controlling entity does not also meet the definition of a controlling employer, the Agency has the authority to require the controlling entity to comply with the requirements of § 1926.1402. (*See* discussion of authority at 73 FR 59731–59732, Oct. 9, 2008.) With respect to the controlling entity's duty to warn the operator and other users of the equipment about hidden ground condition hazards, § 1926.1402(c) constitutes OSHA's exercise of its authority to "prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed * * * and proper conditions and precautions of safe use or exposure." 29 U.S.C. 655(b)(7).

Act and requires controlling employers to exercise reasonable care to prevent and detect violations on the site. *See* OSHA CPL 02–00–124, *Multi-Employer Citation Policy,* Dec. 10, 1999. Under this policy, the controlling employer has a duty to address hazards the employer either creates or controls, regardless of whose employees are threatened by the hazard. *See, e.g. Universal Const. Co., Inc.* v. *Occupational Safety and Health Review Comm'n,* 182 F3d 726, 730 (10th Cir. 1999). Implicit in those duties is a duty to notify employees of hazards the controlling employer controls and has already detected, particularly where such notification would prevent a violation. As noted in the preamble to the proposed rule, requiring employers to include hazard information needed by downstream employees is a necessary and appropriate means to ensure that the employees are apprised of all hazards to which they are exposed. (*See* 73 FR 59731, Oct. 9, 2008; *see also American Petroleum Institute* v. *OSHA,* 581 F.2d 493, 510 (5th Cir. 1978).) (OSHA may require upstream employers to warn downstream employees of concealed hazards when the upstream employer knows of those hazards under remedial purpose of the OSH Act and OSHA's broad authority to prescribe warning labels under 29 U.S.C. 655(b)(7)).

OSHA is therefore clarifying in paragraph (c)(2) that the controlling entity still must share both documentary and non-documentary information about other hazards when the hazards are "known to the controlling entity." This requirement only applies to hazard information already in the possession of the controlling entity, and does not require the controlling entity to obtain any additional information. For example, if the controlling entity is setting up non-crane equipment and discovers during the course of that work that there is an undocumented void in the area where the crane is to be set up, the controlling entity would be required to share that information with the crane operator. Although this requirement extends beyond the "documents" specified in the proposed rule, it is consistent with the rationale provided in the proposed rule and is supported by those commenters who favor this provision: C–DAC sought to distinguish between information in the possession of the controlling entity, and information that must be sought out by the controlling entity. Thus, to comply with § 1926.1402(c)(2) of the final rule, the controlling entity has no duty to seek out new information not already in its possession; it is only required to share information already in its possession, whether or not such information is contained in a document.

OSHA received several comments about whether these responsibilities should rest with the controlling entity as it is defined in § 1926.1401 (prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the construction of the project—its planning, quality and completion).

One commenter sought clarification on whether a construction manager/general contractor or a site/project owner is considered the controlling entity where the latter contracts with the former but retains responsibility for oversight of certain matters (*e.g.,* quality control, safety). The commenter also wanted to know if the site/project owner is still responsible for inspecting ground conditions under § 1926.1402 if the construction manager/general contractor is the controlling entity. (ID–0107.1.) As explained above, the "controlling entity" is the entity which has the overall responsibility for the construction of the project—its planning, quality and completion. Where this responsibility is split among several entities, there may not be a controlling entity. In that case, § 1926.1402(d) applies: whichever employer has authority to make or arrange for ground preparations is required to ensure that the necessary ground preparations are made. If more than one entity each possesses this authority, then OSHA holds each of those entities separately liable for the duty to ensure that the necessary ground preparations are made.

Some commenters suggested that the provision is unclear as to which hazards, *i.e.,* known or unknown, the controlling entity is required to disclose. (ID–0166.1; –0214.1.) The purpose of this requirement is to ensure that the user of the equipment and the operator are informed of hazards that might not be known to them, because they are beneath the set-up area, but are known to the controlling entity. In other words, under this provision, the controlling entity must examine information in its possession (such as site drawings, as-built drawings, and soil analyses) to see if there are hazards beneath the set-up area. If there are hazards identified in those documents, or if the controlling entity has already identified other hazards not in those documents, the controlling entity must inform the user and operator of the hazards. As explained above and in the proposed rule preamble, new § 1926.1402 does not place any new requirements on the controlling entity to discover hazards that are not already known to it (*see* 73 FR 59741, Oct. 9, 2008). The Agency concludes that the provision's language adequately reflects this intent.

One commenter suggested that § 1926.1402(c) be replaced with a section that would simply encourage a cooperative meeting between the controlling entity, the employer using the crane, and the employer best situated to control and prepare the ground conditions. (ID–0218.1.) OSHA determines that such a change would merely replicate the status quo, an arrangement which the Committee found to be inadequate for ensuring adequate ground conditions.

Several commenters argued that the crane operator, not the controlling entity, should be required to obtain information about the location of hazards beneath the equipment set-up area. (ID–0165.1; –0179.1; –0191.1; –0197.1; –0214.1; –0232.1; –0235.1; –0285.1.) These comments fell into one of two groups.

The first group argued that some controlling entities are either not engaged in construction work,[12] may have little to no expertise concerning ground conditions in general, or may hire subcontractors to work at a remote location of which the controlling entity may have little knowledge. (*See, e.g.,* ID–147.1; –0165.1; –0232.1; –0235.1.) This group appears to read § 1926.1402(c)(1) to mean that the controlling entity must personally determine and provide the ground conditions necessary to meet the requirements in § 1926.1402(b).

C–DAC considered the concern that some controlling entities would not have the expertise needed to determine if ground conditions were adequate. The final rule therefore addresses this concern in two ways. First, paragraph (c)(1) provides that the controlling contractor is responsible for "ensuring" that these ground conditions are provided. In other words, if the controlling contractor is not familiar with the crane's requirements or with the ground conditions at the particular site, then it must make sure that someone who is familiar with those requirements and conditions provides what is required by § 1926.1402(b). Second, under § 1926.1402(e), if the A/D director or operator determines that ground conditions are inadequate, the controlling entity will, through a discussion, obtain the relevant information. (*See* discussion of

[12] In most cases entity that meets the definition of "controlling entity" will be engaged in construction.

1926.1402(e) at 73 FR 59741, Oct. 9, 2008).

One of the commenters suggested that § 1926.1402(c) be revised to place requirements on either the controlling entity or a competent person designated by the controlling entity. (ID–0191.1.) As explained above, § 1926.1402, as promulgated, does not preclude a controlling entity from using a competent person to provide the information it needs to meet its responsibilities under this section. However, C–DAC's experience indicates that it is important to ensure that one entity with the authority to address ground condition hazards has the responsibility to do so. To permit a controlling entity to divest itself of its ground condition responsibilities would unduly fragment responsibility for ground conditions, thus defeating one of the goals of the section.

The second group argued that the rule may result in situations that are beyond the capacity and responsibility of certain subcontractors. (*See, e.g.,* ID–0165.1; –0191.1; –0235.1.) One commenter suggested that the definition of "controlling entity" be revised "to reflect that subcontractors and others who have little to do with the overall project including site conditions and do not have the expertise to determine compliance with crane manufacturer specifications are not included in the definition, purpose, or requirements of a controlling entity." (ID–0191.1) These commenters also argued that, because such subcontractors do not know or control the site conditions, the responsibilities in § 1926.1402(c) should fall on the crane owner or operator. The other two commenters were concerned about the effect of the rule on heating, ventilating, air conditioning, and refrigeration (HVACR) contractors in particular. (ID–0165.1; –0235.1.)

These commenters have misunderstood § 1926.1402(c). For example, an HVACR contractor, if contracted to do only HVACR work and is not in control of the entire work site, would not be the controlling entity, and would be subject to the limited requirements in § 1926.1402(d) only if it had authority to make changes to the ground conditions.

One commenter requested that the term "user of the equipment" be defined. (ID–0214.1.) OSHA determines this term does not need to be defined in § 1926.1401, since its meaning is sufficiently clear. "User of the equipment" refers to the employer that is using the equipment to perform a task. For example, a drywall installation employer engaged in erecting precast wall panels would be a "user of the equipment" if that employer directs a crane to hoist the panels into place. Similarly, an employer installing wooden roof trusses would be a "user of equipment" if that employer directs a crane to place the trusses on the structure. A general contractor handling several subcontracting areas, but not the controlling entity for the worksite, would also be a "user of equipment" if it directs its subcontractors to use a crane to hoist materials. In the latter example, the general contractor and the subcontractor would each be a "user of equipment."

Paragraph (d)

In the event that no controlling entity exists, § 1926.1402(d) provides that the requirement in § 1926.1402(c)(1) must be met by the employer that has authority at the site to make or arrange for ground preparations needed to meet the requirements of § 1926.1402(b). For example, if the employer who hires the crane has the authority to get the ground prepared in the absence of a controlling entity, the responsibility for complying with § 1926.1402(b) would fall to that employer. However, that employer would not be required to comply with § 1926.1402(c)(2) because the information required to be disclosed under § 1926.1402(c)(2) is not likely to be available to that employer.

One commenter suggested that paragraph (d) of this section be revised to read that the requirements in § 1926.1402(c)(1) must be met by a competent person designated by the employer that has authority at the site to make or arrange for ground preparations needed to meet the requirements of § 1926.1402(b). (ID–0191.1.) As explained above with respect to a similar suggestion regarding § 1926.1402(c), OSHA determines this would have the effect of unduly fragmenting the responsibility for ground conditions, which is contrary to the intent of the provision.

For the reasons above, OSHA is promulgating § 1926.1402(d) as proposed.

Paragraph (e)

Proposed § 1926.1402(e) established a mechanism for a controlling entity to obtain information from the A/D director or the equipment operator about insufficient ground conditions and the preparations needed to correct the problem. Specifically (as discussed above in the context of § 1926.1402(c)(1)), if the A/D director or equipment operator determines that ground conditions do not meet the criteria in § 1926.1402(b), that person's employer is required to have a discussion with the controlling entity regarding the ground preparations needed so that, with the use of suitable supporting materials/devices (if necessary), the requirements in § 1926.1402(b) can be met.

The Committee determined that, in some instances, the controlling entity may lack the expertise needed to know what ground preparations may be needed. In such cases, it is necessary for the information it needs to be provided by the A/D director or operator, who has that expertise, so that the preparations needed for safe crane operations can be made. The Committee concluded that, in such circumstances, such a discussion would make it more likely that the requirements in § 1926.1402(b) would be met, which, as discussed above, is necessary for safe crane operations.

One commenter suggested that the provision will encourage disputes. The commenter suggested that rental companies would not accept a controlling entity's ground conditions unless the controlling entity purchases services from the rental company to improve them. (ID–0105.1.)

OSHA determines that the commenter's concerns are unwarranted. Section 1926.1402(e) is a mechanism for a controlling entity to obtain information to facilitate its compliance with § 1926.1402(c)(1). Once ground conditions meet the criteria in § 1926.1402(b), the controlling entity is not required to make further improvements, even if the rental company objects.

For the reasons above, OSHA is promulgating § 1926.1402(e) as proposed, with the substitution of the word "director" for the word "supervisor" to be consistent with the change made and discussed in § 1926.1404.

Paragraph (f)

At the public hearing, a representative of the railroad industry explained that, in his experience, railroads use cranes to: remove, replace or renew rails; build bridges; handle materials; and to pick up and repair railroad cars. (ID–0342.) In addition, the witness explained that the railroad industry uses a variety of construction equipment, some on the tracks (locomotive cranes, rubber-tired off-road cranes that are capable of being used on the tracks) and others off the tracks (rubber-tired off road cranes, truck cranes, and service trucks). (ID–0342.) The witness estimated that 95% of railroad industry crane operations take place on or around railroad tracks. (ID–0342.)

One commenter expressed concern about the application of § 1926.1402 to the railroad industry's use of cranes and requested an exemption for the use of cranes on and alongside tracks. (ID–0176.1; –0292.1.) The commenter expressed two specific concerns. First, that, unlike most construction sites, a railroad construction site may include many miles of railroad track. The commenter elaborated that the time and cost associated with locating and checking site drawings and soil analyses—which the commenter said may arguably be available to the railroad industry—for thousands of miles of track would be "exorbitant" and would "not appreciably lower the risks to the crane operator." (ID–0176.1.)

As for the cost associated with locating and checking documents, § 1926.1402 does not require the controlling entity to possess or acquire any particular documents or other information, but requires that the controlling entity share any information about underground hazards that it has in its possession with the crane user and operator. As explained above, OSHA has replaced "available to" with "in the possession of" to make this clear.

The commenter also suggested that there is no need to apply § 1926.1402 to cranes used by railroads along track rights of way because the Federal Railroad Administration (FRA) has regulations that specify minimum requirements for roadbeds and areas immediately adjacent to roadbeds that concern the ground conditions underneath and alongside the track, as well as requirements for how the track must be laid.

The Federal Railroad Administration has established requirements for the ballasts beneath railroad tracks,[13] limited requirements for the roadbed,[14] and requirements for the track surface.[15] The failure of any one of these elements (the ballast, the roadbed or sub-grade, or the track) is detrimental to the effectiveness of the system as a whole. These provisions are designed to, in concert, enable trains to travel safely, and involve conditions adjacent to the track only to the extent that they affect track stability.

The comment is persuasive to the extent that it pertains to cranes that operate on railroad tracks that are part of the general railroad system of transportation because FRA's regulations address ground support for the tracks.[16] Therefore, OSHA has decided to exempt from the requirements of § 1926.1402 cranes used on railroad tracks that are part of the general railroad system of transportation subject to FRA regulation. To effectuate this change from the proposed rule, OSHA has added § 1926.1402(f), which exempts cranes that are designed for use on railroad tracks and that are being used on tracks regulated by the Federal Railroad Administration requirements at 49 CFR part 213. In addition, OSHA has exempted railroad tracks and their underlying support from the ground conditions inspection requirements in § 1926.1412(d)(1)(x).

The commenter also stated that the FRA has regulations that "concern[] the ground conditions * * * alongside the track." (ID–0176.1.) The only aspects of the ground conditions of the area adjacent to the track roadbed addressed by the FRA regulations are drainage and vegetation.[17] An area with adequate drainage can nonetheless present problems for equipment set-up with respect to slope, compaction and firmness, as well as have hazards beneath the set-up area. For this reason, the Agency has decided not to exempt equipment used alongside railroad tracks. Therefore, for example, a rubber tired off-road crane designed for use on tracks would be exempted from § 1926.1402 while being operated on the tracks, but would be subject to the requirements of § 1926.1402 if used adjacent to the tracks.

Sections 1926.1403—1926.1406 Assembly and Disassembly

Sections 1926.1403 through 1926.1406 set out requirements designed to ensure the safety of employees while equipment is assembled and disassembled (and, in the case of tower cranes, during erecting, climbing and dismantling). C–DAC members indicated that, in their experience, the failure to adequately address hazards associated with these processes is a significant cause of injuries and fatalities. The Committee also concluded that the most effective way to reduce these injuries and fatalities would be to have a standard that comprehensively addresses these hazards (*see also* the Agency's discussion of fatality data associated with assembly/disassembly at 73 FR 59741–59742, Oct. 9, 2008).

Note that the term "procedures," which is used in the assembly/disassembly provisions, is defined to include (but is not limited to) instructions, diagrams, recommendations, warnings, specifications, protocols and limitations (*see* § 1926.1401). The operation of an "assist" crane used to help in the assembly/disassembly process is not covered by the assembly/disassembly requirements but is covered by the other sections of this standard.[18]

One commenter suggested that the Agency clarify whether §§ 1926.1403 through 1926.1406 apply to activities that modify or increase the height of the crane such as "jumping." (ID–0156.1.) "Jumping" (or "climbing") refers to the process of adding mast sections to a tower crane to increase its height. In many cases a tower crane is first erected and used at one height, and then as the height of the structure being built increases, the height of the tower crane is increased in stages to keep pace with it.

Irrespective of whether the crane is initially erected to its full height, or is "jumped" in stages, the process of increasing the height of the crane is an assembly/erection process. Sections 1926.1403 through 1926.1406 apply whenever the crane's height is modified. To ensure that this intent is reflected in the standard, OSHA has added a sentence to the definition of "assembly/disassembly" in § 1926.1401 to this effect.

[13] The FRA regulations for the ballast (the foundation for most railroad tracks) can be found at 49 CFR 213.103 and 213.334, depending on the class of track. The provisions are otherwise identical, and provides:

Unless it is otherwise structurally supported, all track shall be supported by material which will—

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alignment.

[14] FRA requirements address issues other than ground support in the area adjacent to the track roadbed. Specifically, 49 CFR 213.31 requires that each drainage or other water carrying facility under or immediately adjacent to the roadbed be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned. Section 213.37 requires the control of vegetation on railroad property which is on or immediately adjacent to roadbeds to prevent fires, maintain visibility and signals, and to prevent interference with other duties.

[15] 49 CFR 213.51 *et seq.* contains requirements for the gage, alignment, and surface of the track.

[16] The general railroad system of transportation is defined as "the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas." Appendix A to 49 CFR part 209. If a railroad that is part of the general railroad system of transportation operates over track that is confined to an industrial installation, that plant trackage is also considered part of the general railroad system of transportation.

[17] *See* the description of FRA requirements that relate to the area adjacent to the track roadbed in footnote 11.

[18] However, the rigging requirements in §§ 1926.1404(r) and 1926.1425(c)(3) apply to the rigging used by the assist crane.

In proposed § 1926.1401, "assembly/disassembly" was defined to mean "the assembly and/or disassembly of equipment covered under this standard." With regard to tower cranes, 'erecting and climbing' replaces the term 'assembly,' and 'dismantling' replaces the term 'disassembly.' C–DAC did not originally include a definition of "assembly/disassembly," but OSHA included this definition in the proposed rule to avoid any implication that §§ 1926.1403–1926.1406 do not apply to tower cranes because the terms "assembly" and "disassembly" are not commonly used in the industry in referring to tower cranes. Instead, the words "erecting," "climbing," and "dismantling," are used, and the definition of "assembly/disassembly" makes it clear that §§ 1926.1403–1926.1406 also apply to tower cranes.

Section 1926.1403 Assembly/Disassembly—Selection of Manufacturer or Employer Procedures

Final § 1926.1403 requires that when assembling or disassembling equipment (or attachments), the employer must comply with all manufacturer prohibitions applicable to assembly and disassembly and must also comply with either manufacturer procedures, or employer procedures, for assembly and disassembly. Employer procedures may be used only where the employer can demonstrate that the procedures used meet the requirements in § 1926.1406 and may not be used during rigging if the employer uses synthetic slings, as explained in the discussion below regarding § 1926.1404(r).

Two commenters suggested that only manufacturer procedures for crane assembly/disassembly be allowed. (ID–0151.1; –0305.1.) One of these commenters clarified its comment at the hearing (ID–0343.) and confirmed this clarification in post-hearing submissions (ID–0387.1.) that they did not believe the assembly/disassembly procedures should be limited to just manufacturer procedures. The commenter suggested using a procedure designed by a registered professional engineer or by a qualified person. (ID–0387.1.) Note that § 1926.1406(b) of the final rule requires employer procedures to be developed by a qualified person.

As explained in the proposed rule preamble, the Committee members discussed whether employers should be required to comply with the manufacturer's procedures, or if deviations from those procedures should be allowed. The Committee determined that deviations should be allowed for two reasons. First, manufacturers' procedures are typically designed for use in "ideal" environments: Large, flat, dry, unencumbered open areas. However, in C–DAC's experience, such conditions are not typical, especially in urban areas. Consequently, employers are currently unable to implement those procedures in those situations. Second, members were of the view that there is often more than one way to safely assemble and disassemble a crane, and that it is unnecessary to mandate that in every case the manufacturer procedures be used. The inclusion of specific requirements in the standard that employer procedures must meet (*see* § 1926.1406) addresses the concern that those procedures ensure worker safety.

Another commenter suggested that employer procedures not be allowed for climbing operations unless approved by the manufacturer. (ID–0137.1.) As explained in the discussion below regarding § 1926.1404(r), the Agency has decided to require manufacturer procedures to be used with regard to the use of synthetic slings. Since the commenter has not provided information substantiating the need for manufacturer approval with respect to deviation from climbing procedures, the Agency is unaware of any basis to conclude that the requirements in §§ 1926.1403 and 1926.1406 would be inadequate to ensure the safety of employer procedures in this regard. Therefore, OSHA has decided not to adopt the commenter's suggestion.

Another commenter suggested that if the Agency is going to allow employer procedures, a written copy should be required to be kept on the job site for the use of the entire crew. (ID–0178.1.)

The final rule requires that the A/D director understand the assembly/disassembly procedures. In addition, the A/D director must review the assembly/disassembly procedures prior to starting the assembly/disassembly process unless the A/D director is experienced in having used them on the same type and configuration of equipment and is able to recollect the procedures such that review is unnecessary. (*See* § 1926.1404(b).) Furthermore, before beginning assembly/disassembly operations, the A/D director must determine that the crew members understand their tasks and the associated hazards, as well as any hazardous positions/locations that they need to avoid. (*See* § 1926.1404(d).) These requirements ensure that both the A/D director and crew members understand the assembly/disassembly procedures that are going to be undertaken.

C–DAC declined to require the procedures to be in writing and at the site. In some cases, the procedures are not complex and are very familiar to the A/D director. In such cases C–DAC determined that having them in writing is not necessary. In other cases, such as where the procedures are complex, the equipment is new to the employer, or the A/D director has not often assembled/disassembled the equipment, there is an inherent incentive for the employer to have them in writing. In such instances, OSHA expects that the employer will have written procedures on site to facilitate meeting the requirements in §§ 1926.1404(b) and (d). The Agency therefore finds that it is not necessary to have a requirement that they be in writing and at the site.

Lastly, a commenter suggested that this section incorporate by reference the ANSI/ASSE A10.31 American National Standard, Safety Requirements, Definitions and Specifications for Digger Derricks. (ID–0178.1.) Because the commenter did not explain how incorporating this standard would make the final rule more effective, OSHA has decided not to incorporate ANSI/ASSE A10.31 into § 1926.1403.

In the proposed rule, § 1926.1404(n) set forth the requirement (now set forth in this section) that an employer must comply with manufacturer prohibitions. The Agency decided that this important caveat to § 1926.1403 would be better understood if it was moved to this section. Therefore, § 1926.1404(n) is now reserved and its text is integrated in this section.

Additionally, OSHA has substituted an "or" in place of the "and" separating "assembling" and "disassembling" to clarify that the listed requirements apply when the employer is assembling or disassembling. Finally, a reference to § 1926.1404(r) has been added to § 1926.1403(b) to clarify when employer procedures may not be used.

Section 1926.1404 Assembly/Disassembly—General Requirements (Applies to All Assembly and Disassembly Operations)

Paragraph (a) Supervision—Competent—Qualified Person

Section 1926.1404(a) requires assembly/disassembly to be directed by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons ("A/D director"). Where the assembly/disassembly is being performed by only one person, that person must meet the criteria for both a competent person and a qualified person. For purposes of this standard,

that person is considered the A/D director.

Section 1926.1401 defines "A/D director" as "an individual who meets this standard's requirements for an A/D director, irrespective of the person's formal job title or whether the person is non-management or management personnel." C–DAC constructed the definition in this way to make clear that it is the substance of the individual's qualifications, and not his or her job title or position in the company hierarchy, that determines whether the person is qualified to act as an A/D director.

In the proposed rule, OSHA used the term "A/D supervisor." Some commenters objected by written submission and at the hearing to the use of the word "supervisor" in this provision. (ID–0182.1; –0199.1; –0172.1; –0341.) They were concerned that the use of this term would imply that anyone who serves in this role under § 1926.1404 would be considered a supervisor under the National Labor Relations Act ("NLRA").[19] Their objections are rooted in the fact that the word "supervisor" is used and defined in the NLRA. The commenters' only objection to § 1926.1404(a) was the use of the term "supervisor"; they did not object to the actual duties or prerequisites spelled out in the proposed rule applicable to this individual/team. Several commenters suggested that the word "supervisor" be replaced with the term "designated individual" and that the regulatory text be amended to definitively indicate that OSHA has no intention of creating NLRA implications by use of the term. (ID–0182.1; –0199.1; –0172.1.)

The use of "supervisor" in this rule would not be determinative of supervisor status under the NLRA.[20] Nonetheless, OSHA understands the commenters' concerns that workers in the industry may be confused by the use of this term. However, the term "designated individual," suggested by a labor representative and other commenters, could also cause confusion, since it is ambiguous as to whether that person had been granted the authority to correct hazards. Such ambiguity in the minds of the A/D crew members regarding the authority of the A/D supervisor would undermine the effectiveness of the provision itself.

Therefore, OSHA has decided to use the term "A/D director." "Director" is not a defined term in the NLRA nor does it have any particular significance as a job title with respect to NLRA jurisprudence. Furthermore, like "A/D supervisor," it is consistent with C–DAC's intent to use a term that conveys the concept of authority to oversee the assembly/disassembly process. To remain consistent with this new term, in § 1926.1404(a)(1), OSHA has replaced the word "supervised" with "directed."

The A/D director has to meet the definition of both a "competent" and "qualified" person as OSHA defines those terms.[21] The Committee determined that having an A/D director overseeing the assembly/disassembly process who had both the authority to correct a hazard and who had the expertise of a qualified person was necessary to ensure the safety of the operation. Several commenters strongly endorsed the new A/D director requirement, believing the addition will improve workplace safety. (*See, e.g.,* ID–0343.)

A commenter asserted that the qualifications for A/D directors are too abstract and allowed for too much interpretation. The commenter suggests that the qualifications for an A/D director should be more similar to the requirements for operator certification in § 1926.1427. (ID–0137.1.)

C–DAC thoroughly discussed the necessary qualifications for an A/D director and determined that the best option for ensuring employee safety during assembly/disassembly was to require an A/D director to be both a qualified and a competent person. (*See* ID–0321.5.) Furthermore, the terms qualified person and competent person and their definitions are well established and well recognized in the construction industry. For these reasons, OSHA is deferring to the judgment of the Committee and is not making the suggested change.

Paragraphs (b) Knowledge of the Procedures and (c) Review of the Procedures

Section 1926.1404(b) requires that the A/D director understand the assembly/disassembly procedures. In addition, § 1926.1404(c) requires the A/D director to review the procedures immediately prior to starting the process unless the director's experience in having used them on the same type and configuration of equipment, and recollection and understanding of the procedures is such that it makes their review unnecessary.

These two sections work together to ensure that an experienced A/D director understands the procedures. Even if an A/D director has experience, he/she must still meet the knowledge requirement in § 1926.1404(b). For example, if an A/D director configured a type of crane a number of years ago and no longer remembers the procedures applicable to such a crane, he/she does not fall within the experienced A/D director exception, and must, accordingly, review the procedures immediately prior to starting the process.

No comments were received on these provisions. They are promulgated as proposed except that, in addition to a grammatical clarification, § 1926.1404(c) now contains a clearer knowledge requirement to clarify the interplay between §§ 1926.1404(b) and 1926.1404(c), as described above.

Paragraph (d) Crew Instructions

Under this provision, before beginning assembly/disassembly operations, the A/D director would have to ensure that the crew members understand their tasks and the associated hazards, as well as any hazardous positions/locations that they need to avoid.

No comments were received on this provision. It is promulgated as proposed except that "ensure" replaces "determine," to better represent the role of the A/D director.

Paragraph (e) Protecting Assembly/Disassembly Crew Members Out of Operator View

Section 1926.1404(e) requires that before a crew member goes to a location that is out of view of the operator and is either in, on, or under the equipment, or near the equipment (or load) where the crew member could be injured by movement of the equipment (or load), the crew member must inform the operator that he/she is going to that location. Where the operator knows that a crew member went to a location

[19] 29 U.S.C. 159–169 (1935).

[20] With "A/D supervisor," OSHA was merely creating a descriptive term for use solely in the application of an OSHA standard. OSHA's use of the term is a less significant designation for the purposes of the NLRA than even a job title, which is itself not determinative under the NLRA. *See, e.g., N.L.R.B.* v. *St. Mary's Home, Inc.,* 690 F.2d 1062, 1066 (4th Cir. 1982) ("As the [NLRB] itself has put it, 'job titles are meaningless).

[21] Section 1926.1401, *Definitions,* defines a "competent person" as: "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." Section 1926.1401 defines a "qualified person" in this proposed standard as: "One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project." These definitions are essentially the same as the definitions in §§ 1926.32(f) and 1926.32(m).

covered by paragraph (e)(1) of this section, the operator must not move any part of the equipment (or load) until the operator is informed in accordance with a pre-arranged system of communication that the crew member is in a safe position. An example of such a system would be the use of a signal person who gives an all-clear signal to the operator once the signal person sees that the employee has exited the hazard area. Another example would be where the employee in the hazard area is equipped with a portable air horn and, in accordance with a pre-arranged horn signal system, sounds an appropriate signal to the operator that the employee has exited the hazard area. To be effective, the pre-arranged signal system needs to be designed so that this all-clear signal could not be confused with a horn signal from some other employee for another purpose.

One of the hazards identified by the Committee is an operator swinging or moving the crane/derrick when assembly/disassembly personnel are in a crush/caught-in-between zone and out of the operator's view. The Committee concluded that an effective and practical means of preventing these accidents would be through a communication procedure that would provide key information to, and coordination between, the operator and these workers.

One Committee member suggested that instead of requiring that the crew member directly inform the operator of his/her location, the rule should permit the crew member to provide this information to the operator through a third person. For example, the crew member would instruct his/her foreman to radio the information to the operator. OSHA requested public comment on this suggestion in the preamble of the proposed rule (*see* 73 FR 59743, Oct. 9, 2008).

Several commenters stated that the requirements should remain as originally proposed and the Agency should not allow notification through a third person. (ID–0205.1; –0213.1; –0182.1; –0187.1; –0379.1.) One commenter believed that third party notification could result in miscommunication or delays. (ID–0226; –0357.1.)

One commenter testified that introducing a third person into the communications link would not present any danger so long as there was some verbal confirmation. (ID–0344.)

OSHA agrees with C–DAC and the majority of the commenters. Indirect communication between the crane operator and the employee working out of view, through an intermediary, would increase the potential for miscommunication. Therefore, the Agency has not changed the provisions to allow third party notification.

Commenters raised additional issues regarding § 1926.1404(e). Proposed § 1926.1404(e) provided two methods to assure that employees would not be injured while working outside of the operator's view. Under proposed § 1926.1404(e)(2)(i), the operator would give a warning that is understood by the crew member as a signal that the equipment (or load) is about to be moved and would allow time for the crew member to get to a safe position. Under proposed § 1926.1404(e)(2)(ii), the operator was prohibited from moving any part of the crane until informed, in accordance with a pre-arranged system of communication, that the crew member is in a safe position.

Two commenters raised concerns regarding crew members actually hearing warnings that were given in accordance with proposed § 1926.1404(e)(2)(i). One commenter suggested that the operator should be required to confirm that the employee has moved to a safe location prior to initiating crane movement. (ID–0292.1.) Another commenter suggested that a prearranged communications system should be required because audible warnings can be drowned out by ambient noise. (ID–0122.)

These comments identified two flaws in proposed § 1926.1404(e)(2)(i) that were not addressed by C–DAC. First, a crew member may not hear a warning signal that the equipment or load is about to move and may not respond appropriately. Second, the crew member may hear the warning signal but be unable to move from his/her position. This would leave the crew member exposed to struck-by and crushing hazards. As a result, the Agency has revised the provision by deleting the option that was in proposed § 1926.1404(e)(2)(i). Proposed § 1926.1404(e)(2) is otherwise included as proposed except for one grammatical correction.

Paragraph (f) Working Under the Boom, Jib or Other Components

Section 1926.1404(f) requires that when pins (or similar devices) are being removed, employees must not be under the boom, jib, or other components, except where the employer demonstrates that site constraints require employees to be so positioned. In such instances the A/D director must implement procedures that minimize the risk of unintended dangerous movement and minimize the duration and extent of exposure under the boom. An example of such procedures is provided in non-mandatory Appendix B.

Paragraph (g) Capacity Limits

This provision requires that the rated capacity limits for loads imposed on the equipment, each of its components (including rigging), lifting lugs and equipment accessories being assembled or disassembled not be exceeded. The provision applies "during all phases of assembly/disassembly." (*See* the discussion of this provision at 73 FR 59744, Oct. 9, 2008.) Note that where an assist crane is being used during the assembly/disassembly of another crane/derrick, the requirements for rated capacity during operations must be met under § 1926.1417(o), *Compliance with rated capacity,* with respect to the assist crane.

No comments were received on this provision. It is promulgated as proposed except for one grammatical correction.

Paragraph (h) Addressing Specific Hazards

Section 1926.1404(h) requires that the A/D director supervising the assembly/disassembly operation address known hazards associated with the operation with methods to protect the employees from them, and provides a list of specific hazards that are likely to cause serious injury or death. The A/D director must consider each hazard, determine the appropriate means of addressing it, and oversee the implementation of that method.

No comments were received on this provision. It is promulgated as proposed with a grammatical clarification and the addition of the words "which include" at the end of the introductory language to acknowledge the employer's existing responsibility under § 5(a)(1) of the OSH Act (the "general duty clause") to address other recognized hazards not listed in this paragraph.

Paragraph (h)(1) Site and Ground Bearing Conditions

This provision works in conjunction with § 1926.1402, which addresses ground conditions for both assembly/disassembly and use of the equipment, including ground condition criteria. Section 1926.1404(h)(1) requires the A/D director to assess the ground conditions for conformance with those criteria, and to assess the site for suitability for assembly and disassembly. (*See* the discussion of this provision at 73 FR 59744, Oct. 9, 2008.) No comments were received on this provision; it is promulgated as proposed.

Paragraphs (h)(2) Blocking Material and (h)(3) Proper Location of Blocking

These two provisions address the hazards associated with inadequate blocking. Section 1926.1404(h)(2) requires the size, amount, condition and method of stacking the blocking to be sufficient to sustain the loads and maintain stability. Section 1926.1404(h)(3) requires that when used to support booms or components, blocking must be appropriately placed to protect the structural integrity of the equipment, and prevent dangerous movement and collapse.

"Blocking" (also referred to as "cribbing") is defined in § 1926.1401 as "wood or other material used to support equipment or a component and distribute loads to the ground. Typically used to support latticed boom sections during assembly/disassembly and under outrigger floats." This definition is from *A Glossary of Common Crane and Rigging Terms,* a publication by the Specialized Carriers & Rigging Foundation ("SC&RF Handbook"). (ID–0035.)

Proper blocking plays an important role in assembly/disassembly safety by reducing the risk of injuries from unplanned movement or the collapse of equipment. (*See* the discussion of blocking at 73 FR 59744, Oct. 9, 2008.)

One commenter suggested including a strength requirement for blocking. (ID–0053.1.) OSHA determines that the provision as proposed, which requires that the "size, amount, condition and method of stacking blocking must be sufficient to sustain the loads and maintain stability," appropriately addresses blocking strength. Therefore, OSHA has not made a change to the wording of the provision in this regard.

The version of paragraph (h)(3) in the proposed rule was applicable only to lattice booms and components. In the proposed rule's preamble, OSHA asked for public comment on whether the provision should also apply to other types of booms and components (*i.e.,* those for hydraulic cranes). (*See* the discussion of this provision at 73 FR 59745, Oct. 9, 2008.)

Several commenters stated that proper blocking is necessary for hydraulic cranes in addition to lattice boom cranes. (ID–0213.1; –0205.1; –0118.1.) In addition, hearing testimony also indicated that there is a need for this requirement to apply to hydraulic cranes because they are sometimes assembled or disassembled, at least partially, in the field. (*See* ID–0343.1.)

OSHA has concluded that the requirement is necessary for both hydraulic and lattice boom cranes and components. At times, portions of hydraulic cranes are assembled and disassembled in the field and need proper blocking. As a result, the word "lattice" in the proposed provision's language has not been included in the final rule so that the provision applies to hydraulic cranes and components as well as lattice boom cranes and components.

Paragraph (h)(4) Verifying Assist Crane Loads

This paragraph requires that, when using an assist crane, the loads that will be imposed on the assist crane at each phase of assembly/disassembly must be verified in accordance with § 1926.1417(o)(3). The purpose of this requirement is to avoid exceeding the assist crane's rated capacity. "Assist crane" is defined in § 1926.1401 as "a crane used to assist in assembling or disassembling a crane." When used for this purpose, an "assist crane" is subject to all applicable provisions of this standard, including the requirement of § 1926.1417(o) that it not be used in a manner that exceeds its rated capacity. (*See* the discussion of this provision at 73 FR 59745, Oct. 9, 2008.)

No comments were received on this provision; it is promulgated as proposed except that the purpose of the requirement is now included above in the preamble, rather than in the rule text, to increase the clarity of the requirement.

Paragraph (h)(5) Boom and Jib Pick Points

This provision would require the A/D director to address the hazard of using improper boom and jib pick points. Specifically, the points of attachment of rigging to a boom/jib or boom/jib section(s) must be suitable for preventing structural damage. Such damage could compromise structural integrity and, in some cases, may not be immediately noticed. If that component were nonetheless used, the boom/component could fail.

The points of attachment also need to facilitate the safe handling of these components. (*See* the discussion of this provision at 73 FR 59745, Oct. 9, 2008.) No comments were received on this provision; it is promulgated as proposed.

Paragraph (h)(6) Center of Gravity

In a variety of instances the method used for maintaining stability during assembly/disassembly depends on supporting or rigging a component (or set of components) so that it remains balanced throughout the process. In such instances the A/D director is required to identify the center of gravity of the load. (*See* the discussion of this provision at 73 FR 59745, Oct. 9, 2008.) No comments were received on this provision. It is promulgated as proposed except for one grammatical change.

Paragraph (h)(7) Stability Upon Pin Removal

This paragraph requires that each of the following must be rigged or supported to maintain stability upon the removal of the pins: Boom sections, boom suspension systems (such as gantry A-frames and jib struts), and components. "Boom suspension system" is defined in § 1926.1401 as "a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle." This definition is the same as that for "boom suspension" in the SC&RF Handbook. (*See* the discussion of this provision at 73 FR 59745, Oct. 9, 2008.)

No comments were received on this provision; it is promulgated as proposed except that the conjunctive "and" is substituted for "or" to make it clear that all three of the listed items (boom sections, boom suspension systems, and components) must be properly rigged, not just any one of those.

Paragraph (h)(8) Snagging

As explained in the preamble to the proposed rule, "snagging" occurs when pendant cables hung alongside the boom are caught ("snagged") on the pins, bolts, or keepers as the operator raises the boom (*see* 73 FR 59746, Oct. 9, 2008.) Snagging could damage the cables or other equipment and result in injury. This paragraph requires that suspension ropes and pendants not be allowed to catch on the boom or jib connection pins or cotter pins (including keepers and locking pins). The definition for pendants can be found in § 1926.1401. This definition is similar to that in the SC&RF Handbook, but with the addition of the reference to "bar type" pendants. (*See* the discussion of this provision at 73 FR 59746, Oct. 9, 2008). No comments were received on this provision; it is promulgated as proposed.

Paragraph (h)(9) Struck by Counterweights

Final § 1926.1404(h)(9) requires the A/D director to address the potential for unintended movement from inadequately supported counterweights and from hoisting counterweights. "Counterweight" is defined in § 1926.1401 as a "weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads." This

definition is taken from the SC&RF Handbook. (*See* the discussion of this provision at 73 FR 59746, Oct. 9, 2008.)

No comments were received on this provision; it is promulgated as proposed except that OSHA has replaced the adjective "unexpected" with "unintended" to remain consistent throughout this section.

Paragraph (h)(10) Boom Hoist Brake Failure

This provision addresses a hazard that can occur both during assembly and disassembly, although it is more typically a hazard during assembly. In many older cranes the boom hoist brake mechanism has an external or internal mechanical brake band that operates by pressing against the hoist drum. As the configuration of the crane changes and, for example, more boom is added, this type of boom hoist brake may slip unless it has been adjusted to hold the extra weight. The Committee was concerned that the inability of an unadjusted brake to hold the increased load will not be evident until the additional boom section(s) has been added and the operator attempts to rely on the brake in a subsequent phase of the operation. If the operator does not first raise the boom a small amount after the section has been added (with the crew clear of the boom) to test the brake, employees could be injured later in the process when the operator manipulates the boom and finds that he/she is unable to brake it.

To address this hazard, the employer is required to test the brake to determine if it can hold the load. In many cases, if it is insufficient, an adjustment to the brake will correct the problem. If it remains insufficient, the employer is required to use a boom hoist pawl, other locking device, back-up braking device, or another method of preventing dangerous boom movement (such as blocking or using an assist crane to support the load) from a boom hoist brake failure.

The Agency was concerned that the text of the proposed provision was not sufficiently clear regarding the timing of this brake test, so it solicited public comment on this issue. OSHA's interpretation was that the test would need to be done immediately after each section (or group of sections) is installed, and after all sections are in place (*see* 73 FR 59746, Oct. 9, 2008).

One commenter recommended revising the provision to specify that the brake be tested prior to the commencement of lifting. (ID–0214.1.) However, two other commenters wrote that the regulatory text should remain as is and should not specify when to perform the brake test. They point out that C–DAC's intent in § 1926.1404(h) was to identify hazards and require that they be addressed by the A/D director. C–DAC designed § 1926.1404(h) so that, for the most part, the A/D director could determine the procedures (or how to implement specified requirements) that would be best suited in each situation to protect against those hazards. They also state that, in some cases, the specific procedure that OSHA referred to in the proposed rule preamble could result in a greater hazard. (ID–0205.1; 0213.1.)

OSHA agrees that specifying an overly-detailed procedure to address this hazard would be inappropriate given the myriad of circumstances in which this issue may arise. However, the Agency also determined that the proposed rule's regulatory text did not identify the purpose of the provision with sufficient clarity. Therefore, the final standard does not specify that the test has to be performed at a certain time that is tied to the installation of any particular section, but instead requires a test whenever the A/D director will be relying on the boom hoist brake to function properly. In short, the test needs to be performed, prior to reliance being placed on the brake, and the test needs to accurately account for the loads that will be placed on the brake. The provision in the final rule, therefore, requires the boom hoist brake to be tested prior to each time reliance on the boom hoist brake is anticipated.

Paragraph (h)(11) Loss of Backward Stability

The Committee identified three points during the assembly/disassembly process at which there is a heightened risk of loss of backward stability. These are: when swinging the upperworks, during travel, and when attaching or removing equipment components. Therefore, under this provision, before any of these occur, the A/D director is required to consider whether precautions need to be instituted to ensure that backward stability is maintained. No comments were received on this provision. However, OSHA is not including the drawing described as Figure 1 in the proposed rule. *See* the discussion of the removal of this figure below in § 1926.1405. Except for the removal of any reference to figure 1, OSHA is promulgating the provision as proposed.

Paragraph (h)(12) Wind Speed and Weather

Section 1926.1404(h)(12) requires the A/D director to address hazards caused by wind speed and weather to ensure that the safe assembly/disassembly of the equipment is not compromised.

The Committee considered the option of establishing a maximum wind speed, as well as the option of incorporating ANSI's provisions regarding wind speed. However, it determined that selecting any one particular speed as a maximum would be arbitrary because of the variety of factors involved. For example: different cranes and crane types vary with respect to the "sail" area they present; an assembly process involving use of an assist crane may require lower wind speeds than one in which no assist crane is used; and assembly/disassembly operations done "in the air" (that is, with the boom elevated in the air, without ground support for the boom) may require lower wind speeds than a boom assembled/disassembled on the ground. The Committee ultimately decided that a better approach would be to have the A/D director determine the maximum safe wind speed under the circumstances.

Other weather conditions that can affect the safety of assembly/disassembly would include, for example, ice accumulation on crane components. Ice can both add to the weight of the components and create slippery, dangerous surfaces on which employees work. The A/D director must address weather conditions that affect the safety of the operation. No comments were received on this provision; it is promulgated as proposed with a slight rewording for clarity.

Paragraph (i) [*Reserved*.]

Paragraph (j) Cantilevered Boom Sections

Members of the Committee determined that a common mistake in assembly/disassembly is cantilevering too much boom. When too much boom is cantilevered, structural failure can occur in components such as the mast/gantry, boom sections and lifting lugs. Employees may be struck by falling components from this type of failure. To prevent accidents from cantilevering too much boom during assembly/disassembly, this provision requires manufacturer's limitations on cantilevering not to be exceeded.

If the manufacturer's limitations are not available, the employer is required to have a registered professional engineer (RPE) determine the appropriate limitations, and to abide by those limitations. The Committee concluded that in such cases there would need to be a requirement that the RPE's determination be in writing to ensure that the assessment has been done.

This provision is promulgated as proposed with one grammatical correction to make it clear that it is the limitations that must not be exceeded.

Paragraph (k) Weight of Components

As with any load to be lifted by a crane/derrick, the weight of the components must be available to the operator so that the operator can determine if the lift can be performed within the crane/derrick's capacity. This requirement applies irrespective of whether the component is being hoisted by the crane being assembled/disassembled or by an assist crane.

No comments were received on this provision. OSHA is promulgating this provision largely as proposed, but has modified the text to make it clear that assembly/disassembly is prohibited when the weight of each of the components is not readily available.

Paragraph (l) [*Reserved*.]

Paragraph (m) Components and Configuration

This provision deals with the selection of components that will be used to comprise the crane/derrick, the configuration of the equipment, and its inspection upon completion of assembly. (*See* the discussion of this provision at 73 FR 59747, Oct. 9, 2008.)

No comments were received on this provision. However, to be consistent with the requirements of § 1926.1403, the word "prohibition" has been added to § 1926.1404(m)(1)(i); otherwise, it is promulgated as proposed with the addition of commas to clarify that this paragraph only applies to the selection of components and configuration to the extent that either one affects the capacity or safe operation of the equipment.

Note that another section (§ 1926.1434) allows cranes/derricks to be modified under certain circumstances. To the extent a crane/derrick is modified in accordance with § 1926.1434, the employer is not required to follow the manufacturer's original instructions, limitations and specifications regarding component selection and configuration regarding those modifications. Instead, under § 1926.1404(m)(1)(ii), the employer is required to follow the component selection and configuration requirements approved in accordance with § 1926.1434.

Paragraph (n)

For clarity, OSHA has reserved this paragraph and incorporated its substance in § 1926.1403, as explained above in the discussion regarding § 1926.1403. (*See* the discussion of this provision at 73 FR 59747, Oct. 9, 2008.)

Paragraph (o) Shipping Pins

This provision requires reusable shipping pins, straps, links and similar equipment to be removed. Once they are removed they must either be stowed or otherwise stored so that they do not present a falling object hazard. No comments were received for this paragraph; it is promulgated as proposed.

Paragraph (p) Pile Driving

This provision prohibits equipment used in pile driving operations from having a jib attached. An attached jib could be dislodged during pile driving operations and cause structural damage to the boom, potentially causing the boom to fail or diminishing its capacity. (*See* the discussion of this provision at 73 FR 59748, Oct. 9, 2008.) No comments were received on this provision; it is promulgated as proposed.

Paragraph (q) Outriggers and Stabilizers

This paragraph specifies requirements regarding outriggers. (*See* the discussion of this paragraph at 73 FR 59748, Oct. 9, 2008.)

OSHA received several comments with regard to § 1926.1404(q)(2) in relation to stabilizers. One commenter stated that it is necessary to add the term "stabilizers" to the regulatory text for the provision to properly apply to articulating cranes. (ID–0206.1.) The commenter explains that, as opposed to outriggers, which are designed to take all load off of the tires, stabilizers are designed to relieve some, but not all, of the sprung weight for the purpose of increasing the stability of the vehicle. The commenter believes that the provision as written in the proposed rule would lead to improper use of stabilizers in such a way that is dangerous and against manufacturer recommendations. A second commenter emphasized that cranes equipped with stabilizers (and not outriggers) do not raise the wheels off the ground. (ID–0292.)

OSHA agrees with the commenters that it is necessary to address stabilizers in § 1926.1404(q). With the exception of § 1926.1404(q)(2), the term "stabilizers" has been added so that each provision also applies to stabilizers. Section 1926.1404(q)(2) does not apply to stabilizers because they are not designed to remove all weight from the vehicle's wheels.

One comment was received in regards to § 1926.1404(q)(4). Under that provision, each outrigger must be visible to the operator or to a signal person during extension and setting. The commenter suggested that the requirement be modified so that it would also apply to the retraction of outriggers. (ID–0053.1.) The commenter indicated that employees can be subject to crushing and pinching hazards during outrigger retraction and this would be less likely to occur if it the outrigger had to be visible to the operator or signal person during retraction.

OSHA agrees that crushing and pinching hazards exist during outrigger retraction. However, § 1926.1404(q) is designed to prevent the overturning of the crane; it does not address the crushing and pinching hazards posed by operation of the equipment in struck-by or crushed/by locations outside the operator's view. The final rule contains other provisions that are designed to address such hazards. (*See, e.g.,* § 1926.1404(e).) Therefore, the Agency is not incorporating the commenter's suggestion into § 1926.1404(q) and is promulgating the provision largely as proposed.

Paragraph (r) Rigging

This paragraph specifies requirements regarding rigging during the crane assembly/disassembly process. It includes a requirement for a qualified rigger and sets forth specifications regarding the use of synthetic slings.

C–DAC did not focus on the proper use of synthetic sling rigging during the crane assembly/disassembly process, primarily because another standard—29 CFR 1926 Subpart H (Materials handling, storage, use, and disposal)—already addresses some of the hazards associated with the use of synthetic slings in construction.

However, after C–DAC completed its work, a catastrophic crane collapse resulted in a reevaluation of subparts N and H with regard to synthetic slings and rigging expertise. On March 15, 2008, a tower crane in New York City collapsed, killing six construction workers. OSHA's investigation of that incident focused on the use of synthetic slings to hold a bracing collar that was being installed.

The Agency determined that neither subpart H (Rigging equipment for material handling) nor subpart N specifically address the hazard posed when a synthetic sling is used in a manner causing compression or distortion of a sling, or when the sling is in contact with a sharp edge. The Agency asked for public comment on whether to prohibit using synthetic slings altogether in the assembly/disassembly process or, alternatively, to

require padding or similar measures to protect the slings from being damaged (*see* 73 FR 59742, Oct. 9, 2008).

Commenters generally opposed prohibiting the use of synthetic slings during assembly/disassembly, as long as appropriate precautions are taken. (*See, e.g.,* ID–0205.1; –0213.1; –0343.) Specifically, commenters stated that synthetic slings have the advantage of helping to prevent damage to equipment components, but need to be protected from cuts, compression, distortion and reduction of capacity, by the use of "softeners" (*i.e.,* padding). (*See, e.g.,* ID–0187.1; –0343.) One commenter testified that it does not oppose synthetic slings if they are listed in the manufacturer's procedures or if they are not specifically prohibited by the manufacturer. (ID–0343.) Some commenters also emphasized the need for such slings to be properly rated and inspected. (*See, e.g.,* ID–0226.) Another commenter recommended requiring rigging equipment for material handling to be inspected. One commenter advocated prohibiting synthetic slings used in conjunction with tower crane erection, unless the manufacturer specifically allows their use. (ID–0156.)

Commenters also suggested adding requirements regarding the qualifications and training of riggers. Specifically, several commenters suggested requiring certification of riggers similar to operator certification requirements in § 1926.1427. (ID–0126; –0132.1; –0136; –0204.1; –0311.1; –0362.1.) One commenter opposed certification, but supported requiring training. Another suggested third party certification or licensing of supervisors. (ID–0156.1.) Another advocated employer qualification of riggers. (ID–0197.1.)

OSHA acknowledges that synthetic slings have certain advantages, such as preventing damage to equipment components, and no commenters advocated a prohibition in all instances. OSHA has therefore decided not to prohibit the use of synthetic slings in assembly/disassembly. There must, however, be adequate safeguards for their use.

OSHA agrees with the comment that stressed the importance of inspecting slings. However, as § 1926.251(a)(1) already requires that all rigging equipment be inspected, no additional requirement is needed in subpart CC regarding the inspection and removal of synthetic slings.

The Agency finds that it is vital that synthetic slings be protected from abrasive, sharp or acute edges, since any of those conditions can damage a synthetic sling, resulting in a failure. Also, based on its review of the record, the Agency concludes that such slings must be protected from configurations that could cause compression or distortion of the sling, since that can also cause failure. For example, wrapping a synthetic sling through a V-angled junction point of steel members in a tower mast section can cause the sling to compress and distort under load, compromising its capacity.

As was demonstrated by the March 2008 collapse in New York City, such protection is needed whenever the object that is in contact with the sling—whether it is a load or something else, such as a crane component used to anchor the sling—has such an edge or configuration. Therefore, OSHA is including a requirement in the final § 1926.1404(r)(2) to protect employees from such synthetic slings hazards when used in assembly/disassembly.

OSHA also learned from its investigation of the March 2008 collapse that it is vital that synthetic slings be selected and used properly. In particular, the sling manufacturer's recommendations must be observed strictly as the capacity ratings set by the manufacturer are highly dependent on the sling being used as specified by the manufacturer. (*See* ID–0336.) Consequently, employers, even with the assistance of a qualified rigger, will typically not have the ability to develop safe alternative procedures regarding their use. Therefore, the Agency is including a requirement in the final § 1926.1404(r)(3) (also noted in § 1926.1403(b)) that when a synthetic sling is used during assembly/disassembly, the sling manufacturer's instructions, limitations, specifications and recommendations must be followed.

Note that § 1926.1403 requires that the employer "comply with all applicable manufacturer prohibitions." Therefore, if a manufacturer prohibits the use of synthetic slings during assembly/disassembly, OSHA prohibits that use of such slings. Furthermore, while § 1926.1403 requires the employer to comply with either the manufacturer's or the employer's assembly/disassembly procedures (*see* § 1926.1403(a) and (b)), employer procedures may be used only if the employer meets a two-prong test. First, the employer must not be using synthetic slings. Second, the employer must demonstrate that its procedures meet the requirements in § 1926.1406.

There may be cases in which the equipment manufacturer does not prohibit the use of synthetic slings during assembly/disassembly, but identifies wire rope slings in its procedures. In such cases, the employer may only use synthetic slings if it establishes and implements its own procedures under § 1926.1403(b) and can demonstrate that those procedures, including the use of synthetic slings, meet the criteria requirements in § 1926.1406.

As noted above, several commenters advocated adding a requirement that rigging be performed by qualified riggers. One local government stated that although rigging operations are critical to completing crane work, rigging operations involve a high level of risk if not performed properly. (ID–0362.1.) The local government's experience supports the proposition that human error causes most rigging accidents. (ID–0362.1.) The New York crane collapse and the subsequent OSHA investigation further highlight the dangers associated with improper rigging during assembly/disassembly, and the need to address this hazard was supported by all of the commenters who addressed this issue. OSHA notes that although several commenters pointed to the need for qualified riggers early on in the comment process, and again during the hearing, no one expressed any disagreement about the need to address the hazard by requiring riggers to be qualified. This means of addressing the hazard is consistent with the means that C–DAC applied when it identified a hazard related to rigging in § 1926.1425(c), and the Agency relies on C–DAC's expertise in selecting the appropriate method to address a rigging hazard. OSHA is therefore requiring in § 1926.1404(r)(1) that all rigging for crane assembly/disassembly be performed by a qualified rigger.

Finally, the fact that the commenters did not limit their suggestions on rigging qualifications to rigging synthetic slings leads the Agency to conclude that all rigging done for assembly/disassembly, irrespective of type, is a safety-critical function. One person testified about how he was involved with improper rigging which led to the death of his coworker. He stressed the importance of having qualified riggers, stating that in his experience most of the accidents he has seen and been involved with or investigated have involved problems with rigging. (ID–0343.)

After considering the record, OSHA is including the qualified rigger requirement in the final rule and it applies to all rigging used for assembly/disassembly.

Section 1926.1405 Disassembly—Additional Requirements for Disassembly of Booms and Jibs (Applies to Both the Use of Manufacturer Procedures and Employer Procedures)

Section 1926.1405 requires that none of the pins in the pendants be removed (partly or completely) when the pendants are in tension. In addition, none of the pins (top or bottom) on boom sections located between the pendant attachment points and the crane/derrick body are to be removed, partly or completely, when the pendants are in tension. None of the pins (top or bottom) on boom sections located between the uppermost boom section and the crane/derrick body are to be removed, partly or completely, when the boom is being supported by the uppermost boom section resting on the ground (or other support). Finally, none of the top pins on boom sections located on the cantilevered portion of the boom being removed (the portion being removed ahead of the pendant attachment points) are to be removed (partly or completely) until the cantilevered section to be removed is fully supported. (*See* the discussion of these requirements at 73 FR 59748, Oct. 9, 2008.)

The Committee determined that many of the accidents associated with cranes occur during the removal of pendant, boom and jib pins. The Committee determined that accidents typically occur because of a failure to recognize that, in certain situations, particular pins are "in tension." If partly or fully removed while in that state the result can be unplanned movement of a component or the collapse of the boom or jib.

Consequently, the Committee concluded that the removal of pendant, boom section and jib pins warrants heightened attention. This section focuses on protecting employees from these hazards during the dismantling of booms and jibs, either when disassembling the crane/derrick or when changing the length of a boom or jib. To make clear that "dismantling" includes activities such as shortening a boom, final § 1926.1401 defines "dismantling" to include "partial dismantling (such as dismantling to shorten a boom or substitute a different component)."

In this section, the Committee identified particular scenarios that, in the experience of many of the Committee members, pose specific hazards in disassembly if the wrong pins (that is, pins that are in tension) are partly or completely removed. The Committee concluded that the failure to follow the provisions would very likely result in unintended movement and/or collapse of the components. OSHA agrees that these requirements will help to prevent unintended movement or collapse of booms or jibs as they are being disassembled.

Several comments were received regarding the illustrations in this section of the proposed rule. Two commenters noted the illustration of a tower crane in figure 2 of the proposed rule and suggested it be replaced with a mobile crane. (ID–0205.1;–0213.1.) Two commenters recommended that figures 4 and 6 be changed such that no pins would be permitted to be removed without blocking the entire boom. (ID–0131.1; -0292.) Specifically, these commenters did not believe that the bottom boom connecting pins could be removed due to the weight of the cantilevered boom exerting force on these bottom connecting pins. They stated that if there was sufficient clearance between the connecting lugs to enable the pins to be removed, the boom could move downward upon the removal of the pins.

Based upon C–DAC's expertise, OSHA determines that figures 2, 4 and 6 in the proposed rule were accurate depictions as to blocking, but the proposed arrows may have been confusing to the extent that commenters incorrectly understood that the removal of pins would be allowed where arrows did not appear. To avoid confusion, OSHA is not including any of the assembly/disassembly figures from the proposed rule in the final rule.

Section 1926.1406 Assembly/Disassembly—Employer Procedures—General Requirements

Section 1926.1406 sets requirements that must be met if an employer elects to use its own procedures for assembling and disassembling a crane/derrick instead of those of the manufacturer. (*See* the discussion of this provision at 73 FR 59748, Oct. 9, 2008.)

One commenter wrote that, to ensure safe assembly and disassembly, employer procedures must not be allowed. In the preamble to the proposed rule, OSHA explained its rationale and the basis of C–DAC's recommendation that employer procedures be allowed where they meet the specified criteria in § 1926.1406. (*See* full discussion at 73 FR 59742, 59748, Oct. 9, 2008). The commenter did not challenge the rationale or provide any evidence of why employer procedures that comply with § 1926.1406 would be insufficient. The Agency is therefore adopting § 1926.1406 as proposed for the reasons explained in the preamble to the proposed rule, with several minor clarifications.

In § 1926.1406(a), the phrase "assembly/disassembly" replaces "assembling or disassembling" to make this section consistent with other sections of the rule. Also in § 1926.1406(a), OSHA has removed the phrase "are designed to" to increase clarity. In § 1926.1406(a)(1), the phrase "any part" replaces "all parts" to make it clear the duty to prevent dangerous movement in any part of the equipment. This provision is otherwise promulgated as proposed with several grammatical corrections.

Sections 1926.1407–1926.1411 Power Lines

Introduction

Final §§ 1926.1407 through 1926.1411 contain requirements designed to help ensure the safety of employees while cranes/derricks are being assembled, disassembled, operated, or while they travel under power lines.

Previously, subpart N, in former § 1926.550(a)(15), addressed power line hazards by specifying the minimum distance that must be maintained between a crane and an energized power line. For lines rated 50 kilovolts (kV) or below, the minimum distance was 10 feet; for lines over 50 kV, the minimum distance was generally 10 feet plus 0.4 inches for each 1 kV over 50 kV (we will refer to this subpart N requirement in this preamble as the "10-foot rule").

However, the subpart N provisions, which instructed employers to maintain a minimum clearance distance, did little by way of requiring employers to implement measures to help prevent operators from inadvertently breaching that distance. The only preventative measure in subpart N was a requirement, in former § 1926.550(a)(15)(iv), to use a spotter "where it is difficult for the operator to maintain the desired clearance by visual means." In discussing how to reduce power line fatalities, the Committee determined that a systematic, proactive approach to preventing power line contact is needed (*see* the Agency's explanation for the need for these provisions in the proposed rule preamble at 73 FR 59748–59750, Oct. 9, 2008).

Brief Overview of Requirements

The standard requires the implementation of a systematic, proactive approach to dealing with the hazard of power lines. This approach is comprised of the following steps: (1)

Identify the work zone and assess it for power lines—determine how close the crane could get to them. The employer has the option of doing this assessment for the area 360 degrees around the crane or for a more limited, demarcated area; (2) If the assessment shows that the crane could get closer than a trigger distance—20 feet for lines rated up to 350 kV (50 feet for lines rated over 350 kV)—then requirements for additional action will be triggered.

The voltages given in the final rule are phase-to-phase system voltages on the power lines. It should be noted that the system voltages for power lines generally take three forms. First, there is the actual voltage on the line. This voltage varies from one moment to the next as conditions on the power line change. Second, there is the nominal voltage on the line that is used to designate its voltage. The actual operating voltage varies above and below this voltage. (*See* the definition of "voltage, nominal" in subpart K of the Construction Standards, § 1926.449.) Third, there is the maximum operating voltage on the line. This represents the maximum voltage that can appear on a power line and is 5 percent above the nominal voltage on the line. (*See* IEEE Std. 516–2009.) For purposes of the final rule, the power line voltage is the maximum operating voltage for that line. This approach, which is consistent with the determination of minimum approach distances in § 1910.269,[22] ensures that the minimum clearance distance is appropriate when the voltage on the line rises to its maximum. The following table lists the maximum operating voltages over 50 kV for power line systems commonly found in the U.S.

Nominal voltage range (kV)	Maximum operating voltage (kV) [1]
46.1 to 72.5	72.5
72.6 to 121	121
138 to 145	145
161 to 169	169
230 to 242	242
345 to 362	362
500 to 550	550
765 to 800	800

Source: 29 CFR 1910.269 Table R–6 and Appendix B to that section.

Note 1: This is the "voltage" of the power line for the purposes of the final rule.

Unless the power lines are deenergized and grounded, encroachment/electrocution prevention measures have to be implemented to prevent the crane from breaching a minimum clearance distance and protect against electrocution. The employer is allowed to choose among several minimum clearance distance options.

For example, for lines up to 350kV, the minimum clearance distance options would be: (1) 20 feet; or (2) the distance specified in Table A of § 1926.1408 for the line's voltage (Table A is the "10-foot rule"; *see* discussion of Table A in discussion of § 1926.1408); or (3) a distance closer than what is specified in Table A.

However, there are limitations to the availability of some of these options, and the number of mandatory encroachment prevention (and other) measures increases when using a clearance distance closer than Table A.

A commenter stated that use of the term "employer" was confusing when there are multiple employers on a given construction site, and raised the issue of whether each employer was responsible for employing its own dedicated spotter and its own set of barricades and similar safety measures. (ID–0143.1.)

In general, except where otherwise specified in this standard, the requirements of this standard apply to employers whose employees are exposed to hazards addressed by this standard, and also to other employers in certain situations as explained in OSHA's multi-employer policy (*see* OSHA CPL 02–00–124, *Multi-Employer Citation Policy,* Dec. 10, 1999). For example, with respect to situations in which barricades, a dedicated spotter, or other measures are required under §§ 1926.1407–1926.1411, each such employer is responsible for ensuring that the required measures are in place. However, that does not mean that each employer is required to install or provide duplicate sets of those measures. In multiple employer worksites, one employer may rely on measures provided by another employer as long as those measures meet the requirements of the standard.

Several commenters asked that OSHA specify in the standard that utility owner/operators may charge fees for the services they are required to perform under the standard. (ID–0155.1; –0203.1.) For example, where the employer uses § 1926.1408(a)(2)(iii)'s Option (3) for setting the clearance distance (*i.e.,* the clearance distance under Table A), under § 1926.1408(c), the utility owner/operator must provide requested voltage information within two working days of the request.

The standard does not address the issue of fees; the Agency determined that fees will generally be addressed as a contractual matter between the parties involved.[23]

Section 1926.1407 Power Line Safety (Up to 350 kV)—Assembly and Disassembly

The requirements in § 1926.1407 address the hazards of assembling and disassembling equipment near power lines up to 350 kV. The requirements in § 1926.1407 are similar in most respects to the requirements in § 1926.1408, which address operations of equipment near power lines.

One commenter suggested that OSHA amend § 1926.1407 to include cranes used to assist the assembly and disassembly of other cranes. (ID–0131.) As OSHA noted in the preamble to the proposed rule, when an assist crane is used during the assembly or disassembly of another crane/derrick, the use of the assist crane, with respect to power line safety, would be considered "operations" and therefore covered by § 1926.1408 (or, for power lines over 350 kV, § 1926.1409). This is because the assist crane has already been assembled and is being used for a crane operation. Therefore, use of the assist crane must comply with § 1926.1408 during the assembly/disassembly process rather than with § 1926.1407.

In contrast, a crane that is not yet fully assembled is often used to complete its own assembly. For example, a crane is often used to load its own counterweights. Similarly, it may unload its counterweights in its own disassembly process. Such activities would be covered under § 1926.1407 since it is being assembled/disassembled. Therefore, the provision is promulgated in the final rule without change.

Paragraph (a)

Under this paragraph, before beginning assembly or disassembly, the employer must determine if any part of the crane, load or load line (including rigging and lifting accessories) could get, in the direction or area of assembly, closer than 20 feet to a power line.

As stated in the preamble of the proposed rule, the phrase "in the direction or area of assembly/disassembly" was included to address the fact that, in some cases, the assembly or disassembly of a crane takes place not just in an "area," that is, a fixed portion of the work site, but also in a "direction." For example, when

[22] For further information, *see* Appendix B to § 1910.269.

[23] Note that in the Regulatory Flexibility Analysis, OSHA has assumed that the cost of providing this information would be passed on to the employer requesting the information, not the utility owner/operator. *See* section V.B of this preamble.

disassembling a crane, the disassembly process takes place in an area that includes the area under and around the boom's path as it is lowered to the ground (in most, but not all cases, the boom is lowered to the ground for the disassembly process). Under this provision, the employer must assess the proximity that the boom will be in to the power line in its path of travel to (and on) the ground.

Two commenters expressed confusion about the meaning of the phrase "in the direction or area of assembly/disassembly." (ID–0122; –0178.1.) C–DAC's intent in including this phrase was to ensure that employers make the initial 20-foot clearance assessment based on not only the area which the crane equipment occupies at the beginning of the assembly/disassembly process, but also with respect to other areas radiating from the initial area, both horizontally and vertically, that will be occupied as the equipment components are added, removed, raised, and lowered during the assembly/disassembly process. For example, when assembling a lattice boom crane, the "area" involved will expand as boom sections are added.[24] This area expands in the "direction" in which the boom sections are added. The power line assessment has to be made for the portion of the site that will be involved as these boom sections are added.

As stated in the preamble to the proposed rule, "direction" includes the direction that, for example, the boom will move as it rises into the air after the boom has been assembled on the ground. For example, the boom, when fully assembled on the ground, may be more than 20 feet from a power line. However, when raising it from the ground, it may get closer than 20 feet. Accordingly, under this language, the "direction" that the boom will travel as it is raised must also be evaluated for proximity to power lines.

Another example is the assembly of a tower crane. As tower sections are added, the assembly process may reach a point where components are closer to power lines than when the process began. That "direction" of assembly upwards must also be evaluated.

If an employer determines that the 20 foot "trigger" determination is positive, then the employer is required to take additional steps. Specifically, the employer must meet the requirements under either Option (1), Option (2), or Option (3) of § 1926.1407(a).[25] Some commenters were concerned that the three compliance options in § 1926.1407(a) could be construed as a prioritization of compliance preferences, *e.g.,* a preference for deenergization over the other options. (ID–0203.1; –0214.1.) In response, OSHA wishes to clarify that the three options are in no particular order. In the Agency's view they represent three adequately protective compliance methods. The standard offers employers the flexibility to select the method most suitable for each specific work situation.

Paragraph (a)(1) Option (1)

An employer choosing Option (1) of this section will protect against electrocution by having the power lines deenergized and visibly grounded. Where the employer elects this option, it will not have to implement any of the encroachment/electrocution prevention measures listed in § 1926.1407(b). This option helps to minimize the electrical hazards posed by power lines.[26]

A number of commenters confirmed the Committee's determination that because of the time and cost considerations in arranging for the utility owner/operator[27] to deenergize and ground the line, deenergizing and grounding has not been routinely done. (ID–0155; –0203; *see* the discussion in the proposed rule preamble of deenergizing and grounding with regard to proposed § 1926.1408(a)(2)(i), 73 FR 59755, Oct. 9, 2008.)

Therefore, OSHA continues to conclude that providing other safe and practical options in the final rule will help to reduce unsafe practices in the industry. Those other options (Options (2) and (3) in § 1926.1407(a)) combined with § 1926.1407(b) are designed to be effective protection against the hazards of electrocution.

One commenter requested that OSHA provide guidance on whether written confirmation of deenergization and grounding from the utility owner/operator will be required. (ID–0214.1.) He further recommended that the requested guidance should be set forth in the regulatory text rather than in the preamble if OSHA expects employers to obtain a written confirmation. OSHA did not determine that written confirmation is necessary. As long as the utility owner/operator confirms that the line is deenergized and it is visibly grounded, employee safety is assured. Thus, the final rule does not require written confirmation that the line is deenergized.

For a discussion of comments related to the requirement for visible grounding, *see* the section later in this preamble addressing § 1926.1408(a)(2)(i).

One commenter suggested that in some situations deenergizing and grounding could place the utility owner/operator in conflict with other Federal and State regulatory requirements. (ID–0203.1.) The commenter did not provide information for OSHA to consider regarding any specific conflicts, and OSHA has not identified any such conflicts. Moreover, in the event that such a conflict does arise, the employer could choose, as an alternative to deenergizing, Options (2) or (3) as described below.

This paragraph is being adopted without change from the proposal.

Paragraph (a)(2) Option (2)

Under Option (2) (§ 1926.1407(a)(2)), the employer is required to maintain a minimum clearance distance of 20 feet. To help ensure that this distance is not breached, the employer has to implement the encroachment prevention measures in § 1926.1407(b). Under this option, no part of the equipment, load or load line, including rigging and lifting accessories, is permitted closer than 20 feet to the power line.

Employers using this option will have to stay further away from the power line than had been required under subpart N's 10-foot rule (employers wanting to use the 10-foot rule would have to use Option (3), discussed below).[28] However, an advantage of this option to many employers is that they do not have to determine the voltage of the power line; they only have to determine that the line voltage is no more than 350 kV.

Under the old subpart N formula, an employee was required at most to

[24] This also occurs with telescopic extensible boom cranes when a "dead man section" is added to the boom.

[25] If no part of the crane, load or load line could come closer than 20 feet to a power line, the employer is not required to take any further action under this section. However, the employer may encounter a situation where it needs to get closer than anticipated to the power lines during the assembly/disassembly process. In such a case the employer is required to go back and conduct a new 20 foot "trigger assessment."

[26] Grounding the lines helps minimize the electrical hazard from possible reenergizing of the lines; however, some voltage will still appear on the line until the circuit protective devices open the circuit. In addition, under certain conditions, the circuit protective devices will not open the line, and the voltage will remain.

[27] OSHA notes that the phrase "utility owner/operator" reflects scenarios where utilities may not be operated by an owner but by some entity other than the owner. Therefore wherever the phrase "utility owner/operator" is used in the standard or in the preamble it is meant to apply to utility owners or utility operators. The final rule also uses the word "utility" in its broadest sense. It includes traditional utilities as well as other entities (such as steel or paper companies) that own or operate the power lines.

[28] As discussed above, the 10-foot rule requires varying clearance distances increasing with voltage with clearance distances that begin at 10 feet.

maintain a 20-foot distance away from a power line. Under the new option, employees are required to stay at least 20 feet away from the power line, so the Committee determined that there would be no diminution of safety under this new option. In fact, in the Committee's experience, most power lines encountered by most employers have voltages that, under the current subpart N formula, require a minimum clearance distance of 10 feet. Therefore, use of this option will result in a higher margin of safety. Employers who do not need to get closer than 20 feet to assemble/disassemble the crane could use this option and would be saved the step of obtaining the line voltage.

As noted above, in addition to maintaining a minimum clearance distance of 20 feet, employers using this option are required to implement the encroachment prevention and other measures specified in § 1926.1407(b).

Paragraph (a)(3) Option (3)

Under Option (3) (§ 1926.1407(a)(3)), the employer is required to maintain a minimum clearance distance in accordance with Table A of § 1926.1408. Under Table A, depending on the voltage of the power line, the minimum clearance distance ranges from 10 feet to 20 feet for lines up to 350 kV. Under this option the employer is required to determine the line's voltage.

As a practical matter, in the Committee's experience, the power lines most typically encountered by most employers would require a minimum clearance distance of 10 feet under Table A. As a result, employers can assemble/disassemble equipment closer to power lines under this option than under Option (2).

Table A is based upon the same formula that was used in subpart N (the 10-foot rule) and is similar to Table 1 in ASME B30.5–2004. Unlike subpart N, which had required employers to calculate the minimum clearance distance from a formula, Table A sets forth specified clearance distances in a readily understood table and requires no calculations. In addition to maintaining the minimum clearance distance specified in the Table, employers using this option are required to implement the encroachment prevention and other measures specified in proposed § 1926.1407(b).

Several commenters verified C–DAC's determination that obtaining voltage information in practice can often be difficult and time-consuming. (ID–0118; –0143.1; –0146.1; –0155.1.) OSHA determines that providing a mechanism under § 1926.1407(a)(2) ("Option (2)") to proceed with construction operations without having to obtain voltage information from utilities provides employers with a viable alternative to obtaining voltage information without compromising the safety of workers. This section of the final rule provides a mechanism by which employers can, using Table A, perform work with clearance distances of less than 20 feet. It is promulgated as proposed.[29]

Paragraph (b) Preventing Eencroachment/Electrocution

Once an employer has determined that some part of the crane, load or load line could come within the trigger distance of 20 feet of a power line (*see* § 1926.1407(a)), if it chooses either Option (2) or (3) of § 1926.1407(a) it is required to implement encroachment prevention measures to help ensure that the applicable minimum clearance distance (20 feet under Option (2) or the Table A distance under Option (3) is not breached.[30]

Most of the measures in this paragraph are designed to help the employer maintain the appropriate clearance distance and thereby prevent electrical contact while in the process of assembling or disassembling equipment. One of the measures is designed to prevent electrocution in the event of electrical contact.

Paragraph (b)(1)

Under paragraph (b)(1) of this section, the employer is required to conduct a planning meeting with the Assembly/Disassembly Director[31] (A/D Director), operator, assembly/disassembly crew and other workers who will be in the assembly/disassembly area (including the area of the load). This planning meeting must include reviewing the location of the power line(s) and the steps that will be implemented to prevent encroachment and electrocution.

In the planning meeting, the employer is required to select a protective measure from paragraph (b)(3) of this section (*see* discussion below) and review all the measures that will be used to comply with this section.

The purpose of the meeting requirement is to ensure that the operator and other workers who will be in the area understand these measures and how they will be implemented. That understanding is important to their successful implementation. Because of the critical nature of these measures, and the seriousness of the consequences to the safety of the employees if they are not implemented correctly, the Committee concluded that it is necessary for there to be a structured process by which the employer communicates this information.

As noted below, a planning meeting to discuss implementing encroachment prevention measures is also required under § 1926.1408(b)(1). Refer to the preamble section related to that provision for a discussion about public comments received regarding responsibilities for ensuring that such a meeting takes place. That discussion is equally relevant to this section. With the exception of the use of the term "director" instead of "supervisor," as explained above, this section is promulgated as proposed.

Paragraph (b)(2)

Paragraph (b)(2) of this section requires that where tag lines are used they must be nonconductive. This provision uses two terms that are defined in § 1926.1401. "Tag lines" is defined as "a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations." Thus, one end of a tag line is attached to the load and the other end is held by an employee who controls the load's motion by exerting force on the line.

If the equipment or load were to make electrical contact with a power line while an employee was holding a tag line that was able to conduct electricity, the employee could be electrocuted. The requirement that the tag line be nonconductive is designed to protect against such an event. Section 1926.1401 defines "nonconductive" as meaning that, "because of the nature and conditions of the materials used, and the conditions of use (including environmental conditions and condition of the material), the object in question has the property of not becoming

[29] The proposed regulatory text for § 1926.1407(a)(3)(i) used the phrase "minimum clearance distance" while that for § 1926.1407(a)(3)(ii) used "minimum approach distance." For consistency, OSHA has, in § 1926.1407(a)(3)(ii), changed the phrase "minimum approach distance" to "minimum clearance distance." Provisions in § 1910.269 and proposed subpart V of 29 CFR 1926 use the phrase "minimum approach distance." OSHA believes that employers who are covered by those standards are familiar with that term. In contrast, the Agency believes that employers that do not perform electric power work will better understand the term "minimum clearance distances." OSHA considers the terms "approach distance" and "clearance distance" to be interchangeable; no substantive distinctions are intended.

[30] Alternatively, under Option (1), the employer could have the lines deenergized and grounded. If Option (1) were selected, no further action under this section would be required.

[31] As explained in the preamble accompanying § 1926.1404, the term "assembly/disassembly director" replaces the proposed term "assembly/disassembly supervisor."

energized (that is, it has high dielectric properties offering a high resistance to the passage of current under the conditions of use)."

This definition recognizes that it is not only the inherent property of the tag line material that results in it being nonconductive but also the conditions of use. For example, in some cases, if an otherwise nonconductive material were to become wet and therefore able to conduct electricity, it would no longer qualify as nonconductive under this paragraph.

One commenter requested that OSHA specify test procedures to assist employers in making the determination of whether a tag line is nonconductive. (ID–0178.1.) C–DAC considered the utility of setting specifications for materials required to be nonconductive but determined that it would be impractical. American Society for Testing and Materials (ASTM) *Standard Specification for Unused Polypropylene Rope With Special Electrical Properties,* ASTM F1701–05 contains specifications and test methods for live-line rope used in electric power work. These ropes are used to insulate power line workers from energized power lines. Tag lines meeting this standard are acceptable under the final rule. However, to meet the requirement for "nonconductive" tag lines, they need not meet this standard, which requires a degree of insulation beyond that intended by the final rule. In addition, several other OSHA general industry and construction standards call for nonconductive materials, including § 1910.268(n)(13)(ii) (requiring nonconductive measuring devices to measure clearance distances from overhead power lines), §§ 1910.269(l)(6)(i) and 1910.333(c)(8) (requiring metal articles worn by employees to be rendered nonconductive), and § 1926.955(a)(8) (requiring nonconductive tag lines). In general these and other standards that call for nonconductive materials require the use of insulating material that does not have a voltage rating; thus, there is no need to specify a test method. In fact, setting test criteria for these materials would produce a voltage rating and render them insulating rather than nonconductive. (Because nonconductive materials have no voltage rating, there is still a risk of injury from electric shock should contact occur. However, these materials reduce that risk substantially.) In practice, under dry conditions nonmetallic fiber rope typically satisfies the definition for nonconductive.[32] The Agency concludes that this guidance is sufficient to help employers determine whether their tag lines meet the definition and has therefore, declined to specify test procedures in the final rule. The provision is promulgated as proposed, without change.

Paragraph (b)(3)

Under this paragraph the employer is required to implement one of five listed encroachment prevention measures (§ 1926.1407(b)(3)(i) through (v)). The Committee concluded that the use of any one of these measures, in combination with the required measures listed elsewhere in § 1926.1407(b), would be feasible and effective in protecting against encroachment. Specifically, the employer is required to choose either: (i) The use of a dedicated spotter; (ii) a proximity alarm; (iii) a device that automatically warns the operator when to stop (*i.e.,* a range control warning device); (iv) a device that automatically limits the range of movement of the equipment; or (v) an elevated: warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high-visibility markings. Providing the ability to choose among these options gives the employer flexibility so that it can pick one that is well suited and efficient in the circumstances.

A definition of "dedicated spotter (power lines)" is included in § 1926.1401, *Definitions.* A dedicated spotter must meet the signal person qualification requirements of § 1926.1428 and his/her sole responsibility must be to watch the separation between the power line and the equipment, load line, and load, and to ensure through communication with the operator that the applicable minimum distance is not breached.

When the employer uses a dedicated spotter to prevent encroachment under this section, that person has the critical responsibility of ensuring, through communication with the operator, that the equipment maintains a specified minimum clearance distance from a power line. This definition makes clear that the dedicated spotter cannot have any other responsibilities.[33] The dedicated spotter must have the qualifications required of a signal person under § 1926.1428, discussed below. Those qualifications will ensure that the signal person can communicate effectively with the operator. They also ensure that the signal person is knowledgeable about crane dynamics and therefore is able to recognize situations in which the minimum clearance distance may inadvertently be breached if, for example, the load is stopped quickly while it is being moved near a power line.

One commenter requested that OSHA include a clarification that the dedicated spotter can also be the signal person. (ID–0292.1.) As noted in the definition of "dedicated spotter" quoted above, although the dedicated spotter must be a qualified signal person under the requirements of § 1926.1428, that definition also mandates that the sole responsibility of the dedicated spotter be to ensure the required separation between the power line and the equipment, the load line, and the load (including loading and lifting accessories). Thus, in situations where the equipment operator requires the assistance of a signal person to provide signals related to maneuvering the equipment or the load other than maintaining the required power line clearance distance, a different person must serve as signal person.[34]

The devices listed in §§ 1926.1407(b)(3)(ii) and (iii) are also defined in § 1926.1401. A "proximity alarm," is a device that warns of proximity to a power line and must be listed, labeled, or accepted by a Nationally Recognized Testing Laboratory in accordance with § 1910.7.[35] A Nationally Recognized Testing Laboratory is an organization that has been recognized by OSHA pursuant to § 1910.7 as competent to evaluate equipment for conformance to appropriate test standards for that type of equipment. Thus, approval of a

[32] Wet, muddy, or high humidity conditions can cause such rope to stop being nonconductive. Similarly, the presence of metal or other conductive fibers or conductive sheaths or reinforcement would render the tag line conductive.

[33] The preamble language of the proposed rule stated that "the dedicated spotter cannot have any other responsibilities that detract him/her from this task." (73 FR 59752, Oct. 9, 2008.) The phrase "that detract him/her from this task" incorrectly implied that a dedicated spotter could have other tasks provided those other tasks did not distract the dedicated spotter from his/her task of maintaining the required separation between the power line and the equipment, the load, and the load line. This implication was incorrect. As stated in the definition section, the dedicated spotter's duty to maintain the required separation from the power line must be his/her "sole responsibility."

[34] If a dedicated spotter also served as a signal person for purposes other than maintaining the clearance distance, the dedicated spotter would be vulnerable to a typical cause of power line contact—focusing on something else and forgetting about, or being distracted from, maintaining the clearance distance.

[35] The C–DAC version of this provision defined proximity alarm as: "a device that provides a warning of proximity to a power line that has been approved by a Nationally Recognized Testing Laboratory." OSHA has modified the provision to conform its language to that used in § 1910.7, the OSHA rule governing nationally recognized testing laboratories, and to explicitly refer to § 1910.7 to make clear that the listing, labeling, or acceptance of a device under this rule must be accord with § 1910.7.

proximity alarm by a nationally recognized testing laboratory provides assurance that the device will work as intended. (For a discussion of public comments submitted relating to proximity alarms, *see* discussion of § 1926.1408(b)(4).) A "range control warning device," is defined in § 1926.1401 and is a device that can be set by an equipment operator to warn that the boom or jib tip is at a plane or multiple planes.

OSHA realized that some of the devices listed in § 1926.1407(b)(3) would not be operational or effective against electrocution during certain phases of the assembly or disassembly process of certain types of cranes. For example, for lattice boom cranes, proximity alarm devices may not be able to be used when the boom is not yet fully assembled; at that point the proximity alarm typically cannot be connected and functioning. Therefore, during certain phases of assembly/disassembly, one of the other options would need to be used (such as a dedicated spotter) to provide the needed protection.

However, the proposed regulatory text would have permitted an employer to select an option under paragraph (b)(3) of this section irrespective of whether it would be effective under the circumstances. To address this concern, OSHA requested public comment on whether to modify proposed § 1926.1407(b)(3) to preclude the employer from selecting an option that, in the employer's situation, would be ineffective, such as by revising the provision to read:

> (3) At least one of the additional measures listed in this paragraph must be in place. The measure selected from this list must be effective in preventing encroachment. The additional measures are: * * *.

Two of four commenters on this issue supported amending the language of this provision as described above. (ID–0067; –0118.) The two commenters who disagreed with requiring that the chosen method be effective in preventing encroachment thought that this provision would prove problematic for employers; they favored the original wording from the Committee that did not specifically require efficacy. (ID–0205.1; –0213.1.) These latter two commenters did not present any evidence to counter OSHA's concern that some of the listed encroachment prevention measures may not be fully effective under all circumstances. OSHA concludes that prudence dictates amending this provision to require that the selected measure be effective in preventing encroachment; the final rule therefore reflects the change described above.

In situations where an employer chooses the option of using a dedicated spotter to prevent encroachment under § 1926.1407(b)(3), the employer is required to meet the requirements for spotters in § 1926.1407(b)(3)(i). As specified in paragraph (b)(3)(i)(A) of this section, the spotter must be equipped with a visual aid to assist in identifying the minimum clearance distance. The Committee concluded that a visual aid is needed for the spotter because of the difficulty in visualizing the minimum clearance distance boundary in the air.

Under paragraphs (b)(3)(i)(B)–(D) of this section, the spotter must be positioned so that he/she can effectively gauge the clearance distance from the power line; the spotter, where necessary, must use equipment that enables him/her to communicate directly with the equipment operator; and the spotter must give timely information to the operator so that the required clearance distance can be maintained. C–DAC determined that each criterion is needed for the spotter to be able to be effective.

One commenter on this provision asked whether an airhorn is appropriate communication equipment for purposes of paragraph (C). (ID–0120.) OSHA determines that an airhorn would not enable the dedicated spotter to communicate with the operator as effectively as a radio, telephone, or other electronic communication device, and, in any event, might not be an effective means of communication on a noisy construction site; therefore, OSHA does not consider use of an airhorn to constitute compliance with paragraph (C).[36]

Paragraph (c) Assembly/Disassembly Below Power Lines Prohibited

This paragraph precludes employers from assembling or disassembling cranes/derricks beneath energized power lines. The Agency agreed with the Committee's conclusion that assembly/disassembly below energized power lines presents an extreme risk and needs to be prohibited. The assembly/disassembly process necessarily involves moving and hoisting parts of the equipment into place. If some of this work takes place beneath a power line, the risk that a part, load, load line, or other equipment would make electrical contact is very high. Also, in both assembly and disassembly, maneuvering an assembled crane out from under the power lines, or maneuvering a crane that is about to be disassembled under them, itself poses a high risk of such contact.

C–DAC's agreement on this provision indicates a determination by the Committee that, in almost all cases, the employer can plan the assembly/disassembly so that there will be no need to be beneath power lines. The Committee and OSHA also concluded that, in the very few instances where this is not possible, in light of the extreme risk involved, it is essential that the lines be deenergized and visibly grounded. No comments were received on this provision; it is promulgated as proposed.

Paragraph (d) Assembly/Disassembly Closer Than Table A Clearance Prohibited

Assembly and disassembly of cranes/derricks closer than the minimum clearance distance in proposed Table A of § 1926.1408 to an energized power line is prohibited under this paragraph. If assembly or disassembly needs to take place closer than that distance, the employer is required to have the line deenergized and visibly grounded. The rationale for this provision is similar to that discussed above for assembly/disassembly beneath power lines (that rationale is set forth in the discussion in the proposed rule preamble of proposed § 1926.1407(c), 73 FR 59753, Oct. 9, 2008). Engaging in assembly/disassembly activity closer to an energized power line than the Table A distance was considered by the Committee to be too hazardous to be permitted under any circumstances.

This reflects certain inherent characteristics of the assembly/disassembly process that preclude the employer from being able to reliably maintain clearance distances closer than Table A of § 1926.1408. For example, when disassembling a lattice boom, pins that hold boom sections together are removed. Even when done properly, this can release stored kinetic energy and cause the boom section being removed, as well as the remaining sections, to move. It is too difficult to estimate the amount of such potential movement with the precision that would be necessary when working closer than the Table A distances.

Another example is when assembling a boom, an error in the assembly process may similarly cause unanticipated movement. Using clearances closer than those in Table A would not allow sufficient room in light of the difficulty

[36] The cross-reference to § 1926.1420 originally included in this provision as proposed was deleted in the final rule for consistency with the parallel provisions for dedicated spotters in §§ 1926.1408(b)(4)(ii)(C) and 1926.1410(d)(2)(iii). This is a ministerial change not intended to have any substantive enforcement implications.

of predicting the amount of such movement.[37]

This paragraph is being adopted as proposed.

Paragraph (e) Voltage Information

This section operates in conjunction with § 1926.1407(a)(3). Under § 1926.1407(a)(3), employers who elect to use Option (3) of § 1926.1407(a) must determine the line's voltage. Under § 1926.1407(e), where the employer asks the utility owner/operator for that voltage information, the utility owner/operator of the line is required to provide the voltage information within two working days of the request.[38]

This reflects a conclusion of the Committee that, in the absence of such a time limitation on the utility owner/operator, in many instances Option (3) § 1926.1407(b) would not be useful because the employer would not be able to get the voltage information in sufficient time to be able to use it. Many employers will rely on the utility owner/operator to get this information. The Committee was concerned that an extended delay in getting it would result in employers, to some extent, doing the work anyway without the information. Therefore, for Option (3) § 1926.1407(b) to be viable, the Committee concluded that a reasonable time limitation for the utility owner/operator to respond was needed.[39]

Some utility owner/operators asserted that OSHA cannot require them to provide voltage information because OSHA does not have authority to impose such requirements on an electric utility that does not have employees at the construction site in question. (ID–0166.1; –0203.1; –0226.1.)

OSHA's authority to require that electric utilities disclose voltage information derives from secs. 6(b) and 8(g)(2) of the Act. While sec. 6(b) generally authorizes the Secretary to promulgate and enforce occupational safety and health standards, sec. 6(b)(7) specifically permits the Secretary to "prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed * * * and proper conditions and precautions of safe use or exposure." 29 U.S.C. 655(b)(7). Thus, OSHA may include information-gathering requirements among the provisions of a standard. Section 1926.1407(e) falls within the scope of sec. 6(b)(7), because voltage information is necessary to the determination of safe clearance distances for employees who work near power lines.

The Agency previously exercised its authority under sec. 6(b)(7) of the Act to promulgate the Hazard Communication Standard, which requires that chemical manufacturers and importers provide information for the benefit of downstream employees (*see* § 1910.1200). As a rationale for these provisions, OSHA explained that chemical manufacturers and importers are in the best position to develop, disseminate, or obtain information about their products (*see* 48 FR 53280, 53322, Nov. 25, 1983). Similarly, in an early case discussing sec. 6(b)(7), the Fifth Circuit found that "[t]he ability of downstream employers to protect their own employees is also an appropriate consideration in determining where the duty to warn should lie." *American Petroleum Institute* v. *OSHA,* 581 F.2d 493, 509 (5th Cir. 1978).

Section 8(g)(2) of the Act affords the Secretary additional authority for § 1926.1407(e). According to this section, the Secretary may "prescribe such rules and regulations as he may deem necessary to carry out responsibilities under the Act." The enumerated purposes of the Act indicate that the Secretary's responsibilities include:

— Setting mandatory occupational safety and health standards applicable to businesses affecting interstate commerce (29 U.S.C. 651(b)(3));

—Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)); and

—Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12)).

An electric utility representative asserted that, because employees of electric utilities are not likely to perform work under the circumstances that the standard contemplates, sec. 4(a) prevents OSHA from including requirements that target electric utilities. OSHA disagrees. Section 4(a) broadly provides that the OSH Act applies "with respect to employment performed in a workplace," 29 U.S.C. 653(a), and does not bar the statute's application to any class of employers. Section 4(a) contains no language to suggest that the Act's application depends on the relationship between the employees at risk and the employer with the power to reduce their risk.

Additionally, the commenter stated that § 1910.12(a) precludes OSHA from regulating electric utilities, because employees of electric utilities will not be present at construction worksites and therefore will not be "engaged in construction."[40] The commenter cites *Reich* v. *Simpson, Gumpertz & Heger, Inc.,* 3 F.3d 1, 4–5 (1st Cir. 1993), in which the First Circuit relied on the second sentence of § 1910.12(a) as a basis for vacating citations that OSHA had issued to an engineering firm under the multi-employer worksite doctrine.

Simpson, Gumpertz is inapposite; the multi-employer worksite doctrine has no bearing on the validity of § 1926.1407(e), which explicitly holds electric utilities responsible for the distribution of voltage information. A more relevant case is *Sec'y of Labor* v. *Trinity Indus., Inc.,* 504 F.3d 397 (3d Cir. 2007), in which the Third Circuit upheld information disclosure requirements that are analogous to those in § 1926.1407(e). In *Trinity,* the Third Circuit affirmed OSHA's authority for provisions in the Asbestos Standard for the Construction Industry that require building owners to communicate the presence of asbestos or presumed asbestos-containing materials to certain prospective employers. *Id.* at 402. The court distinguished OSHA's authority to require that specific employers disclose information from the Agency's authority under the multi-employer doctrine to cite a general contractor for violations committed by a subcontractor:

> Unlike the regulations at issue in *Summit Contractors, Inc.,* the regulation at issue here specifically applies to building owners * * *. We are not convinced that the Secretary is powerless to regulate in this field, especially given the findings she has made regarding the importance of building owners in the discovery and communication of asbestos hazards.

Id. As *Trinity* confirms, the multi-employer worksite doctrine does not govern the validity of regulatory provisions that require specific employers to provide information. As a

[37] In this respect this provision differs from § 1926.1410. As discussed below, § 1926.1410 allows use of minimum clearance distances closer than Table A in some circumstances for crane "operations." In contrast, § 1926.1407(d) reflects a determination by the Committee that there are no circumstances for "assembly/disassembly" when it would be safe for any part of the crane, load or load line (including rigging and lifting accessories) to get closer than the Table A minimum clearance distance.

[38] One commenter suggested that utility owners/operators be required to label all power lines with voltage information. (ID–0143.1.) OSHA rejected this suggestion because it believes the cost of labeling every overhead power line in the country would be prohibitive.

[39] As noted in the introduction, C–DAC included two members from the electric utility industry.

[40] It should be noted that utility employees will be at these worksites from time to time to perform work on the power lines.

result, the interpretation that the multi-employer case law has given to § 1910.12(a) is not controlling in relation to § 1926.1407(e). Moreover, the requirement that electric utilities provide voltage information is not in conflict with the plain language of § 1910.12(a), which states:

> The standards prescribed in part 1926 of this chapter are adopted as occupational safety and health standards under section 6 of the Act and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each of his employees engaged in construction work by complying with the appropriate standards prescribed in this paragraph.

As the Agency noted in the proposal, the first sentence in § 1910.12(a) makes the construction standards applicable to every employment and to every "place of employment" of every construction employee. The second sentence of § 1910.12(a), by providing that each employer must protect the employment and the places of employment of each of his employees, does not negate the broad reach of the first sentence. The Secretary did not include language to indicate that an employer has obligations only toward his employees and the worksites of his employees.

Furthermore, the history of § 1910.12(a) reveals that the Secretary did not intend for it to limit her authority. Indeed, § 1910.12(a) is located within a subpart entitled "Adoption and Extension of Federal Standards," which the Secretary created to extend her jurisdiction through the adoption of the Construction Safety Act's standards. § 1910.11(a), subpart B. The opening paragraph of subpart B states that the subpart's provisions "adopt and extend the applicability of established Federal standards * * * with respect to every employer, employee, and employment covered by the Act." § 1910.11(a). Thus, neither the language nor the context of § 1910.12(a) suggest a conflict with the requirement that electric utilities provide voltage information when employers request it.

The commenter also cites *United States* v. *MYR Group, Inc.,* in which the Seventh Circuit held that OSHA could not cite a parent corporation for the failure of a subsidiary to train its employees. 361 F.3d 364 (7th Cir. 2004). Yet the court distinguished the facts of that case from circumstances where "[e]ach employer at the worksite controls a part of the dangerous activities occurring at the site and is the logical person to be made responsible for protecting everyone at the site from the dangers that are within his power to control." *Id.* at 367. Consistent with the Seventh Circuit's reasoning, OSHA has placed on utilities the responsibility to inform construction workers about power line voltage, as electric utilities are in the best position to disseminate voltage information.

In summary, OSHA has firmly-established precedent, under part 1926 and beyond, for requiring that an employer with special knowledge of occupational hazards provide information to protect workers. Like the provisions of the Hazard Communication Standard and the Asbestos Standard for the Construction Industry, § 1926.1407(e) imposes requirements on employers who possess essential information and are in the best position to distribute it.

The Committee determined that two business days would be a reasonable amount of time to allow the utility owners/operator to respond and be sufficiently short to be useful to the employer requesting the information. Most of the utility owner/operators who submitted comments or testimony on this issue did not indicate that a two-day requirement was unworkable so long as weekends and holidays were excluded from the two-day calculation.[41] (ID–0203.1; –0205.1; –0213.1.) Similarly, although one contractor indicated a desire to be able to obtain power line voltage information immediately at all times through Internet services provided by the utility owner/operator (ID–0118.1), other contractors indicated that a two working day time frame was manageable from a construction planning standpoint (ID–0205.1; –0213.1). In light of these comments, OSHA concludes that the proposed two-day requirement to fulfill voltage information requests was a reasonable time frame for both contractors and utility owners/operators.

In the proposed rule preamble, the Agency noted that the C–DAC provision read:

> *Voltage information.* Where Option (3) is used, owner/operators of power lines must provide the requested voltage information within two working days of the employer's request.

In a different context—determining the timeliness of notices of contest to OSHA citations—OSHA defines "working days" to mean "Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays." 29 CFR 1903.22(c). Since the term is already defined in an OSHA regulation, the Agency stated that it would apply the same definition here unless this rule were to specify a different definition and solicited comments on whether the phrase "working days" should be defined differently for purposes of this rule than it is in § 1903.22(c). All comments received on this issue indicated that the § 1903.22(c) definition was appropriate in this context. (ID–0203.1; –0205.1; –0213.1.) Although OSHA is not specifically incorporating the § 1903.22 definition by reference, the Agency intends to rely on that definition for purposes of enforcing § 1926.1407(e). One commenter sought clarification that the two working day time period would start to run on the first full business day after the request for information is received. (ID–0215.1.) This is, in fact, an accurate representation of how this provision will be enforced. If, for example, the utility receives a request for voltage information on Monday, it will have until the end of the business day on Wednesday to provide the necessary information.

Another commenter asked OSHA to provide guidance on whether the voltage information needed to be provided in written form. (ID–0214.1.) Given the inherent difficulties of obtaining written information expeditiously in many construction sites, OSHA concurs with C–DAC's recommendation not to require that voltage information be provided in writing.

Paragraph (f) Power Lines Presumed Energized

This paragraph requires that employers always assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite. No adverse comments were received on this provision; it is promulgated as proposed.

Paragraph (g) Posting of Electrocution Warnings

This paragraph requires the posting of electrocution warnings as follows: one inside the cab in view of the operator and (except for overhead gantry and tower cranes) at least two on the outside of the equipment. The Committee concluded and OSHA agrees that these electrocution warnings are necessary to protect the operator as well as any employees working in the area around the crane by increasing their awareness of the hazard. This provision is similar to sec. 5–3.4.5.2(d) of ASME B30.5–

[41] One electric utility representative at the public hearing did request, however, that the time period for responding to a request be changed to four business days. (ID–0342.)

2004. No adverse comments were received on this provision; it is promulgated as proposed.

Section 1926.1408 Power Line Safety (Up to 350 kV)—Operations

As discussed with respect to power line safety in assembly/disassembly, the standard requires the implementation of a systematic approach to power line safety for crane/derrick operations. This approach consists of two basic steps. First, the employer must identify the work zone, assess it for power lines, and determine how close the crane could get to them. The employer has the option of doing this assessment for the area 360 degrees around the crane or for a more limited, demarcated area. Second, if the assessment shows that the crane could get closer than a trigger distance—20 feet for lines rated up to 350 kV—then requirements for additional action are triggered.

Specifically, unless the power lines are deenergized and grounded, encroachment prevention measures have to be implemented to prevent the crane from breaching a minimum clearance distance. The employer is allowed to choose among three minimum clearance distance options. For example, for lines up to 350 kV, the minimum clearance distance options are 20 feet, or the distance specified in Table A of this section for the line's voltage (Table A is the "10-foot rule"; *see* discussion of Table A below), or a distance closer than what is specified in Table A. However, there are limitations to the availability of some of these options, and the number of mandatory encroachment prevention (and other) measures increases when using a clearance distance closer than Table A.

Paragraph (a) Hazard Assessments and Precautions Inside the Work Zone

Before beginning crane/derrick operations, the employer is required to determine if power lines would pose a hazard. The first step in this process is to identify the work zone for which this hazard assessment will be made (§ 1926.1408(a)(1)). The employer has two options for defining the work zone.

Under the first option (§ 1926.1408(a)(1)(i)), the employer is required to define the work zone by marking boundaries and prohibiting the operator from operating the equipment past those boundaries. Examples of how to demarcate the boundaries include using flags or devices such as a range limit device or range control warning device. "Range control warning device" is defined in § 1926.1401 as "a device that can be set by an equipment operator to warn that the boom or jib tip is at a plane or multiple planes."

OSHA noted in the proposed rule that the term "range limit device" was used in proposed § 1926.1408(a)(1)(i) but that no definition of this term was provided in proposed § 1926.1401. OSHA stated that it determined that C–DAC understood a range limit device to be a device that physically limits how far a crane can boom out and the angle within which the boom can swing. OSHA requested public comment on whether a definition of "range limit device" should be added to § 1926.1401 and, if so, whether the definition described in the proposed rule preamble is appropriate (73 FR 59759, Oct. 9, 2008).

Three commenters responded, endorsing the need for a definition and suggesting language along the lines discussed in the proposed rule. (ID–0118; –0205.1; –0213.1.) OSHA has added a definition for a "range control limit device" that defines it as "a device that can be set by an equipment operator to limit movement of the boom or jib tip to a plane or multiple planes."

Employers are not permitted to use existing landmarks to demarcate work zone boundaries unless they are marked. For example, a line of trees would be insufficient. Without anything more the trees would not signal a reminder to the operator of there being a boundary that must be maintained. However, adding flags to those trees would be sufficient because the flags would serve as a reminder that the trees are located along a boundary that the operator must not breach.

The boundaries must mark the limits of all crane movement. For example, a work zone could be defined by demarcating boundaries: (1) To the left and right of the operator, to limit the lateral movement of the boom, and (2) in front of the operator, in a line connecting the side boundaries, limiting the boom's radius.

In identifying the work zone, the employer must consider the entire area in which the crane will need to operate. If the crane will need to be positioned in more than one spot to accomplish its work, or to travel with a load, the employer must consider the total area in which it will need to operate and set the boundaries accordingly.

The second option for identifying the work zone (§ 1926.1408(a)(1)(ii)) is to define the work zone as the area 360 degrees around the crane, up to the crane's maximum working radius. In other words, under this option, the work zone is the area within a circle, with the crane at the center, and the radius defined by the maximum working radius of the crane. No boundaries would have to be marked under this option since the crane would be permitted to operate in the entire area that it could reach.

Paragraph (a)(2)

Once the employer has identified the work zone according to § 1926.1408(a)(1), it is then required to make the power line hazard assessment. Specifically, it must determine if any part of the crane, load or load line (including rigging and lifting accessories) could come within a "trigger" distance—20 feet of a power line. This determination must be made based upon the assumption that the crane would be operated up to its maximum working radius (or, if a demarcated boundary is used, the assessment must be made with the assumption that the crane would be operated up to that boundary).

Three commenters expressed concern over OSHA's use of the term "maximum working radius" in describing the methodology for defining the work zone. (ID–0146.1; –0206.1; –0209.1.) Their concern is that using "maximum working radius" would trigger the encroachment-prevention requirements of § 1926.1408(b) on construction sites where the equipment operator has no intention of using the equipment up to the equipment's maximum working distance. Another commenter questioned whether the phrase "any part of the equipment" would include the boom if the boom "could be lowered within 20 feet of a power line even though the working radius will not require encroachment into the 20-foot zone." (ID–0178.1.)

OSHA notes that these concerns are already addressed through a mechanism in the provision as proposed: the employer's ability, under § 1926.1408(a)(1)(i), to define the work zone boundaries and then prohibit operation of the equipment beyond those boundaries. In other words, employers may define the boundary of a work zone at the outer boundary of the intended working radius of any part of the equipment, including the boom.

To illustrate, if an employer is using a crane with a maximum working radius of 100 feet, but intends to extend the crane boom out only 75 feet beyond the center point of the crane, that employer can demarcate the outer boundary of the work zone using such measures as a line of flags, and then prohibit crane operations beyond that 75-foot work zone boundary. Therefore, in the one commenter's example of where the boom could come within 20 feet of a power line but the work does not

require it, the employer need not take encroachment-prevention measures if it prohibits working beyond a radius that would bring the boom within 20 feet of the line. OSHA concludes, therefore, that no change to the proposed regulatory language is needed to address these concerns and is promulgating this paragraph as proposed.

If, after defining a work zone, an employer determines that the 20 foot "trigger" determination is positive, then the employer is required to take additional steps. Specifically, the employer must meet the requirements under either, Option (1), Option (2), or Option (3) of § 1926.1408(a)(2).[42] *See* above discussion of § 1926.1407(a) for additional information about how OSHA intends to enforce these compliance options.

Section 1926.1408(a)(2) is adopted without change from the proposal.

Paragraph (a)(2)(i) Option (1)

An employer choosing Option (1) of this section will protect against electrocution by having the power lines deenergized and visibly grounded at the worksite. This option minimizes the probability that equipment that contacts the power line will become energized. The power line must be "visibly grounded at the worksite."

One commenter believed that the requirement for visible grounding was "impractical and overly burdensome." (ID–0146.1.) A second commenter believed that this requirement was needed to permit the employer to visually verify that the power line has been deenergized. (ID–0190.0.)

After reviewing these comments, OSHA continues to conclude, as C–DAC did, that visible grounding of the deenergized line is necessary to protect workers. First, it minimizes the voltage that can appear on the power line from a number of causes, including induced current and capacitive coupling, lightning, other energized lines falling onto the power line (for example, where there is a traffic accident involving a motor vehicle striking a utility pole supporting the power line), and accidental reenergizing of the lines. It also facilitates the operation of circuit protective devices to deenergize the line after it is reenergized from the last two causes. It also serves as a visual confirmation that the power line has been deenergized. (*See* discussion of § 1926.1407(a)(1) where OSHA declines to amend the proposal to require written confirmation that the power line has been deenergized.)

Where the employer elects to deenergize the power line, it will not have to implement any of the encroachment/electrocution prevention measures listed in § 1926.1408(b). However, some amount of time is needed to arrange for the utility owner/operator to deenergize and ground the line. Also, in some instances, especially where the construction project is small, the cost of deenergizing and grounding may be a substantial portion of the cost of the project. Because of these factors, deenergizing and grounding, which was also a permissible option under former § 1926.550(a)(15), has not been routinely done. Accordingly, the rule provides other safe and practical options to reduce unsafe practices in the industry. Those other options (Options (2) and (3) in § 1926.1408(a)(2)(ii) and (iii), discussed below) combined with § 1926.1408(b) are designed to afford effective protection against the hazard of electrocution.

Section 1926.1408(a)(2)(i) is adopted as proposed.

Paragraph (a)(2)(ii) Option (2)

Under Option (2) (§ 1926.1408(a)(2)(ii)), the employer is required to maintain a minimum clearance distance of 20 feet. To help ensure that this distance is not breached and that employees are protected from electrocution, the employer is required to implement the encroachment/electrocution prevention measures in § 1926.1408(b).

Employers using this option will have to stay further away from the power line than had been required under subpart N's 10-foot rule (employers wanting to use the 10-foot rule will have to use Option (3) of this section, discussed below).[43] However, an advantage of this option to many employers is that they do not have to determine the voltage of the power line; they only have to determine that the line voltage is not more than 350 kV.

Several commenters verified the Committee's conclusion that obtaining voltage information from utilities can often be difficult and time-consuming. (ID–0118.1; –0143.1; –0146.1; –0155.1.) OSHA determines that by providing a mechanism under § 1926.1408(a)(2)(ii) for employers to proceed with construction operations without having to obtain voltage information, employers will have more flexibility without compromising the safety of workers.

One commenter believed that the maximum clearance distance for this option should be 15 feet instead of the proposed 20 feet because it believed such a distance would be safe for what it described as "relatively small cranes." (ID–0184.1.) However, OSHA does not agree that a distinction based on crane size is justified. When smaller cranes operate near power lines, they present the same hazard as larger cranes and need to take similar precautions. OSHA further notes that smaller cranes, *i.e.,* cranes with shorter booms, will have a smaller work zone than larger cranes and therefore should be better able to avoid coming within the permitted 20-foot clearance and, as a result, may be less likely to trigger the protective steps required under paragraph (a)(2) of this section in any event. Moreover, if OSHA were to adopt a 15-foot minimum clearance distance for this option as advocated by the commenter, it would have to make a corresponding reduction in the maximum voltage covered by §§ 1926.1407 and 1926.1408 and a corresponding increase in the minimum voltage covered by § 1926.1409 to retain the protection afforded by the 10-foot rule previously contained in subpart N. Therefore, OSHA has concluded that it would be inappropriate to decrease the proposed 20 foot minimum clearance distance under § 1926.1408(a)(2)(ii); this paragraph is therefore promulgated as proposed.

As noted above, in addition to maintaining a minimum clearance distance of 20 feet, employers using this option are required to implement the encroachment prevention and other measures specified in § 1926.1408(b).

Paragraph (a)(2)(iii) Option (3)

Under Option (3) (§ 1926.1408(a)(2)(iii)), the employer is required to maintain a minimum clearance distance[44] in accordance with

[42] If no part of the crane, load or load line could come closer than 20 feet to a power line, the employer is not required to take any further action under this section. However, the employer may encounter a situation where it unexpectedly needs to increase the size of the work zone. This may occur, for example, as a result of an unanticipated need to change the crane's position or to have the crane operate beyond the original work zone boundaries. In such a case the employer is required to go back to the first step under § 1926.1408(a)(1), re-identify a work zone and conduct a new 20 foot "trigger" assessment.

[43] As discussed above, the 10-foot rule requires varying clearance distances increase with voltage with clearance distances that begin at 10 feet.

[44] The proposed regulatory text for this section used the phrase "minimum approach distance" instead of "minimum clearance distance." As pointed out by two commenters the latter phrase is what was used in the proposed § 1926.1407(a)(3)(i) regulatory text. (ID–0205.1; –0213.1.) For consistency, OSHA has, in this section, changed the phrase "minimum approach distance" to "minimum clearance distance." Provisions in § 1910.269 and proposed subpart V of 29 CFR 1926 use the phrase "minimum approach distance." OSHA believes that employers who are covered by those standards are familiar with that term. In contrast, the Agency

Continued

Table A of this section.[45] Under Table A, depending on the voltage of the power line, the minimum clearance distance ranges from 10 feet to 20 feet.[46] Under this option the employer is required to determine the line's voltage.

In addition to maintaining the minimum clearance distance specified in the Table, employers using this option are required to implement the encroachment prevention and other measures specified in § 1926.1408(b).

A labor representative urged OSHA to require a minimum clearance distance of 20 feet rather than the lower clearance distances allowed under Table A, in essence eliminating Option (3). (ID–0201.1.) The 20-foot clearance is needed because, in the commenter's view, under the options in the proposal, crane operations can easily encroach on an absolute safe distance from power lines. OSHA does not agree. The clearance distances permitted under Table A are "safe" distances, as indicated by their inclusion in ASME B30.5–2004 as well as the consensus reached by C–DAC. As discussed in the preamble to the proposed rule, the 10-foot rule was not effective under prior subpart N because subpart N provided little guidance as to how to maintain the required clearance. In the proposed rule, OSHA discussed how the provisions of this rule addressed two major problems employers faced in complying with the minimum clearance requirements of former subpart N: (1) The lack of a means to enable operators to judge when the crane was breaching the minimum required clearance distance; and (2) the problem of temporary operator inattention to a power line as he/she concentrated on tasks related to moving the load. (73 FR 59749, Oct. 9, 2008.) The provisions of paragraph (b) of this section, discussed below, are designed to overcome these two problems and ensure compliance with the minimum clearance distances in this rule. Even where Table A permits the clearance distance to be the same as the 10-foot rule of former subpart N, this final rule provides far greater protection against equipment violating the allowed clearance. It does not allow a crane "to very easily encroach" on a safe clearance distance, as IBEW suggests.

The labor representative also proposed more stringent requirements than those currently contained in § 1926.1410 when it is infeasible to maintain the Table A clearances. OSHA addresses this issue below in the discussion of § 1926.1410. Accordingly, paragraph (a)(2)(iii) is promulgated as proposed.

Paragraph (b) Preventing Encroachment/Electrocution

Once the employer has determined that some part of the crane, load or load line could come within the work zone assessment trigger distance of 20 feet of a power line (*see* § 1926.1408(a)), if it chooses either Option (2) or (3) (of § 1926.1408(a)(2)(ii) and (iii)), it must implement encroachment prevention measures to help ensure that the applicable minimum clearance distance (20 feet under Option (2) or the Table A distance) under Option (3) is not breached.[47] Most of the measures in this paragraph are designed to help the employer maintain the appropriate distance and thereby prevent electrical contact while operating the equipment. One of the measures is designed to prevent electrocution in the event of electrical contact.

Paragraph (b)(1)

Under 1926.1408(b)(1) the employer is required to conduct a planning meeting with the operator and other workers who will be in the area of the crane or load. This planning meeting must include reviewing the location of the power line(s) and the steps that will be implemented to prevent encroachment and electrocution.

One commenter raised the issue of who is responsible for ensuring that the planning meeting takes place. (ID–0218.1.) Where encroachment precautions are required under Option (2) or Option (3) (*see* § 1926.1408(a)(2)(ii) and § 1926.1408(a)(2)(iii)), the employers of the operator and other workers who will be in the area of the equipment or load must ensure that the required planning meeting under § 1926.1408(b)(1) takes place. Other employers at the work site may also be responsible for such compliance in certain situations; *see* OSHA CPL 02–00–124, *Multi-Employer Citation Policy,* Dec. 10, 1999 for further information.

As discussed below, under this paragraph, certain encroachment/electrocution prevention measures are required (they are listed in § 1926.1408(b)(1) through (3)). In addition, the employer is required to select at least one additional measure from the list in § 1926.1408(b)(4). In the planning meeting, the employer must make that selection and review all the measures that will be used to comply with this section. The purpose of this requirement is to ensure that the operator and other workers who will be in the area understand these measures and how they will be implemented. That understanding is important to their successful implementation. Paragraph (b)(1) is adopted as proposed.

Paragraph (b)(2)

Section 1926.1408(b)(2) requires that where tag lines are used they must be nonconductive. This provision provides additional protection to those employees who would be exposed to electrical hazards in the event that the equipment, load line, tag line or load contacts a power line and the tag line they are holding becomes energized. Note the discussion above related to § 1926.1407(b)(2). This provision is promulgated as proposed.

Paragraph (b)(3)

Section 1926.1408(b)(3) requires elevated warning lines, barricades or a line of signs, in view of the crane operator, equipped with flags or similar high-visibility markings, at 20 feet from the power line (if using Option (2) of § 1926.1408(a)(2)(ii)) or at the minimum clearance distance under Table A (if using Option (3) of § 1926.1408(a)(2)(iii)). The steps required by this provision are designed to remind the operator that there are power lines with associated minimum clearance distances that must be met. Warning lines, barricades or a line of signs in the operator's view equipped with high-visibility markings also indicate to the operator where the minimum clearance distance boundary is located. This serves as one of two layers of protection (the second layer consists of an additional means selected by the employer under § 1926.1408(b)(4), discussed below).

A commenter urged OSHA to reconsider this requirement because there is nothing outside of the traveled roadway to which a warning line, barricade, or line of signs could be affixed. (ID–0114.) OSHA recognizes that this requirement will often require the employer to install a series of poles or other supports to install an elevated warning line. However, temporary

believes that employers that do not perform electric power work will better understand the term "minimum clearance distances." OSHA considers the terms "approach distance" and "clearance distance" to be interchangeable; no substantive distinctions are intended.

[45] The information in Table A of the final rule is similar to information in Table 1 of ASME B30.5–2004. A table with specified clearance distances is more easily applied than the formula set out in former § 1926.550(a)(15). Table A is intended to be a clear way of conveying the minimum clearance distances.

[46] The range referred to here is the range in the part of the table that is applicable up to 350 kV.

[47] Alternatively, under Option (1) of § 1926.1408(a)(i), the employer could have the lines deenergized and grounded. If Option (1) were selected, no further action under this section would be required.

supports are routinely installed on construction sites, and installing them for the purpose of enabling the operator to maintain a safe distance from a power line serves an important safety purpose without being overly difficult or time-consuming.

A visual line on the ground to mark the minimum clearance distance is not permitted under § 1926.1408(b)(3) because an operator would generally not notice or see a line on the ground and because, from where the operator sits, it would be particularly difficult for the operator to extrapolate from that line the location of the boundary in the air. By contrast, visual reminders that are sufficiently elevated from the ground level enable the operator to more accurately judge the distance between the load, load line (including rigging and lifting accessories) or crane and the boundary marked by the elevated warning line.

In reviewing the C–DAC draft of this provision, OSHA realized that there may be situations where the employer would not be able to place such a line so that it would be visible to the operator. In such a case, to have two layers of protection, it would be necessary to require that a dedicated spotter be used in addition to one of the other (non-spotter) methods described below in § 1926.1408(b)(4). Therefore, in the proposed rule, OSHA stated that it was planning to modify the proposed provision by adding the following after the last sentence in § 1926.1408(b)(3):

> If the operator is unable to see the elevated warning line, a dedicated spotter must be used as described in § 1926.1408(b)(4)(ii) in addition to implementing one of the measures described in § 1926.1408(b)(4)(i), (iii), (iv) and (v).

The Agency requested public comment on this issue. Two commenters agreed with the substance of the proposed addition to this provision (ID–0205.1; –0213.1); a third commenter agreed with the proposed addition but recommended that OSHA go a step further and require a dedicated spotter at all times (ID–0113). For the reasons explained in the discussion of § 1926.1408(b)(4) below, OSHA has decided not to accept this latter recommendation for a dedicated spotter in all cases. The Agency has, however, included the additional regulatory text delineated above in the final rule.

Paragraph (b)(4)

This section sets out a list of five prevention measures, from which the employer must select at least one, when the employer elects to use either Option (2) or Option (3) under § 1926.1408(a)(2). The first four measures are methods for encroachment prevention. The fifth measure is a method of electrocution prevention in the event of electrical contact with a power line. Specifically, the employer is required to choose one of the following: (i) A proximity alarm; (ii) the use of a dedicated spotter; (iii) a device that automatically warns the operator when to stop (*i.e.,* a range control warning device); (iv) a device that automatically limits the range of movement of the equipment; or (once they are available) (v) an insulating link/device, as defined in § 1926.1401.[48]

Proximity alarm performance was the subject of a study conducted by the National Institute for Occupational Safety and Health (NIOSH) published in January 2009, and submitted as an exhibit to this rulemaking. (ID–0141.2.) This study tested the efficacy of two proximity alarm models under various simulated construction conditions. The study indicated that the accuracy of the proximity alarms could be adversely affected by such factors as: (1) Operating the equipment with a boom angle and length significantly different than that used for the device's last sensitivity adjustment; and (2) operating the equipment on sites with multiple overhead power lines, especially where those power lines had differing voltages or involved intersecting installations. Two other commenters also questioned the efficacy of proximity alarms. (ID–0118.1; –0206.1.)

OSHA shares the concerns expressed by NIOSH and other commenters over the accuracy of currently available proximity alarms.[49] However, such concerns are addressed by the definition of "proximity alarm" in § 1926.1401, which states that the term refers to a device "that has been listed, labeled, or accepted by a Nationally Recognized Testing Laboratory in accordance with § 1910.7." To be so listed, labeled, or accepted, the Nationally Recognized Testing Laboratory (NRTL) must determine that the device works properly by concluding that it conforms to an appropriate test standard. Accordingly, no proximity alarm can be listed, labeled, or accepted by a Nationally Recognized Testing Laboratory (NRTL) in accordance with § 1910.7 until the problems identified by the commenters have been rectified. OSHA concludes that retaining this option in the final rule will provide an incentive for proximity alarm manufacturers to improve these devices to the point where they will meet the definition's criteria.

In situations where an employer chooses the option of using a dedicated spotter, the employer is required to meet the requirements for spotters in § 1926.1408(b)(4)(ii). As specified in § 1926.1408(b)(4)(ii)(A), the spotter has to be equipped with a visual aid to assist in identifying the minimum clearance distance.

Under § 1926.1408(b)(4)(ii)(B)–(D), the spotter has to be positioned so that he/she can effectively gauge the clearance distance from the power line; the spotter, where necessary, must use equipment that enables him/her to communicate directly with the equipment operator; and the spotter must give timely information to the operator so that the required clearance distance can be maintained.

Some commenters recommended that dedicated spotters be required at all times. (ID–0112; –0113.) OSHA declines to impose such a requirement. The Agency determines that allowing the employer to choose from a variety of options for this second layer of protection allows the employer to select a method that it believes would be suitable, increases the likelihood of employer compliance, and will be an effective approach to reducing power line related injuries and fatalities.

One commenter also advocated adding a provision requiring dedicated spotters to pass a visual acuity exam. (ID–0071.) OSHA determines that it is unnecessary to require a specific level of visual acuity. Wherever this standard requires an employer to have an individual perform a particular task, that duty is met only where the individual has the ability to perform the task. If an employer assigns an individual to serve as a spotter, but his/her vision is insufficient to perform the task of a spotter, the employer will not have met the spotter requirement. For additional discussion of spotter requirements see the discussion of § 1926.1407(b)(3)(i) earlier in this preamble.

Section 1926.1408(b)(4)(iii) gives the employer the option of using a device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device must be set to give the operator sufficient warning to prevent encroachment. "Range control warning device" is defined in § 1926.1401 as "a device that can be set by an equipment operator to warn that the boom or jib tip is at a plane or multiple planes."

For example: An employer has chosen the option of maintaining a 20-foot

[48] *See* discussion later in this section for an explanation of the delay in the effective date for this provision.

[49] Neither of the proximity alarm models tested in the NIOSH study had obtained NRTL listing, labeling, or acceptance.

distance from the power line. Under § 1926.1408(b)(4)(iii), it has chosen to use a range control warning device to help maintain that distance. The device would have to be set to alert the operator in time to prevent the boom, load line or load (whichever is closest to the power line) from breaching that 20-foot distance. As a practical matter, the device would have to be set to sound the warning more than 20 feet from the line, since the operator will need some time to react and to account for the momentum of the equipment, load line and load.[50]

Section 1926.1408(b)(4)(iv) gives the employer the option of using a device that automatically limits the equipment's range of motion and is set to prevent encroachment. Such a device can be particularly suitable for tower cranes, for which the swing angle can be programmed so that the operator cannot move the boom or jib past a certain range. While it may be more technically difficult to apply swing limitation devices for use in mobile cranes, the technology may develop so that they could be used in such cranes as well.

The insulating link option that is available under § 1926.1408(b)(4)(v) would not protect against encroachment but would provide protection to employees handling the load against electrocution in the event encroachment did occur. Such a device must be installed between the end of the load line and the load. When so installed, it prevents the load from becoming energized in the event the load line or other part of the equipment makes electrical contact with a power line. Preventing the load from becoming energized helps protect riggers, who often guide crane loads manually and who are therefore at high risk of being electrocuted if a load becomes energized.

Some commenters expressed concern about the effectiveness of insulating links. (ID–0206.1; –0378.1.) As stated in § 1926.1401, "Insulating link/device" is defined as "an insulating device that has been listed, labeled, or accepted by a Nationally Recognized Testing Laboratory in accordance with § 1910.7." This definition addresses this concern, since an insulating link used under this provision must have been found by a Nationally Recognized Testing Laboratory ("NRTL") to conform to an appropriate test standard as required in § 1910.7.

[50] One commenter questioned whether range control warning devices exist. (ID–0151.1.) OSHA has confirmed that some cranes are equipped with such a device.

Because insulating links previously have not been required by any OSHA standard, OSHA has not yet recognized any testing laboratory as a NRTL for purposes of insulating link listing, labeling, or acceptance. A period of time will be needed to review laboratory requests for such recognition. Once there are NRTLs for testing insulating links, some time will also be needed for the NRTLs to conduct the tests. As a result, where § 1926.1408(b) applies, § 1926.1408(b)(4)(v) will be unavailable as an additional measure in the list contained in § 1926.1408(b)(4) until employers acquire NRTL-approved insulating links. Therefore, during that period, in addition to implementing the requirements in § 1926.1408(b)(1)–(3), the employer must implement at least one of the measures listed in § 1926.1408(b)(4)(i)–(iv).

A commenter suggested that § 1926.1408(b)(4)(v) be deleted because it involves a live line procedure covered under § 1910.269, which, it says, requires an operator to be a qualified worker to get this close to an insulating link. (ID–0161.1.) This commenter misunderstands the provision. Paragraph (b)(4)(v) allows employers to use an insulating link between the load line and load as an alternative to other protective measures. It has nothing to do with live line procedures under § 1910.269, which is a general industry standard that applies to operation and maintenance of power lines and which has no provision regulating the proximity of an operator or a qualified person to an insulating link.

One commenter pointed out that insulating links do not provide protection for those employees, such as equipment operators, who are in contact with the equipment "upstream" of the insulating link. (ID–0053.1.) That is incorrect. Insulating links serve a dual purpose. They protect a rigger who is handling the load if the equipment upstream of the link makes electrical contact with a power line. And they protect employees who are upstream of the insulating link if the load makes electrical contact with a power line. The workers who are at the greatest risk of electrocution—the riggers who handle the load, are also protected by the requirement for nonconductive tag lines. But the best protection for all workers, and the primary focus of paragraph (b), is to employ effective encroachment prevention measures to prevent electrical contact of any part of the equipment and/or load with a power line. For additional discussion of insulating links, *see* later in this preamble where OSHA addresses § 1926.1410(d)(4).

Paragraph (b)(5)

Employers engaged in construction of electric transmission and distribution lines, which is addressed by 29 CFR part 1926 subpart V (§§ 1926.950–1926.960), also have to meet the requirements in § 1926.1408, with several exceptions.[51] The first exception is found in § 1926.1408(b)(5). The other exceptions are discussed elsewhere in this preamble. In accordance with § 1926.1408(b)(5), employers engaged in work involving cranes/derricks that is covered by subpart V are not required to comply with the requirements in § 1926.1408(b)(4). Subpart V applies to the construction of electric transmission and distribution lines and equipment, which includes the alteration, conversion, and improvement of existing lines and equipment. Thus, when employees are engaged in subpart V work near energized lines, by the nature of the job, their full attention is on the power lines. Non-subpart V workers, by contrast, do not work directly with the lines, and their attention is primarily directed elsewhere.

Subpart V contains additional requirements to protect those employees against making electrical contact with the lines. These include requirements in § 1926.950(c) for guarding the line or using insulation (such as insulating gloves) to prevent electrical contact. This paragraph is promulgated as proposed.

Paragraph (c) Voltage Information

This section operates in conjunction with § 1926.1408(a)(2)(iii) (Option (3)—Table A clearance). Where an employer elects to use Option (3) (§ 1926.1408(a)(2)(iii)), the employer must, under § 1926.1408(a)(2)(iii)(A), determine the voltage of the power lines. Under § 1926.1408(c), utility owner/operators of these lines must provide the requested voltage information within two working days of the request (*see* the discussion above of § 1926.1407(e) for a description of the public comments received on this requirement and OSHA's resolution of the issues raised by those comments).

As discussed above with respect to § 1926.1407(e), "working days" means Monday through Friday, excluding Federal holidays. This provision is promulgated as proposed.

[51] As discussed in § 1926.1400, *Scope,* construction of electric transmission and distribution lines is covered under this subpart.

Paragraph (d) Operations Below Power Lines

When a crane operates below a power line, the likelihood of breaching the minimum clearance distance is enhanced by several factors, including the greater difficulty of judging the distance to the power line when it is above the equipment and the fact that in most such situations the operator has to purposely look up to see the line (and therefore is more likely to forget its location or that it is there).

This section addresses this problem by prohibiting any part of a crane, load or load line (including rigging and lifting accessories) from being below a power line unless the employer has confirmed with the utility owner/operator that the power line is deenergized and visibly grounded at the worksite or unless the employer can demonstrate that it meets one of the four exceptions in § 1926.1408(d)(2).

The first exception, § 1926.1408(d)(2)(i), is for work covered by 29 CFR part 1926 subpart V. Subpart V work involves work on the power line itself and commonly requires equipment to operate below a power line. As explained above with respect to § 1926.1408(b)(5), subpart V work does not require all of the precautions required of other work because the full attention of the workers is directed at the power line.

The second exception, § 1926.1408(d)(2)(ii), is for equipment with non-extensible booms and the third exception, § 1926.1408(d)(2)(iii), is for equipment with articulating or extensible booms. These exceptions apply when the uppermost part of the boom (for non-extensible booms) or with the boom at its fullest extension (for extensible booms), will be more than 20 feet below the plane of the power line or more than the Table A minimum clearance distance below the plane of the power line at the boom's most vertical point.[52] Where this criterion is met, it is not possible for the minimum clearance distance to be breached.

The last exception, § 1926.1408(d)(2)(iv), is for situations in which the employer can demonstrate that it is infeasible to comply with § 1926.1408(d)(1), which prohibits any part of a crane, load or load line from being below a power line unless the line is deenergized and visibly grounded. Under this exception, the employer must not only show that compliance with § 1926.1408(d)(1) is infeasible, it must also comply with the requirements in § 1926.1410. Section 1926.1410 governs equipment operations closer than the Table A minimum clearance distances.

Two commenters requested that OSHA define the term "infeasible." (ID–0203.1; –0214.1.) Infeasibility determinations are fact-dependent, and OSHA generally considers compliance with a measure to be infeasible when it is impossible or would prevent performance of the work in question. *See* OSHA CPL 02–00–148, ch. 5, sec. VI.B.2, *Field Operations Manual,* Nov. 10, 1999. OSHA notes that this is not the first standard to incorporate feasibility considerations; the Agency has incorporated feasibility language into many other standards. *See, e.g.,* Fall Protection (§ 1926.502(k)); Permit-Required Confined Spaces (§ 1910.146(d)(5)(i)); Bloodborne Pathogens (§ 1910.1030(f)(3)(ii)); and Electrical Work Practices (§ 1910.333(a)(1)). In letters of interpretation and guidance documents explaining these and other standards, OSHA has elaborated on the meaning of infeasibility in numerous factual contexts. Because infeasibility is a concept of broad applicability in the OSHA context, and its meaning depends on the particular facts present in a given worksite situation, a single definition would not provide useful guidance to employers. Accordingly, the Agency declines to adopt a definition of that term specific to subpart CC. Paragraph (d) is adopted as proposed.

Paragraph (e) Power Lines Presumed Energized

This provision requires employers to assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite. This fundamental precaution is essentially the same as it was in subpart N at former § 1926.550(a)(15)(vi). The one commenter on this proposed provision supported it (ID–0161.1); this provision is promulgated as proposed.

Paragraph (f)

Paragraph (f) of this section addresses the danger that employees could receive an electric shock from equipment that is operating near a transmitter or communication tower. During such operation, the equipment can act as an antenna and become energized by the electromagnetic signal emitted from the tower. As proposed, § 1926.1408(f) stated that when the equipment is close enough for an electrical charge to be induced in the equipment or load, the transmitter must be deenergized or the following precautions taken: The equipment must be grounded, and non-conductive rigging or an insulating link/device must be used.

Previously, subpart N, at former § 1926.550(a)(15)(vii), required that when equipment is close enough to a transmitter tower for an electrical charge to be induced, the equipment had to be grounded and a ground jumper cable used to connect the load to the equipment. In addition, nonconductive poles having large alligator clips or other similar protection had to be used to connect the ground jumper cable to the load. Connecting the load to the grounded equipment dissipated any electrical charge induced in the load. The Committee determined that subpart CC's proposed requirement for nonconductive rigging or an insulating link instead of grounding the load better reflected current industry practice and better protected employees.

The requirement for nonconductive rigging or an insulating link in proposed § 1926.1408(f) was a fundamentally different approach than requiring a ground jumper cable to be connected to the load as was specified in former § 1926.550(a)(15)(vii). The latter connects the load to a ground, while proposed § 1926.1408(f) would have insulated the load from the equipment or employees handling the load.

The Agency requested public comment on whether the proposed requirement was preferable to that in former § 1926.550(a)(15)(vii). Some commenters agreed that the proposed requirements would provide better protection of workers and argued that they were more feasible than the requirements of former § 1926.550(a)(15)(vii). (ID–0205.1; –0213.1.) One commenter believed that § 1926.1408(f) as proposed was inferior to former § 1926.550(a)(15)(vii) because "insulating links are generally rated for distribution voltages and would not properly protect employees working near power lines."[53] (ID–0209.1.) Another commenter recommended that the proposed § 1926.1408(f) requirements be supplemented with a requirement that any insulating link used be rated for the applicable

[52] The plane of the power line is the horizontal plane that touches the lowest point on the lowest power line.

[53] Another commenter opposed the proposed language because it believed that grounding the equipment under the provisions of former § 1926.550(a)(15)(vii) would better protect employees, the crane, and the power line because it would result in a very quick trip of the line. (ID–0144.1.) This comment is not relevant because grounding the crane would not cause the transmitter or communication towers to trip.

transmission tower frequencies, and that nonconductive tag lines be used.

The problem addressed by these comments involves how to protect a worker, such as a rigger, who may come into electrical contact with the load. Under the proposed rule, the load would be insulated from the grounded crane to isolate the load from circulating current that could cause it to be energized. However, it may be possible that the load itself could become energized by absorbing energy from the transmitter or communication tower. The former rule addresses this possibility by requiring an electrical connection between the load and the (grounded) equipment. However, in the event there is either a poor electrical connection or a ground that is not fully effective, this method might not provide complete protection. Therefore, OSHA has decided not to require either precaution, but instead to require that any tag line used be nonconductive. This precaution is required in other provisions, discussed above, to protect the rigger from the possibility that the equipment may come into electrical contact with a power line. It will be equally appropriate here. Section 1926.1408(f) is modified accordingly.

OSHA notes that former § 1926.550(a)(15)(vii) of subpart N required employers to provide crews "with nonconductive poles having large alligator clips or other similar protection to attach the ground cable to the load." This requirement protected employees from the electric shock hazard that exists when employees apply grounds. Due to what the Agency determined was an inadvertent oversight on the part of the Committee, the proposed rule did not contain provisions addressing these hazards. Although no commenters raised this issue, OSHA is aware that employees are exposed to serious electric shock hazards when they are attaching grounds in accordance with § 1926.1408(f). For example, when attaching the rigging to the load or the ground to the crane, the crane and load will be energized. OSHA views this condition as a recognized hazard and expects employers to ensure that employees are adequately protected when they are attaching grounds. Employers who fail to properly protect their employees in this regard will, in appropriate circumstances, be subject to citation under the General Duty Clause (sec. 5(a)(1)) of the OSH Act.

It should also be noted that work covered by §§ 1926.1407 and 1926.1410 that is performed near transmitter or communication towers can pose electric shock hazards similar to those addressed by § 1926.1408(f). Due to another oversight by the Committee, however, neither § 1926.1407 nor § 1926.1410 contains provisions addressing these hazards. OSHA considers these to be recognized hazards and will use its enforcement authority under the General Duty Clause, as appropriate, to ensure that employers are taking measures, such as those required in §§ 1926.600(a)(6)(vii) or 1926.1408(f), to protect employees from electric shock and fires while performing work covered by §§ 1926.1407 and 1926.1410 near transmitter or communication towers. OSHA will consider addressing both of these oversights through future rulemaking.

A commenter suggested adding a provision to paragraph (f) whereby the owner of a transmitter communication tower would be required to evaluate whether power level density levels were high enough to endanger employees working near the tower and, if so, implement precautions to prevent them. (ID–0130.1.) The issue raised by this comment is beyond the scope of this rule, which addresses hazards related to the use of equipment and not employee exposure to possible radiation hazards. Such hazards are covered by § 1926.54, *Nonionizing radiation.*

Paragraph (g) Training

Paragraph (g) of this section sets forth training requirements for crane operators and other crew members assigned to work with the equipment. The training topics listed are designed to ensure that both the operator and the other crew members have the information they need to help protect themselves from power line hazards. One commenter suggested that, in addition to the topics listed in the proposed rule, employees working on equipment operating closer than Table A clearance distances also be trained on induction, step and touch potentials, and proper equipment grounding procedures. (ID–0161.1.) Other commenters also recommended training in grounding procedures and in the limitations of the protection that grounding provides. (ID–0131.1; –0155.1.) OSHA concludes that training on induction, step, and touch potentials would get into issues that are highly technical and would not help workers understand what they must do to protect themselves and others. OSHA does, however, agree with the suggestion that workers be trained in proper grounding procedures and in the limitations of the protection that grounding provides. As discussed under § 1926.1410, equipment grounding is one of the additional precautions required when it is infeasible to maintain the Table A clearances, and training in proper grounding procedures will help ensure the effectiveness of this provision. In addition, employees must understand that grounding may not afford complete protection. Accordingly, OSHA is adding a new § 1926.1408(g)(1)(v) that requires training in the procedures to be followed to properly ground equipment and the limitations of grounding.

In addition, proposed § 1926.1408(g)(1)(i)(E) stated that training was required in the need to avoid approaching or touching "the equipment." In the proposed rule's preamble, OSHA stated that it determined that C–DAC inadvertently failed to add the phrase "and the load" to that provision, since whenever the equipment is in electrical contact with a power line, the load may also be energized. OSHA requested public comment on whether that provision should be modified to correct this omission. Commenters agreed that adding the phrase "and the load" was appropriate. (ID–0051.0; –0205.1; –0213.1.) Therefore, OSHA has made this addition in the final rule.

In the proposed rule, the Agency noted that proposed § 1926.1408(g) did not address the timing and frequency of this training. OSHA requested public comment on whether and, if so, how the standard should address training timing and frequency.

The one commenter on this issue advocated not dictating the timing or frequency of training in this provision. For the final rule, OSHA has decided to cross reference the testing administration requirements of § 1926.1430. That training section requires that employees be evaluated to confirm that they understand the information provided in the training, and that refresher training be provided when, based on employee conduct, there is an indication that retraining is necessary. Section 1926.1408(g) is modified accordingly.

Paragraph (h)

In the proposed rule, this provision required that where devices originally designed by the manufacturer for use as safety devices, operational aids, or a means to prevent power line contact or electrocution are used to comply with § 1926.1408, they must meet the manufacturer's procedures for use and conditions of use. The Committee concluded that this provision is necessary to ensure that the devices work as intended. No comments were received on this provision, and it is promulgated without change. (*See*

§ 1926.1417 for a discussion of OSHA's authority to require compliance with manufacturer procedures.)

Section 1926.1409 Power Line Safety (Over 350 kV)

As proposed, the requirements in §§ 1926.1407 and 1926.1408 would apply to power lines rated over 350 kV in all respects except one: Wherever the regulatory text states "20 feet," "50 feet" would be substituted. Therefore, the "trigger" distance that would be used when assessing an assembly/disassembly area or work zone would be 50 feet. In addition, an employer engaged in assembly/disassembly that is using Option (2) of proposed § 1926.1407(a)(2), or an employer engaged in crane operations that is using Option (2) of proposed § 1926.1408(a)(2)(ii), would be required to maintain a minimum clearance distance of 50 feet. This would apply to all power lines rated over 350 kV, including power lines over 1,000 kV.

For power lines over 1,000 kilovolts,[54] employers electing to use Table A of § 1926.1408 in either assembly/disassembly (Option (3) in § 1926.1407(a)(3)) or crane operations (Option (3) in § 1926.1408(a)(2)(iii)) are required, pursuant to instructions in the Table, to maintain a minimum clearance distance determined by the utility owner/operator or a registered professional engineer who is a qualified person with respect to electrical power transmission and distribution.

In reviewing this regulatory language, OSHA recognized that a minimum clearance distance of 50 feet may be inadequate for the open-ended category of "over 1,000 kV." In fact, at some point in that range, a utility owner/operator or a registered professional engineer may well specify a minimum clearance distance of more than 50 feet. However, as drafted in the proposed rule, employers using Option (2) (in both proposed §§ 1926.1407(a)(2) and 1926.1408(a)(2)(ii)) would only have to maintain a minimum clearance distance of 50 feet. OSHA requested public comment on whether proposed Option (2) is insufficiently protective for power lines rated over 1,000 kV. The one commenter on this issue agreed that the proposed provision was insufficiently protective for power lines carrying voltages greater than 1,000 kV. OSHA agrees and has modified § 1926.1409 in the final rule to conform to the requirement of Table A that the minimum clearance distance for lines over 1,000 kV be determined by the utility owner/operator or a registered professional engineer who is a qualified person with respect to electrical power and distribution. OSHA notes that the minimum distance under Option (2) for voltages between 351 and 1,000 kV is 50 feet. The Agency expects that the distances set by utilities and registered professional engineers in accordance with § 1926.1409(b) will be at least 50 feet.

Section 1926.1410 Power Line Safety (All Voltages)—Crane Operations Closer Than the Table A Zone

Subpart N did not permit work closer than the 10-foot rule [55] unless the lines were deenergized and visibly grounded or where insulating barriers, separate from the equipment, were erected. However, the Committee recognized that many employers, without meeting the exceptions, nonetheless worked closer than the 10-foot rule. The Committee determined that most employers do not use the option to deenergize and ground because of the time, expense and difficulty in making those arrangements.[56] In addition, the Committee concluded that an "insulating barrier" of the type that is currently available does not, by itself, adequately protect employees because these barriers are only effective for "brush" contact. If there is more than brush contact, they will not protect employees from electrocution because the equipment will damage the device.

To address the insufficient protections provided to employees who work closer than the 10-foot rule, the Committee developed, and OSHA proposed, a new approach, which is contained in § 1926.1410. It consists of prerequisites and criteria that apply when work must be conducted closer than the minimum clearance distance specified in Table A of § 1926.1408.

In this case, the Committee's rationale misrepresented existing OSHA enforcement policy under subpart N regarding insulating barriers in two respects. First, current policy recognizes other types of insulating barriers besides the type to which the Committee referred.[57] OSHA also recognizes goal-post-type barriers and, in certain limited circumstances the insulation on insulated power lines operating at 480 volts or less. *See, e.g.,* letters of interpretation dated February 8, 1994, to Mr. Ivan Blood (*http://www.osha.gov*) and August 9, 2004, to Mr. Mathew McFarland (*http://www.osha.gov*). Second, the Agency does accept barriers that protect against brush contact under limited circumstances. *See, e.g.,* letter of interpretation dated February 8, 1994, to Mr. Ivan Blood (*http://www.osha.gov*).

However, as these letters of interpretation recognize, these barriers have their limitations. Because of this, OSHA has concluded that, although the Committee's rationale with respect to § 1926.1410 was slightly flawed by a misunderstanding of subpart N requirements, their reasoning that the provisions of this section are more protective than the former standard still holds.

This section starts out by explicitly prohibiting equipment from operating closer than the distances specified in Table A of § 1926.1408 to an energized power line except where the employer demonstrates compliance with the requirements in § 1926.1410.

Note that, in the discussion below of § 1926.1410, references to a "registered professional engineer" are, in accordance with § 1926.1410(c)(1), references to a registered professional engineer who is a qualified person with respect to electrical power transmission and distribution.

One commenter on the proposed rule asked for clarification regarding who determines whether a professional engineer is such a "qualified person." (ID–0155.1.) Under § 1926.1401, a qualified person is a "person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project." At a given construction site, the employer who is conducting crane operations and who uses the services of the engineer to carry out that employer's responsibilities under this section is responsible for determining whether the registered professional engineer is a

[54] OSHA does not believe that there are any electric power transmission lines in the United States that operate at more than 800 kV. However, there may be some power lines associated with research laboratories or other similar facilities that operate at more than 1,000 kV. In addition, it is possible that utilities may install new power lines operating at more than this voltage or may upgrade existing lines to operate at higher voltages.

[55] As described earlier, the "10-foot rule" is shorthand for the formula in former § 1926.550(a)(15) for minimum clearance distances. Under the 10-foot rule, for lines rated 50 kV or less, work was not permitted closer than 10 feet to an energized power line. For lines rated more than 50 kV, a clearance of 10 feet plus .4 inch for each 1 kV over 50 kV was generally required.

[56] If power lines are deenergized and grounded, power is shut off to the utility owner/operator's customers. As a result, utility owner/operators are understandably reluctant to implement such measures.

[57] The barriers are known as electrically insulating plastic guard equipment. *See* ASTM F712–06 *Standard Test Methods and Specifications for Electrically Insulating Plastic Guard Equipment for Protection of Workers.*

qualified person with respect to electrical power transmission and distribution.

Paragraphs (a) and (b)

These paragraphs set forth prerequisites that must be met for the employer to be permitted to operate equipment closer to a power line than the applicable Table A of § 1926.1408 distance. Section 1926.1410(a) requires the employer to determine that it is infeasible to do the work without breaching the minimum clearance distance under Table A. If the employer determines it is infeasible to maintain the Table A distance, under § 1926.1410(b) it also has to determine, after consulting with the utility owner/operator, that deenergizing and grounding the power line, as well as relocating the line, are infeasible. *See* discussion of infeasibility determinations in § 1926.1408(d).

Two commenters argued that the requirement to demonstrate infeasibility was unnecessary for electric utility work regulated under subpart V. (ID–0203.1; –0209.1.) After careful review of these comments, OSHA has concluded that it is appropriate for subpart V work to be excluded from the need to show infeasibility under § 1926.1410.

Subpart V applies to the erection of new electric transmission and distribution lines and equipment and the alteration, conversion, and improvement of existing transmission and distribution lines and equipment (§ 1926.950(a)(1)). Construction of new lines generally takes place some distance from existing lines, and the lines themselves are not energized until construction is complete. Hence, clearance distances are usually not an issue for new construction. However, alteration, conversion, and improvement of existing lines necessarily takes place on or near the lines themselves. To enable such work to be done safely, subpart V contains clearance requirements that permit equipment to operate much closer to the lines than either former § 1926.550 or §§ 1926.1408–1926.1409 of this final rule, as well as supplementary protective requirements that must be followed when the subpart V clearance requirements cannot be observed.

Subpart V's clearance requirements are found in Table V–1 of § 1926.950. Subpart V does not require a showing of infeasibility before allowing subpart V work to comply with these shorter clearance distances, and OSHA concludes that the record does not support requiring such a showing under the final rule either. The very nature of work that alters, converts, or improves existing power lines must necessarily be carried out close to those lines, and it would almost always be infeasible for the clearances in §§ 1926.1408–1926.1409 to be maintained. As a result, requiring such a finding would be a formality that would not add to worker safety.

It is similarly inappropriate to require a showing that it is infeasible to deenergize and ground the lines or relocate the lines under paragraph (b) of this section for subpart V work. Subpart V provides for deenergizing and grounding as an alternative to live line precautions, but it also recognizes that subpart V work may take place on live lines to avoid power disruptions to the utility's customers and includes precautions for such live line work. Thus, subpart V leaves to the utility employer the discretion to decide whether to deenergize and ground without the need for an infeasibility determination, and OSHA concludes they should continue to have this same discretion under this final rule. OSHA also notes that paragraph (b) of this section requires the employer to consult with the utility owner/operator before deciding that it infeasible to deenergize and ground the lines or relocate them, and it would be anomalous to apply this provision where the utility owner/operator is itself the employer.

For these reasons, OSHA has modified § 1926.1410(c)(2) of the final rule to clarify that paragraphs (a),(b), and (c)(1) of § 1926.1410 do not apply to work covered by subpart V of 29 CFR 1926. Instead, the § 1926.950 Table V–1 minimum clearances apply. Section 1926.1410(c)(2) also explains that employers engaged in subpart V work may work closer than the § 1926.950 Table V–1 distances where both the requirements of § 1926.1410 and § 1926.952(c)(3)(i) or (ii) are met.[58]

See discussion later in this section regarding other provisions in § 1926.1410 that deal specifically with subpart V work.

Paragraph (c) Minimum Clearance Distance

After the employer makes the infeasibility determinations required by § 1926.1410(a) and (b), a minimum clearance distance must be established. Under § 1926.1410(c)(1), the employer can establish this distance by either having the utility owner/operator determine the minimum clearance distance that must be maintained or by having a registered professional engineer who is a qualified person with respect to electrical transmission and distribution determine the minimum clearance distance that must be maintained. The Committee believed that either of these sources of this information has sufficient expertise to accurately apply the factors discussed below in setting an appropriate minimum clearance distance.

Commenters objected to requiring the utility owner/operator to be involved in setting the minimum clearance distance. (ID–0161.1; –0162.1.) However, paragraph (c) of this section does not require the utility owner/operator to establish the minimum clearance distance. It gives the employer the option of engaging the utility owner/operator for this purpose but, if the utility owner/operator declines, the employer must engage a registered professional engineer who is a qualified person with respect to electrical transmission and distribution. In no case is the utility owner/operator required to establish the minimum clearance distance.

Under § 1926.1410(c)(1), regardless of whether it is the utility owner/operator or a registered professional engineer that makes this determination, several factors must be considered when establishing the minimum clearance distance. These factors include, but are not limited to: conditions affecting atmospheric conductivity; time necessary to bring the equipment, load and load line (including rigging and lifting accessories) to a complete stop; wind conditions; degree of sway in the power line; lighting conditions, and other conditions affecting the ability to prevent electrical contact.

A commenter objected to allowing cranes to operate closer to power lines than the "appropriate minimum approach distance to an energized line." (ID–0226.) He further noted that, under the proposed rule, an operator could take equipment closer to power lines than a qualified electrical worker. C–DAC concluded, and OSHA agrees, that workers will be better protected if employers are required to adhere to additional safety precautions when it is infeasible to maintain the Table A clearances. Accordingly, to the extent the commenter recommended that the standard not permit equipment to come within the Table A distances, OSHA rejects this commenter's suggestion.

The same commenter objected to allowing equipment operated by nonelectrical workers to approach closer to power lines than a qualified electrical worker. The rule does not, however, allow this. This section requires the

[58] OSHA is in the process of updating subpart V requirements. If the Agency makes changes to those provisions that necessitate updating the cross-references in § 1926.1410(c)(2), those changes will be made as part of that rulemaking.

employer to determine a minimum clearance distance that will prevent the equipment from making electrical contact with the line. Although existing subpart V permits employees to take equipment closer to power lines than Table V–1 of § 1926.950, the corresponding general industry standard at § 1910.269(p)(4)(i) prohibits the operation of equipment closer than the distances in Tables R–6 through R–10 of § 1910.269. In the proposed revision of subpart V, the proposed rule contains the same prohibition as the general industry standard. As a general matter, OSHA determines that it is not appropriate or safe for nonelectrical workers to bring equipment closer to power lines than is permitted under § 1910.269(p)(4)(i) for qualified workers. Therefore, the Agency does not expect that distances shorter than those in Tables R–6 through R–10 of § 1910.269 will be adequate "to prevent electrical contact" for purposes of § 1926.1410(c)(1).

Several commenters suggested that when equipment operations closer than the Table A of § 1926.1408 zone are performed, (1) "qualified employees" (as defined under § 1910.269) should be used (ID–0161.1; –0199.1); (2) the equipment should be considered energized (ID–0075.0; –0161.1); and/or (3) the power line should be deenergized (ID–0161.1; –0226.0).

Regarding the "qualified employees" suggestion, OSHA determines that the training required under § 1926.1410(m), discussed below, is more appropriate for construction workers working with cranes and other hoisting equipment than the training required under § 1910.269(a)(2)(ii) for electrical workers. The training required under paragraph (m) focuses on the actions that employees can take to protect themselves when working near potentially energized equipment, while the training under § 1910.269(a)(2)(ii) focuses on safe practices for working on energized lines.

The second suggestion is valid because prudence dictates treating the equipment as energized when it is closer than the Table A distance to an energized power line. However, some provisions of the rule already treat the equipment as energized. These include paragraph (d)(8), which requires barricades around the equipment to prevent unauthorized personnel from entering the work area, and paragraph (d)(9), which prohibits employees from touching the equipment. OSHA determines that no additional benefit would be gained by a statement to treat the equipment as energized and therefore declines to add such a statement.

The third suggestion misconstrues the standard, which prohibits work within the Table A clearance distances unless the employer can show, among other things, that deenergizing and grounding the line is infeasible. Therefore, except as noted above, § 1926.1410(c) is promulgated as proposed.

Paragraph (d)

Once a minimum clearance distance has been established under § 1926.1410(c), the employer may not proceed without first having a planning meeting with either the owner/operator of the power line or the registered professional engineer to determine what procedures will be implemented to prevent electrical contact and electrocution. In accordance with § 1926.1410(e), these procedures have to be documented and immediately available on-site. In addition, in accordance with § 1926.1410(f) and (g), these procedures have to be reviewed with the operator and other workers who will be in the area of the equipment and the procedures must be implemented (§ 1926.1410(e)–(g) are discussed below).

Section 1926.1410(d) sets out the minimum protective measures that must be included in the procedures set by the employer and utility owner/operator (or registered professional engineer). These procedures need to include more stringent protective measures than those set out in § 1926.1408, because equipment will be in closer proximity to power lines and there is otherwise a greater risk of contacting a power line and causing electrocution. Therefore, these procedures have to include, at a minimum, those set out in the remainder of this section.

Commenters objected to having the utility owner/operator involved in the planning meeting required by paragraph (d) of this section. (ID–0161.1; –0162.1.) As with paragraph (c) of this section, discussed above, the utility owner/operator is not required to become involved with the decisions that must be made under this section. If the utility owner/operator declines to participate in the planning meeting, the employer must engage a registered professional engineer to help determine the procedures needed to prevent electrical contact. OSHA notes, however, that equipment making electrical contact with a power line can disrupt electrical service as well as create a hazard to employees on the worksite. Therefore, at least in some cases, the utility owner/operator may wish to help develop precautions to prevent such electrical contact.

Paragraph (d)(1)

Under paragraph (d)(1) of this section, for power lines that are equipped with a device that automatically reenergizes the circuit in the event of a power line contact, the automatic reclosing feature of the circuit interrupting device must be made inoperative prior to beginning work. This will help ensure that, in the event of a power line contact and activation of the automatic reclosing feature, the line would not be automatically re-energized. One commenter stated that many circuit interrupting devices currently in use are incapable of having their automatic reclosing mechanisms disabled. (ID–0155.1.) OSHA verified that fact and has amended § 1926.1410(d)(1) to clarify that the automatic reclosing feature must be made inoperative only if the design of the device permits.[59]

Paragraph (d)(2)

Under paragraph (d)(2) of this section, a dedicated spotter who is in continuous contact with the operator must be used. In addition, the dedicated spotter must be equipped with a visual aid to assist in identifying the minimum clearance distance, must be positioned to effectively gauge the clearance distance, where necessary must use equipment that enables him or her to communicate directly with the operator, and must give timely information to the operator so the required clearance distance can be maintained. For a more in-depth analysis of the dedicated spotter requirement and the public comments received, consult the discussion of §§ 1926.1407(b)(3)(i) and 1926.1408(b)(4)(ii) above. This provision is promulgated as proposed.

Paragraph (d)(3)

Under paragraph (d)(3) of this section, an elevated warning line, or barricade that is not attached to the equipment, positioned to prevent electrical contact, must be used. This warning line or barricade must be in view of the operator either directly or by use of video equipment and must be equipped with flags or similar high-visibility markings. The need for an elevated warning line or barricade is explained above in the discussion of § 1926.1408(b)(3). This provision does not apply to subpart V work.

As discussed above in relation to § 1926.1408(b)(3), there may be situations where the operator is not able

[59] This revised language is also consistent with the provisions of § 1910.269(q)(3)(iv).

to see an elevated warning line or barricade. To address such situations, under §§ 1926.1408 and 1926.1409, OSHA changed the regulatory text so that the employer is required to use both a dedicated spotter and one of the other (non-spotter) measures listed in § 1926.1408(b)(4). Because the clearance distances are likely to be significantly smaller than the Table A distances, the Agency determines that more precise means of estimating the clearance distance are necessary. When the operator is not able to see an elevated warning line or barricade when working closer than the Table A clearance distance, it is necessary to provide an additional layer of protection by requiring the use of video equipment to enable the operator to see the warning line or barricade. Therefore, in all cases when working closer than the Table A clearance distance, the operator will have "two sets of eyes" (in addition to other protection required under this section) to ensure that the equipment maintains the minimum clearance distance established under § 1926.1410(c). This paragraph is adopted as proposed.

Paragraph (d)(4) Insulating Link/Device

Under paragraph (d)(4) of this section, an insulating link/device must be installed at a point between the end of the load line (or below) and the load. As described in the discussion of § 1926.1408, an insulating link is a barrier to the passage of electrical current. When used on a crane, it prevents the load from becoming energized if the boom or the load line makes electrical contact with a power line and prevents the equipment from becoming energized if the load contacts a power line.

As explained in the discussion of § 1926.1408(b)(4)(v), OSHA anticipates that NRTL approval of these devices, which is necessary from them to meet the definition of "insulating link" under § 1926.1401, will not be available for up to one year after the effective date of this rule. OSHA is providing two phase-in periods to allow time for the NRTL recognition process, and to phase in the requirement in a manner that will reduce the economic burden on employers with existing inventories of devices that would qualify as "insulating links/devices," as defined in § 1926.1401, except that they have not been subject to NRTL approval ("non-approved links"). First, OSHA is providing for an alternative measure that will be available to all employers for one year after the effective date of the standard. § 1926.1410(d)(4)(iv). Second, OSHA is allowing employers who have existing inventory of non-approved links to continue to use these links for an additional two years (up to a total of three years after the effective date of the final rule), so long as the same protections required for the alternative measures available during the one-year interim period remain in place. § 1926.1410(d)(4)(v). However, the use of links manufactured after the one-year interim period is prohibited unless they are NRTL-approved as required by the definition of "insulating link/device" in § 1926.1401.

The absence of an insulating link can result in the load becoming energized if the equipment makes electrical contact with a power line or the equipment becoming energized if the load makes electrical contact with a power line. When working inside the clearances permitted under Table A, the danger of such electrical contact is increased. As an interim precaution until insulating links (as defined in § 1926.1401) become available, OSHA is requiring that all employees who may come in contact with the equipment, the load line, or the load, excluding equipment operators located on the equipment, must be insulated or guarded from the equipment, the load line, and the load. Insulating gloves rated for the voltage involved are adequate insulation for the purposes of this alternative. This interim precaution will provide some degree of protection to employees working near the equipment or load by providing a layer of insulation should the equipment or the load become energized. During the one-year interim period following the effective date of subpart CC, OSHA is encouraging, but not requiring, the use of non-approved links as an extra form of protection (although they cannot be used to satisfy the standard).

OSHA is also providing a separate alternative measure that would apply for an additional two-year transition period (following the first-year interim period, for a total of three years) to address employers who already own or purchase non-approved links. *See* § 1926.1410(d)(4)(v). Under this alternative, employers with non-approved links would be required to use them in addition to other alternative measures required under § 1926.1410(d)(4)(iv) during the initial one-year interim period. To be eligible for this alternative measure, employers must use and maintain these non-approved links in compliance with manufacturer requirements and recommendations. While OSHA anticipates that NRTL-approved insulating links will be available for purchase within a year after the effective date of subpart CC, the Agency recognizes that some employers will have existing inventories of non-approved links. OSHA is, therefore, allowing employers the additional two years to phase out the use of the non-approved links to reduce the economic burden of replacing the existing inventory of non-approved links.

As noted above, OSHA encourages employers to use non-approved links during the initial one-year interim period as an extra measure of protection, but is not requiring employers to use them during this interim period. The Agency recognizes that some employers might not already own these devices because OSHA did not mandate their use under subpart N. If OSHA required the use of non-approved links during the initial one-year interim period, these employers would be forced to incur additional costs for devices that could only be used for a fixed period of one to three years.[60] However, once the NRTL-approved links are available for purchase, the cost of purchasing the NRTL-approved links would be a capital investment that could be amortized over the normal life of the insulating link.

Several commenters noted the limitations of insulating links/devices and advocated for the ability to employ alternative measures when necessary. For example, commenters stated that no insulating links/devices were readily available for loads above 60 tons or voltages above 33 kV. (ID–0132.1; –0155.1; –0197.1.) In addition, commenters noted that the added length of rigging that results when insulating links are used can create problems in locations where there is limited overhead clearance. (ID–0132.1; –0155.1; –0197.1.)

Another commenter who manufactures insulating links stated that insulating links are available with lifting capacities of up to 120 tons and voltage capacities of up to 125 kV.[61] (ID–0216.1.) Therefore, OSHA concludes that no changes are necessary to address the objections to the proposed insulating link requirement based on load or voltage capacities. However, OSHA has concluded that some accommodation may be necessary to address conditions associated with electric utility operations in work areas

[60] While the record indicates that these devices are available for rental, it is not clear from the record that all employers would have access to the businesses renting these devices.

[61] Refer to the discussion of § 1926.1408(b)(4)(v) for a description of other comments received concerning insulating links in the context of that provision.

with low overhead clearance from power lines.[62] Accordingly, OSHA has added an alternative to this provision for subpart V operations where use of an insulating link is infeasible. However, this provision should rarely, if ever, be available to employers, as there are several alternatives to using a crane or derrick in this operation including use of an aerial lift with a material handler or a manual hoist. The alternative requires use of alternate electrical safety precautions; specifically, the alternate precautions are those required under the electric power generation, transmission, and distribution regulations applicable to general industry under § 1910.269(p)(4)(iii)(B) or (C). Those precautions require either that the hoisting equipment be insulated for the voltage involved, or that each employee be protected from hazards that might arise from equipment contact with energized lines.[63]

Paragraph (d)(5)

Under paragraph (d)(5) of this section, if the rigging may be closer than the Table A of § 1926.1408 distance during the operation, it must be of the nonconductive type. This provides protection to those employees who would be exposed to electrical hazards in the event that the rigging contacts a power line, which otherwise could energize the rigging and the load.

One commenter stated that he was unaware of any sling manufacturers who market their slings as being nonconductive, and that there are no test standards for testing the dielectric properties of slings. (ID–0155.1.) As noted in the discussion of tag lines of § 1926.1407(b)(2), C–DAC considered the utility of setting specifications for material required to be nonconductive but determined that it would be impractical, and OSHA has additionally concluded that there is no need to specify test criteria for these materials. The guidance provided for determining whether a tag line is nonconductive applies equally here. Slings made from nonmetallic fibers will meet the standard provided they are not wet, dirty, or have substances on or in them that will conduct electricity. Therefore, OSHA has concluded that the requirement that rigging that may be closer than the Table A distance be nonconductive is appropriate, and the provision is promulgated as proposed.

Paragraph (d)(6)

Under paragraph (d)(6) of this section, if the crane is equipped with a device that automatically limits range of movement, it must be used and set to prevent any part of the crane, load or load line (including rigging and lifting accessories) from breaching the minimum clearance distance established under § 1926.1410(c). This paragraph is promulgated as proposed.

Paragraph (d)(7)

Under paragraph (d)(7) of this section, if a tag line is used it must be nonconductive. This requirement provides additional protection to those employees who would be exposed to electrical hazards in the event that the equipment contacts a power line and the tag line they are holding becomes energized, or in the event that the tag line itself makes contact with the power line.

Refer to the discussion of § 1926.1407(b)(2) for further explanation of tag line non-conductivity and public comments received on this subject. This provision is promulgated as proposed.

Paragraph (d)(8)

Under paragraph (d)(8) of this section, barricades must be used to form a perimeter at least 10 feet away from the equipment to prevent unauthorized personnel from entering the work area. In areas where obstacles prevent the barricade from being at least 10 feet away, the barricade is required to be as far from the equipment as feasible. This provision, along with §§ 1926.1410(d)(9) and 1926.1410(d)(10), minimizes the likelihood that any more employees than are absolutely necessary to the operation will be near the equipment in the event the equipment, load or load line makes electrical contact with the power line. No comments were submitted on this provision; therefore, it is promulgated as proposed.

Paragraph (d)(9)

Under paragraph (d)(9) of this section, employees other than the operator are prohibited from touching the load line above the insulating link/device and equipment. The reason C–DAC did not extend this prohibition to the operator is that the operator, by being in the cab, is going to be in electrical contact with both the equipment and load line. However, this assumes that the operator is in fact standing or sitting on the equipment. There may be some situations where this is not the case. For example, some equipment may be operated by pendant control or wireless control; in such cases the operator need not be on the equipment to control it. OSHA requested public comment on this issue.

Commenters agreed that equipment operators operating from the ground via remote controls need to be protected from potential shocks by either (1) using wireless controls that physically isolate the operator from the equipment; or (2) using insulating mats that insulate the operator from the ground. (ID–0062.1; –0162.1.) OSHA agrees with these comments. Although rubber insulating matting is designed for use as a floor covering, the Agency determines that such mats can provide an additional measure of protection for workers operating the equipment from the ground.[64] OSHA has amended paragraph (d)(9) accordingly.

Paragraph (d)(10)

Under paragraph (d)(10) of this section, only personnel essential to the operation are permitted to be in the area of the equipment and the load. In conjunction with §§ 1926.1410(d)(8) and 1926.1410(d)(9), this minimizes the likelihood that any more employees than are absolutely necessary to the operation would be in a position to make electrical contact with the equipment in the event the equipment, load or load line makes electrical contact with the power line. No comments were submitted on this provision; it is promulgated as proposed.

Paragraph (d)(11)

Under paragraph (d)(11) of this section, the equipment must be properly grounded. As described in the summary and explanation of final § 1926.1408(a)(2)(i) Option (1), in the event the equipment inadvertently makes electrical contact with the power line, proper grounding will protect employees in two ways. First, if the line is equipped with a circuit interrupting device, the grounding facilitates the operation of the device to deenergize the line. However, under some conditions, for example, if there is arcing contact or if the contact is near the end of a power

[62] The example provided by the commenter was replacement/repair of utility pole transformers. (ID–0155.1.) Such operations frequently involve hoisting transformers onto and off of utility poles immediately beneath power lines. The commenter stated that frequently in those operations there is barely sufficient room for the boom head itself; when an insulating link is added to the load line, the extra 2–3 feet of rigging prevents the hoisting of the transformer to the required elevation. The commenter did not explain why an aerial lift or manual hoist could not be used.

[63] *See* discussion of this paragraph below under subpart V-work.

[64] The proposed revision of subpart V also proposed a new construction standard for electrical protective equipment, which would cover rubber insulating matting. Until the subpart V revision is finalized, rubber insulating matting meeting ASTM D178–01(2005) *Standard Specification for Rubber Insulating Matting,* meets the requirement in final § 1926.1410(d)(9) for insulating mats.

line, the fault current may not be high enough to open the circuit for the power line. Second, in the event an employee on the ground is touching the equipment when it contacts the power line or if the circuit protective device does not operate to deenergize the power line, proper grounding will reduce the danger to the employee by providing an additional, low resistance path to ground for the electric current, substantially lowering the voltage on the equipment while the power line remains energized.[65]

Commenters on this provision stressed the need for worker training on proper equipment grounding procedures and the limitations of the protection that grounding provides. (ID–0131.1; –0155.1; –0161.1.) OSHA agrees. As discussed under § 1926.1408(g), OSHA is requiring that the training under that paragraph include training in proper grounding procedures and the limitations of the protection grounding provides. To make clear that the training required under § 1926.1408(g) is also required under this section, OSHA is adding § 1926.1410(m), discussed below, to require that operators and crew assigned to equipment under this section be trained in accordance with § 1926.1408(g). Section 1926.1410(d)(11) is promulgated as proposed.

Paragraph (d)(12)

Under paragraph (d)(12) of this section, insulating line hose or cover-up must be installed by the utility owner/operator except where such devices are unavailable for the line voltages involved. The Committee noted that prior subpart N, at former § 1926.550(a)(15), allowed such insulating barriers to be used as a complete alternative to deenergizing and grounding or to maintaining the applicable minimum clearance distance from the power line. However, the Committee determined that such insulating devices do not provide complete protection because they can be pierced if the equipment makes more than brushing contact with the device. However, the Committee concluded that these insulating devices do provide protection if there is brushing contact and that such devices are useful to supplement the other protective measures provided by the requirements of this § 1926.1410(d).

One commenter on this provision believed that when work is being performed under § 1926.1410 around voltages above which insulating line hose or cover-up are available, OSHA should require that the power line be deenergized and visibly grounded. (ID–0161.1.) Another commenter stated that the Committee correctly limited the use of line hoses and similar rubber cover-ups as complete protection since it can be pierced, but stated that it was unfortunate that the Committee prohibited the use of other rigid plastic barriers that are effective insulation and are not easily pierced. (ID–0144.1.) Regarding the former comment, OSHA notes that the rule applies only when the employer demonstrates that it is infeasible to deenergize and ground the power line. Also, the provision does not require that line hose or cover-up be made of rubber; if rigid plastic barriers provide effective insulation for the voltage involved, they are permitted by this paragraph. OSHA also notes that rigid plastic barriers (that is, electrically insulating plastic guard equipment) is also intended for brush contact only. (*See* ASTM F712—06 *Standard Test Methods and Specifications for Electrically Insulating Plastic Guard Equipment for Protection of Workers*.) Although this equipment may be able to withstand higher forces, it is easier to displace than rubber insulating line hose. This provision is promulgated as proposed.

Paragraph (e)

Under paragraph (e) of this section, the procedures that are developed to comply with § 1926.1410(d) must be documented and immediately available on-site. This ensures that these procedures are available to be used as a reference while the work is in progress.

No comments on this provision were submitted, and it is promulgated as proposed.

Paragraph (f)

Under paragraph (f) of this section, the equipment user and utility owner/operator (or registered professional engineer) must meet with the equipment operator and the other employees who will be in the area of the equipment or load to review the procedures that are developed under § 1926.1410(d) to prevent a breach of the minimum clearance distance established under § 1926.1410(c). It is important that this review take place so that the operator and other employees understand this critical information and have the opportunity to discuss the procedures with the utility owner/operator or registered professional engineer who developed the procedures.

OSHA notes that proposed § 1926.1410(f) referred only to the utility owner/operator. However, under § 1926.1410(d), the procedures are determined in a planning meeting with either the utility owner operator or a registered professional engineer, and whichever entity helped develop those procedures must also participate in the meeting required under paragraph (f). Therefore, OSHA has modified this paragraph by adding a reference to the registered professional engineer as an alternative to the utility owner/operator.

Several electric utility representatives questioned OSHA's authority to impose these and other requirements upon power line owners and operators. (ID–0162.1; –0166.1; –0203.1; –0226.1.) As stated above in response to similar arguments, this paragraph does not require the utility owner/operator to take any action. Another commenter asked who was responsible for bearing the costs of deenergizing power lines and other safety precautions, and what would happen if a utility owner/operator was unable to meet the equipment user at the requested time. (ID–0155.1) As stated above with respect to compliance costs, OSHA determines that issues of compliance costs and specific obligations are best handled as contractual matters among the parties involved, and/or as prescribed by local and regional utility regulatory authorities.

Paragraphs (g) and (h)

Under paragraph (g) of this section, the employer must implement the procedures developed in accordance with § 1926.1410(d). And under paragraph (h) of this section, the utility owner/operator (or registered professional engineer) and all employers of the employees involved in the work must identify one person who will direct the implementation of the procedures. This person must direct the implementation of the procedures and have the authority to stop work at any time to ensure safety. As with paragraph (f) of this section, OSHA is adding a reference to the registered professional engineer to paragraph (h) to ensure that the entity that helped develop the procedures participate in the decision required under paragraph (h).

The Committee concluded that, in view of the fact that more than one employer is typically involved in these situations, coordination among the employers of these employees is needed for the protective measures to be effectively implemented. Once the

[65] It should be noted that hazardous potential differences can be created in the ground when a contact occurs, and employees standing close to, but not touching, anything in contact with the power line can still be injured or killed. The requirements in § 1926.1425, *Keeping clear of the load,* which are designed to protect employees from being struck or crushed by hazards, will also protect employees from these electrical hazards.

operation is underway, safety-related orders typically need to be given and followed without delay. Since an employee of one employer typically would not immediately follow an instruction from another employer, it is necessary that, before these operations begin, all employees understand that the one designated person will have this authority. For these reasons, the Committee determined that there needs to be one person who all involved in the operation recognize as having this role and authority.

A commenter objected to having the utility owner/operator involved in determining which individual should direct implementation of the procedures, saying that the decision should be made by the contractors. (ID–0155.1.) OSHA notes that this provision is closely tied to paragraphs (d) and (f) of this section, under which the utility owner/operator or registered professional engineer is involved in developing the procedures and in reviewing the procedures with the appropriate employees. At this point, the utility or registered professional engineer is well situated to help identify an individual who is able to direct the implementation of the procedures. As with the other provisions of this section that require the involvement of the utility or a registered professional engineer, the utility has the discretion not to participate, in which case the employer operating the equipment must use a registered professional engineer.

Paragraph (i) [Reserved]

Paragraph (j)

This provision requires the employer to safely stop operations if a problem occurs with implementing the procedures in paragraph (d) of this section or if there is an indication that those procedures are inadequate to prevent electrocution. In addition, this provision requires that the employer either develop new procedures which comply with paragraph (d) or contact the utility owner/operator and have them deenergize and visibly ground or relocate the power line(s) before resuming operations.

Two commenters suggested that the utility might not be able to deenergize the lines for medical or security reasons and asked what would happen in such a case. (ID–0155.1; –0162.1.) OSHA recognizes that utilities may not be willing or able to discontinue power to their customers, and § 1926.1410(j) permits relocating the line as an alternative to deenergizing.

An electric utility representative requested that OSHA clarify which employer has the responsibility to comply with this provision, stating it should be the equipment operator and not the utility owner/operator. (ID–0161.1.) OSHA notes that this paragraph's requirement for the employer to "safely stop operations" applies to the employer(s) who are conducting the operation, and the requirement for that employer to contact the utility owner/operator after stopping operations makes clear that a utility owner/operator who is not conducting equipment operations near the power line is not the "employer" under this paragraph. OSHA concludes these points are sufficiently clear, and the provision is promulgated as proposed.

Paragraph (k)

Proposed paragraph (k) required that, where a device originally designed by the manufacturer for use as a safety device, operational aid, or a means to prevent power line contact or electrocution is used to comply with § 1926.1410, it must meet the manufacturer's procedures for use and conditions of use. (*See* § 1926.1417 for a discussion of OSHA's authority to require compliance with manufacturer procedures.) No comments were received on this provision; it is promulgated as proposed.

General Comment

A commenter suggested that OSHA consider requiring a written permit as a precondition to any work being done closer than 20 feet to a power line.[66] (ID–0201.1.) The permit, according to this commenter, should document many of the requirements of this section, including the basis for the employer's infeasibility determinations, the utility owner/operator's or registered professional engineer's determination of a minimum clearance distance, the specific procedures to be followed in performing the work, verification that the employees have received the required training, and other information relevant to the work. The commenter did not explain why it believed such a permit system would result in greater safety, but OSHA infers that the commenter believes that the need to document certain information, such as the basis for the employer's infeasibility findings, will lead to more careful consideration of the factors that enter into the decision that it is necessary to work closer to a power line than is normally permitted and more carefully thought out procedures when such work is done. OSHA is not convinced that a permit system is needed to ensure that employers act carefully under this section. OSHA expects that the stringent precautions required when employers work closer than the § 1926.1408 and § 1926.1409 clearance distances will ensure that an employer will only determine that it is infeasible to work within those distances if there is really no other viable option. Similarly, the requirement that a minimum clearance distance must be determined by a utility owner/operator or registered professional engineer ensures that sound expert judgment will enter into that determination without the need for additional documentation.

Subpart V Work

In the proposed rule, OSHA discussed in detail the compliance duties the rule would impose on employers engaged in subpart V work (*see* 73 FR 59762–59764, Oct. 9, 2008). Industry representatives objected to some of the changes from the requirements of subpart V. Among other things, they pointed to another ongoing rulemaking in which OSHA proposed to amend subpart V in ways that differ from the changes proposed by C–DAC (70 FR 34821, Jun. 15, 2005).[67]

OSHA proposed requirements in addition to those in subpart V because it had already concluded that the measures required by subpart V for the operation of equipment near power lines are insufficiently protective. (*See* the discussion of § 1910.269(p)(4) in the preamble to the final rule promulgating the general industry standard on the operation and maintenance of electric power generation, transmission, and distribution installations (59 FR 4320, 4400–4404, Jan. 31, 1994)). Although proposed subpart V would require measures that are sufficiently protective, OSHA has not yet adopted it as a final rule. Consequently, the Agency is taking action today to increase the protection currently afforded by subpart V. In doing so, OSHA has also addressed the concerns raised by utility industry representatives.

First, as discussed above, OSHA has made several changes to the final rule in response to comments from the electric utility industry. These include: (1) An expanded exclusion for digger derricks used in utility pole work; (2) deleting the requirement that employers engaged in subpart V work show the infeasibility of complying with the required clearance distances in §§ 1926.1408

[66] This commenter recommended that 20 feet should be the minimum clearance distance for all work and that Table A of § 1926.1408 should be deleted. OSHA explained in § 1926.1408 why it was rejecting this suggestion.

[67] The subpart V proposed rule was published after C–DAC completed its work.

through 1926.1409; and (3) an alternative to the requirement for insulating links under § 1926.1410(d)(4).

In addition, employers engaged in subpart V activities are not required to implement certain other protective measures required by this standard when working near power lines. As discussed above, subpart V work would not be subject to the requirement for an additional protective measure from the list in § 1926.1408(b)(4). Also, subpart V work would not be subject to the prohibition in § 1926.1408(d)(1) against equipment operating under power lines (*see* discussion above of § 1926.1408(d)(2)(i)). And § 1926.1410(d)(3) provides that an employer engaged in subpart V work closer than the Table A of § 1926.1408 distance is not required to use an elevated warning line or barricade.

In recognition of the fact that much subpart V work necessarily takes place on or near energized power lines, employers engaged in such work may comply with shorter minimum clearance distances than those specified in §§ 1926.1408 and 1926.1409: they must generally adhere to the clearance distances in Table V–1 of § 1926.950. However, § 1926.952(c)(2) (redesignated as § 1926.952(c)(3) as a result of this rulemaking) permits clearances less than those in Table V–1 and includes requirements that must be met when equipment is operating closer to power lines that those distances. To make this clear, § 1926.1410(c)(2) provides: "Employers engaged in subpart V work are permitted to work closer than the distances in § 1926.950 Table V–1 where both the requirements of this section and § 1926.950(c)(3)(i) or (ii) are met."[68] OSHA is also making conforming amendments to § 1926.952(c)(3), which was formerly designated § 1926.952(c)(2).

Under this section, the precautions previously specified in §§ 1926.952(c)(2)(i) and (ii) are required under § 1926.1410(d) when equipment used in subpart V work is operated closer than the Table V–1 clearances. Since these precautions are now required by § 1926.1410(d), OSHA is deleting them from subpart V as redundant. Therefore, OSHA is including the non-redundant provisions from the proposed rule in the final rule, with proposed § 1926.952(c)(2) redesignated as § 1926.952(c)(3).[69]

One commenter opposed deleting former §§ 1926.952(c)(2)(i) and (ii) because the commenter believed that it would not be confusing to duplicate requirements now found in subpart CC in subpart V. OSHA disagrees. As amended by this rule, § 1926.952(c)(3) states that its requirements are "in addition to" the requirements in § 1926.1410. Restating requirements in § 1926.952(c)(3) that are also found in § 1926.1410 can lead to uncertainty over whether the duplicate requirements are in fact redundant or are separate requirements.[70]

OSHA notes that in this zone, one of the options that an employer engaged in subpart V has under prior § 1926.952(c)(3)(i) is to insulate the equipment. Under § 1926.1410(d)(11), that employer also must ground the equipment. An employer can comply with both requirements by using equipment with an insulating boom and grounding the uninsulated portion of the equipment (that is, the portion below the insulated section of the boom).

It should also be noted that, in the subpart V rulemaking, OSHA has proposed to prohibit equipment (other than insulated aerial lifts, which are not covered by this final rule) from being operated closer than the minimum approach distances from power lines. If this prohibition is carried into the final subpart V rule, then the requirements in this final rule relating to work inside the distance in Table V–1 will have no effect.

Finally, § 1926.1400(g) includes a new compliance alternative for subpart V work that has been added to the final rule.

Paragraph (l) [Reserved]

Paragraph (m)

As noted above, the training requirements contained in § 1926.1408(g) are being added to this section as well to assure that employees engaged in activities under this section receive adequate training.

Section 1926.1411 Power Line Safety—While Traveling Under Power Lines With No Load

Paragraph (a)

Proposed paragraph (a) provided that this section is designed to protect against electrical hazards while equipment is traveling with no load under power lines on a construction site. It did not address the potential hazards associated with equipment traveling without a load near power lines. OSHA requested public comment on whether it is necessary to expand the applicability of this section to include equipment traveling on a construction site without a load near power lines.

Two commenters favored broadening the applicability of § 1926.1411 to include equipment traveling near power lines, with "near" being defined as the distances listed in Table T. (ID–0205.1; –0213.1.) One commenter responded that adding an additional set of power line clearance distances to trigger the requirements of § 1926.1411 would be confusing. (ID–0144.1.) A fourth commenter thought that the requirements of § 1926.1411 should extend to cover equipment traveling "along side of" power lines, but did not suggest a definition for the term "along side of." (ID–0155.1.)

After considering these public comments, OSHA concludes that this section should address the hazard of equipment traveling near, as well as under, power lines with no load. If equipment comes into electrical contact with a power line while traveling without a load, the same electrocution hazard is present as when it is operating with a load. The precautions in this section will protect workers against that hazard.

OSHA agrees with the two commenters who suggested that Table T of this section contains appropriate clearances for equipment traveling near, as well as under, power lines. Applying Table T to equipment traveling near power lines will provide a uniform rule for this section and will ensure adequate worker protection. Although the Table T clearance distances are less than those required under Table A of § 1926.1408 during crane operations, additional protection is provided under this section by the requirement in paragraph (b)(1), discussed below, that the boom/mast and boom/mast support system be lowered sufficiently to meet the requirements of this paragraph. With the boom/mast lowered, the highest point of the equipment will generally be below the plane of the power line, reducing the risk of accidental contact. Moreover, as also noted below, the dedicated spotter requirement of § 1926.1411(b)(4) will be triggered whenever the equipment while traveling will get closer than 20 feet to a power line, thereby providing additional protection against accidental contact.

[68] The proposed rule referred to "§ 1926.950(c)(2)(iii) or (iv)." The final rule reflects the changes in numbering to § 1926.950(c)(2) that are made elsewhere in this final rule.

[69] In subpart V, when equipment is considered energized, a number of subpart V requirements are triggered. *See, e.g.,* § 1926.951(c)(1) (restricting use of metal or conductive ladders near energized equipment); § 1926.951(f)(3) (hydraulic tools used on or around energized equipment shall use nonconducting hoses); § 1926.953(c) (materials or equipment shall not be stored near energized equipment if it is practical to store them elsewhere).

[70] Amendments to § 1926.950(c)(1) are discussed in § 1926.1400, *Scope.*

Accordingly, in the final rule, paragraph (a) applies to "equipment traveling under or near a power line on a construction site with no load." In addition, in the proposed rule, the heading of § 1926.1411 read: "Power line safety—while traveling." In the final rule, OSHA has added the words "under or near power lines with no load" so that the heading more clearly describes the activity to which the section applies.

These requirements apply only to cranes/derricks while traveling on a construction site under or near power lines; they do not apply to equipment while traveling on roads (or in areas) that are not part of a construction site. In addition, this section does not apply to equipment traveling on a construction site with a load. That situation is governed by §§ 1926.1408, 1926.1409, and 1926.1410. To make this clear, OSHA is adding the language to paragraph (a) specifying that §§ 1926.1408, 1926.1409, and 1926.1410, whichever is appropriate, govern equipment traveling on a construction site with a load.

Paragraph (b)

Under paragraph (b)(1) of this section, the boom/mast and boom/mast support system must be lowered sufficiently to meet the requirements of this paragraph. Paragraph (b)(2) specifies that the clearances specified in Table T of this section must be maintained. The values in Table T, which provides the minimum clearance distances while traveling with no load and a lowered boom, are substantially similar to the values used in sec. 5–3.4.5.5 of ASME B30.5–2004.

In the proposed rule, the heading of Table T read: "MINIMUM CLEARANCE DISTANCES WITH NO LOAD AND BOOM/MAST LOWERED." In addition, each clearance distance in the table was followed by the following parenthetical: "(while traveling, boom lowered)." OSHA determines that the references to the boom in the heading and parentheticals could be confusing. The intent of the table is to establish minimum clearance distances while the crane is traveling, not clearance distances with the boom lowered. As noted in the discussion of § 1926.1411(b)(1), the boom and/or mast must be lowered sufficiently to comply with Table T; it is not a prerequisite to the applicability of Table T. Accordingly, in the final rule, the words "AND BOOM/MAST LOWERED" are deleted from the heading of Table T, and the parentheticals are also removed from the clearance distances in the table.

Section 1926.1411(b)(3) requires the employer to ensure that the effects of speed and terrain are considered so that those effects do not cause the minimum clearance distances specified in Table T to be breached. Sections 1926.1411(b)(1)–(3) are promulgated as proposed.

Section 1926.1411(b)(4) requires the employer to use a dedicated spotter if any part of the equipment while traveling will get closer than 20 feet to a power line. This provision also requires that the dedicated spotter be in continuous contact with the crane operator; be positioned to effectively gauge the clearance distance; where necessary, use equipment that enables the spotter to communicate directly with the crane operator; and give timely information to the crane operator so that the required clearance distance can be maintained. *See* the earlier discussion of spotters in §§ 1926.1407 and 1926.1408.

In reviewing proposed § 1926.1411(b)(4), OSHA noted that the language "crane operator" was used rather than "driver." Because § 1926.1411 deals with power line safety while equipment is traveling without a load, OSHA recognized that the language "crane operator" may not be appropriate in all situations. In some cases a crane operator may not be the driver of such equipment on the construction site. Therefore, OSHA solicited comments on whether the language "crane operator" used in proposed § 1926.1411(b)(4) should be changed to "driver" or "driver/operator." The two commenters who addressed this issue supported changing the language to "driver/operator." (ID–0205.1; –0213.1.) Therefore, this change to the regulatory text has been made in the final rule.

Section 1926.1411(b)(5) requires the employer to ensure that, when traveling at night or in conditions of poor visibility, the power lines must either be illuminated or another means of identifying them are used and a safe path of travel is identified. No public comments concerning this provision were received; therefore, it is promulgated as proposed.

Section 1926.1412 Inspections

This section seeks to prevent injuries and fatalities caused by equipment failures by establishing an inspection process that identifies and addresses safety concerns. The reasoning underlying the proposed requirements is discussed at 73 FR 59766–59776, Oct. 9, 2008. The following addresses public comments and differences between the proposed and final rules.

Paragraphs (a) through (j) of this section provide inspection requirements for equipment covered by subpart CC. Those requirements are supplemented by other sections of this standard for specific types of equipment. This section is structured so that certain activities (*e.g.,* equipment modification, repair/adjustment, assembly, severe service, or equipment not in regular use) and the passage of time (*e.g.,* shift, monthly, and annual/comprehensive) trigger the inspection requirements.

The proposed rule specified that the various inspections were to be conducted by either a "competent person" or a "qualified person" depending on the type of inspection. Both terms are defined in § 1926.01. OSHA solicited public comment on whether a protocol similar to that for signal person qualifications in § 1926.28 is needed to ensure that the person who performs these inspections has the requisite level of expertise (73 FR 59766, Oct. 9, 2008). Section 1926.28 establishes qualification requirements for signal persons and requires those individuals to have their qualifications evaluated by a qualified evaluator to act as signal persons under this subpart.

Several commenters responded that there should be a verified testing system to ensure "qualified inspectors" have the requisite knowledge to inspect effectively or that the standard require inspectors to demonstrate that ability. (ID–0182.1; –0187.1; –0226.)

Regarding paragraph (f) of this section (annual/comprehensive inspections of equipment) and § 1926.1413(c) (annual wire rope inspections), a local government further recommended that OSHA require that a government agency or a third party crane inspector licensed or certified by the local government perform the annual inspection. (ID–0156.1.) The commenter also believed that the individual who inspects an equipment modification in accordance with paragraph (a) of this section must possess a certification from the manufacturer or an independent third party and have the requisite training to inspect modified, repaired, or altered crane components.

In contrast, a utility company and two trade associations did not support revising the final rule to include a more stringent inspector qualification requirement. (ID–0226; –0205.1; –0213.) The two trade associations expressed concerns that the Committee never discussed the required level of knowledge of inspection workers, which, in the commenter's view, means that consensus was not reached on the issue and that the issue should not be included in the final rule.

In response to these comments, OSHA is retaining the qualification requirements for inspectors as specified in the proposed rule but is not mandating that the inspector be assessed by a qualified evaluator, certified, or licensed because there is not sufficient evidence in the record to warrant these additional requirements. A number of current OSHA construction standards, as did former § 1926.550, require inspections to be conducted by competent persons or qualified persons. For example, § 1926.651(k) requires that a competent person conduct a daily inspection of excavations for possible cave-in hazards. OSHA is not aware of evidence in the record indicating that accidents would be prevented if OSHA required inspectors to have additional qualifications or credentials. OSHA disagrees, and concludes that accidents do not occur due to the inability of competent or qualified persons to conduct adequate inspections of cranes under the former standard. Accordingly, OSHA is retaining the requirement in § 1926.1412 that the various required inspections be conducted either by competent persons or qualified persons.

The local government's request that OSHA not preempt local laws and allow local governments to continue to play a role in crane inspections is within the scope of the local government's broader preemption concerns addressed in the discussion of federalism in section V.D of this preamble. However, OSHA notes that § 1926.1412 would not preclude local government inspectors or others who are not employees of the employer responsible for the inspections, from serving as inspectors in compliance with the requirements of this standard. The inspector need only meet the definition of a competent or qualified person in § 1926.1401 (note that a "competent person" must have the authority to take corrective action.)

Paragraph (a) Modified Equipment

Paragraph (a) of this section requires an inspection (that includes functional testing of the equipment) to be performed by a qualified person for equipment that has been modified or has additions that affect the safe operation of the equipment prior to initial use after that modification/addition.[71] As proposed, this paragraph did not contain a documentation requirement. An industrial contractor stated that the standard should require documentation of this inspection (as well as the inspections required under paragraphs (b) and (c) of this section, discussed below) but offered no reasons to support its suggestion. (ID–0120.) Absent a basis in the record to add such a requirement, OSHA declines to require documentation of the inspections under paragraphs (a), (b), and (c).

Proposed § 1926.1412(a)(1)(ii) stated that "[t]he inspection shall include functional testing." OSHA requested public comment on whether it should modify the provision to limit the functional testing requirement to components that the modification affects or may affect (73 FR 59766–59767, Oct. 9, 2008). Several commenters asserted that functional testing is only necessary to test modifications of the equipment and other affected components. (ID–0205; –0213.) In contrast, a local government asserted that the functional testing should be of the entire crane. (ID–0156.1.)

OSHA is concerned that there may be instances where a modification has an unanticipated effect on the equipment that would not become apparent if the test were limited. Therefore, the Agency has decided to require a functional test of the equipment as a whole. To make this clear, the words "of the equipment" have been added at the end of the sentence of the provision in the final rule.

During the SBREFA process, a Small Entity Representative (SER) suggested adding an exception to § 1926.1412(a) for "transportation systems," by which the SER meant any system dispersing the weight of the crane for movement on a highway. As recommended by the Panel, OSHA solicited public comment on whether to include such an exception and possible language for it (73 FR 59767, Oct. 9, 2008). No comments were submitted on this point. OSHA notes that § 1926.1412 specifies the items that must be inspected, and these items do not include any items dealing with the movement of equipment on a highway.

Paragraph (b) Repaired/Adjusted Equipment

Paragraph (b) of this section provides that equipment that has had a repair or adjustment that affects the safe operation of the equipment must be inspected by a qualified person prior to initial use after the repair/adjustment. In summary, the qualified person is required to determine if such repairs and adjustments were performed in accordance with manufacturer equipment criteria.

Proposed § 1926.1412(b)(1)(iii) stated that "[t]he inspection shall include functional testing." As in the case of proposed § 1926.1412(a)(1)(ii) discussed above regarding modified equipment, OSHA requested public comment on whether the functional testing required for repaired/adjusted equipment should be limited to testing only those components that are or may be affected by the repair or adjustment (73 FR 59767, Oct. 9, 2008).

Several commenters asserted that functional testing is only necessary to test the repairs or adjustments and other affected components and systems of the equipment. (ID–0205; –0213.) In contrast, one commenter indicated that the functional testing should be of the entire crane. (ID–0156.)

The standard requires that repairs or adjustments of equipment must be done in accordance with the manufacturer's or qualified person's recommendations. Repairs or adjustments are meant to restore equipment to original design specifications and safety factors. Otherwise, OSHA considers the maintenance activity performed a modification of the equipment. In essence, repair or adjustment of a system or component must be consistent with the engineering in the original equipment design. OSHA believes that a functional test that is limited to only those components that are or may be affected by the repair or adjustment, in conjunction with the inspection required under § 1926.1412(d). Each shift (discussed below), will sufficiently identify a deficient repair or adjustment. OSHA has therefore modified the language of § 1926.1412(b)(1)(iii) in the final rule accordingly.

A commenter stated that § 1926.1412(b) should be structured similarly to § 1926.1434, *Modifications,* in that the employer should be required to consult with the manufacturer before employers perform repairs or adjustments of equipment that relate to safe operation. (ID–0292.) In that case, the commenter stated, no third party would be able to overrule a manufacturer statement that a repair cannot be made. The commenter believed that an employer should only be able to go to paragraph (b)(1)(ii) if the manufacturer is unavailable.

OSHA does not agree with the suggested change. Implicit in the comment is the suggestion that there are instances where a repair cannot be made without compromising the integrity of the equipment. That concern is already addressed by the standard. If the repair

[71] The phrase "modifications or additions" and the term "modifications/additions," as used in this section, have the same meaning (an addition is a type of modification). C–DAC wanted to emphasize that additions are subject to the same approval procedures as other types of modifications. Wherever a form of the word "modification" is used in this preamble, it is a reference to all modifications, including additions.

cannot meet the criteria in accordance with § 1926.1412(b)(1)(i) (or, if applicable, § 1926.1412(b)(1)(i)), then the requirements in subpart CC for modifications would have to be met. Therefore, OSHA declines to adopt the suggested change.

Paragraph (c) Post-Assembly

Paragraph (c) of this section requires a post-assembly inspection of equipment by a qualified person prior to its use. In sum, the provision requires the qualified person to assure that the equipment is configured in accordance with the manufacturer's equipment criteria. If manufacturer equipment criteria are unavailable, the qualified person must determine whether a registered professional engineer (RPE) is needed to develop criteria for the equipment configuration. If an RPE is not needed, the employer must ensure that a qualified person develops them. If an RPE is needed, the employer must ensure that an RPE develops them. Equipment must not be used until an inspection under this paragraph demonstrates that the equipment is configured in accordance with the applicable criteria. OSHA received no comments on the proposed paragraph; therefore, it is published as proposed.

Paragraph (d) Each Shift

Paragraph (d) of this section requires a shift inspection, the first of three regularly scheduled equipment inspections that are required. Specifically, paragraph (d)(1) sets forth the frequency of this inspection, the degree of scrutiny required and the level of expertise required of the person performing this inspection. The paragraph lists the items that are required to be included in this inspection and specifies the corrective action that is required. The purpose of this provision is to identify and address safety hazards before they cause accidents.

A utility company recommended that OSHA revise § 1926.1412(d) to read "each shift the equipment is used * * * ." to clarify that the equipment does not have to be inspected when it will not be used on a shift. (ID–0226.) This suggested change is consistent with the intent of the proposed rule, and OSHA is adding similar language to final rule § 1926.1412(d)(1) to clarify that intent.

One commenter asserted that OSHA should prohibit operation of the equipment until the shift inspection is complete rather than permitting the inspection to be completed during the shift. (ID–0156.1.) A different commenter disagreed. (ID–0143.) OSHA does not agree with this suggestion. While some of the items that must be inspected can readily be inspected before each shift, *e.g.,* cab windows for deficiencies that would hinder the operator's view, others can best be checked while the equipment is operating. For example, one item that must be inspected is control mechanisms for maladjustments that interfere with proper operation. During the shift, such maladjustments may be easier to detect than a check conducted before the equipment is operating. Still others may change during the shift and require additional inspection. For example, if the crane is moved to a new location during the shift, it would be necessary to inspect the ground conditions in that location.

Regarding the frequency of this inspection, an energy utility representative commented that the per-shift crane inspection fails to take into account the frequency or severity of use. (ID–0203.1.) The commenter points out that if a crane is used once during the first shift, and once during the second shift, even if only to lift a minor load, the inspection would have to be conducted twice. The commenter agrees that the per shift inspection may be valuable and necessary on constructions sites where cranes are used continuously for heavy use, but states that the level of inspection should be adjusted to reflect the infrequent use of mobile cranes for construction activities at operating generating plants. The commenter suggests that the final standard should permit employers to use the inspection protocol in ASME B30.5, sec. 5–2.

OSHA does not agree that minimal use during one shift negates the need for a shift inspection during the next shift. Since the completion of the last shift inspection, the equipment could have developed a deficiency or been damaged even if it was used to hoist one load. For example, fluids may expand or freeze, seals may leak due to a change in temperature, structural materials may crack, or electrical components may fail. A deficiency that might not have been apparent earlier might become more readily observable.

Moreover, while some equipment may be used infrequently for construction work, the commenter did not disagree that it may be used heavily for other purposes. When a crack, leak, or other hazard appears, and the equipment is to be used in construction, the source of that hazard is immaterial; the fact that the problem may have developed during non-construction uses does nothing to reduce the safety hazard that would be posed by the use of that equipment in construction. Instead, the multiple uses of some of this equipment, potentially by different employees using it for different purposes, makes it all the more likely that important information might not be shared in a timely manner, and therefore more important to ensure that the equipment is inspected during each shift of construction work. An employer cannot assume that the condition of the equipment has not changed since the completion of the last shift inspection, even if the employer did not use the equipment extensively during that shift. OSHA is convinced that it is reasonable, and not overly burdensome, to require a competent person to complete this inspection of the equipment before or during each shift to ensure it is safe for use.

A competent person is required to perform the shift inspection. A labor management association commented that OSHA should replace "competent person" with "operator" for the purposes of who should perform the visual inspection required by § 1926.1412(d). (ID–0172.) As explained in the preamble to the proposed rule, OSHA anticipates that the employer will often use the equipment operator as the competent person who conducts the shift inspection. The operator, in most cases, by virtue of his or her qualification or certification under §§ 1926.1427 and 1926.1430, experience, and familiarity with the equipment, is a competent person. However, the employer has the flexibility to use someone else to conduct the shift inspection as long as that person is a competent person. When the operator does not qualify as a competent person, the employer is required to choose a different person. For these reasons, in the final rule, OSHA is retaining the requirement that a competent person conduct the shift inspection.

A local government requested that the standard require the employer to document the completion and results of the shift inspection. (ID–0156.1.) In addition, it asked that the standard require employers to submit daily logs to the equipment owner at the end of each job that include a list of maintenance and repairs made to the equipment by the user at the jobsite. It also requested that the owner maintain these documents for the life of the equipment and transfer them from owner to owner when sold.

OSHA determines the documentation described by the commenter would be burdensome for the user and owner of the equipment, with no added, industry-recognized, benefit to safe hoisting operations. There is no significant, safety-related evidence in the record to substantiate the documentation

requirements the commenter recommended. Therefore, OSHA is not requiring documentation of the shift inspection.

The SBREFA Panel recommended that OSHA solicit public comment on whether, and under what circumstances, booming down should be specifically excluded as a part of the shift inspection, and whether the removal of non-hinged inspection plates should be required during the shift inspection. Section 1926.1413(a)(1), discussed below, explicitly states that booming down is not required as part of the shift inspection for wire rope. C–DAC did not include a similar provision in the general shift inspection provision in § 1926.1412(d) because booming down is not required to observe a deficiency in any of the items requiring inspection under that paragraph. Similarly, OSHA determines that inspection for a deficiency in any of those items does not require the removal of non-hinged inspection plates.

Several commenters submitted comments that indicated a need for OSHA to clarify that it is not usually necessary to boom down to complete a visual inspection of the items listed in § 1926.1412(d). (ID–0143.1; –0205; –0213.) In response to the apparent ambiguity suggested indicated by these comments, OSHA is revising § 1926.1412(d)(1), to clarify that booming down is not required routinely. The term "disassembly" was replaced with "taking apart equipment component" in paragraph (d)(1) of this section to avoid any confusion as to whether the provision was addressing disassembly as defined for the application of §§ 1926.1403 through 1926.1406.

Paragraphs (d)(1)(i) through (xiv) set forth the list of items that, at a minimum, a competent person must inspect each shift. Paragraph (d)(1)(x) of the proposed rule listed "[g]round conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions."

A railroad association objected to the application of this provision to railroads. (ID–0170.1.) The association commented that the § 1926.1412(d)(1)(x) requirement that an inspector verify the ground conditions around the equipment before each shift makes no sense for a crane moving down the track. OSHA notes that this provision does not require a railroad to inspect the ground conditions along the track if a railroad crane is simply traveling down the track. Section 1926.1402, which contains requirements for ground conditions, makes clear that the conditions being addressed are those where the equipment is operating. To the extent that a railroad crane may move down the track during a construction operation, OSHA determines it is appropriate to require the ground conditions along the track to be inspected to ensure that no hazardous conditions, such as the erosion or other physical degradations of the support for railways, have developed that will adversely affect the support needed for equipment to perform safely during hoisting operations. However, OSHA is adding language to exempt railroad tracks and their underlying support from inspection when those rails are regulated by the FRA. OSHA concludes that the exemption is appropriate because the FRA already regulates the ground conditions for railroad tracks, including specific regulations addressing the inspection of those rails and their support. *See, e.g.,* 49 CFR 213.233 (track inspections) and 213.237 (inspection of rail). For consistency and clarity, OSHA is adding similar language exempting rails regulated by the FRA to paragraph (d)(1)(xiii).

A crane rental company objected to the requirement to inspect ground conditions, stating that there is no similar provision for inspecting ground conditions in the elements of inspections required by ASME B30.5 sec. 5–2.1.2. (ID–0143.1.) It also believes listing this requirement in the elements for shift inspections is confusing and suggests that this requirement should either be removed or included in § 1926.1402, *Ground Conditions.* As stated in the explanation of the proposed rule, this item was included because ground conditions can change from shift to shift, and sufficient ground support is of critical importance for safety. OSHA is retaining it in this section because it is more appropriately included in the list of items to be inspected than as a stand-alone inspection item in § 1926.1402.

In paragraph (d)(1)(x) in the final rule, OSHA is replacing the word "outriggers" with "outriggers/stabilizers." The term "stabilizers" was added because some pieces of equipment, like articulating cranes, are designed to use stabilizers instead of outriggers to add stability at their bases. A full discussion of the comments that prompted this regulatory text change is provided in the explanation of the rule for § 1926.1404(q).

Proposed § 1926.1412(d)(1)(xi) included among the items to be inspected "the equipment for level position, both shift and after each move and setup." The SBREFA Panel recommended that OSHA solicit public comment about whether it is necessary to clarify the requirement of proposed § 1926.1412(d)(1)(xi) that the equipment be inspected for "level position" by clarifying the amount of tolerance that would be allowed for the equipment to be considered "level." OSHA requested public comment on this issue and several commenters asked OSHA not to specify tolerance limits. (ID–0143.1; –0170; –0205; –0213; –0226.) OSHA notes that § 1926.1402(b), which pertains to ground conditions, requires the equipment, during use, to be level to the degree specified by the equipment manufacturer. For clarity, OSHA is adding language to § 1926.1412(d)(1)(xi) to state that the equipment must be inspected for level position "within the tolerances specified by the equipment manufacturer's recommendations." OSHA is also adding the words "before each" before shift to clarify the provisions intent.

Paragraphs (d)(2) and (d)(3) require the employer to take corrective action where the competent person identifies a deficiency during inspection. Once the inspector identifies any deficiency in the areas in (d)(1)(i) through (xiii),[72] or pursuant to other equipment-specific inspections (*e.g.,* § 1926.1436(p) (inspection of derricks)), the inspector must immediately determine whether that deficiency constitutes a safety hazard. If so, then equipment operations must cease and the employer must take the equipment out of service, following the tag-out procedure in § 1926.1417(f), and may not use it again until the deficiency has been corrected. This approach reflects C–DAC's determination that not all deficiencies constitute safety hazards. However, regardless of whether the inspector determines that there is a safety hazard, if any deficiency affects a safety device or operational aid, then the employer must take the steps required under §§ 1926.1415, *Safety Devices,* or 1926.1416, *Operational aids.*

OSHA is requiring the procedures in paragraphs (d)(2) and (d)(3) to ensure that the employer stops using unsafe equipment as soon as the safety hazard is identified. The correction procedure

[72] Proposed § 1926.1412(d)(2) inadvertently referred to deficiencies in paragraphs (d)(1)(i) through (xiv), but the preamble to the proposed rule explained correctly that it only applied to deficiencies in paragraphs (d)(1)(i) through (xiii) (not (xiv)) (73 FR 59770, Oct. 9, 2008). The text of paragraph (xiv) addresses operational aides and safety devices, which are specifically addressed in paragraph (d)(3). Therefore, in the final paragraph (d)(2), OSHA refer to deficiencies in "paragraphs (d)(1)(i) through (xiii)."

set forth in paragraph (d)(2) is similar to that in ANSI B30.5–1968 and ASME B30.5–2004 for their Frequent Inspections. OSHA is requiring a competent person to make the determination to ensure that his or her findings are implemented; *i.e.,* the competent person would have the authority to order the equipment out of service if the deficiency constituted a hazard. In the final rule, OSHA has replaced the phrase "removed from service" with "taken out of service," which is the phrase used in § 1926.1417(f), to avoid any ambiguity about the employer's duty to tag out the unsafe equipment.

Paragraph (e) Monthly

Paragraph (e) of this section requires a monthly inspection of the equipment, the second of the three regularly scheduled general inspections that are required by this standard. The monthly inspection is identical in coverage and manner to the shift inspection required by § 1926.1412(d), with one addition discussed below. Thus, the monthly inspection is a visual inspection of the items listed in the shift inspection for apparent deficiencies, conducted by a competent person. However, unlike a shift inspection, the employer must document the inspection and retain the documentation for a minimum of three months.

In addition, under the annual/comprehensive inspection in § 1926.1412(f)(4), the employer is required to identify developing deficiencies that, while not yet safety hazards, need to be monitored. In such cases the employer, under §§ 1926.1412(f)(4) and (f)(6), is required to monitor them in the monthly inspections.

One commenter suggested adding text to the final rule to clarify how the monitoring information would be transferred from annual inspector to monthly inspector, if different. (ID–0226.) The Agency is not modifying the text of the rule as requested, but notes that under paragraph (f)(7)(i) of this section the inspector must document all "items checked and the results of the inspection." Therefore, if the inspector determines that further monitoring is required, that information would be a "result of the inspection" included in the annual report. The inspector would then be responsible for checking the annual report prior to monthly inspections (*see* § 1926.1412(f)(6).)

An industrial contractor commented that OSHA should require employers to keep monthly inspection documentation for a minimum of three months or the duration of the project, whichever is longer. (ID–0120.) This commenter did not, however, describe how expanding the retention requirement would produce any significant benefit, and OSHA determines there would be no benefit. The documentation requirement enables the individuals who use the equipment and conduct shift and monthly inspections to assess the results of earlier monthly inspections. Once more than three months have passed since a monthly inspection, the information in the documentation for that inspection will not reflect the current condition of the equipment.

The SBREFA Panel recommended that OSHA solicit public comment on whether the provision for monthly inspections should, like that for annual inspections, specify who must keep the documentation associated with monthly inspections. (The provision for annual inspections states that the documentation must be "maintained by the employer who conducts the inspection.") OSHA requested public comment on the issue raised by the Panel's recommendation. Several commenters believed that OSHA should require the employer who conducts the monthly inspection to maintain the documentation. (ID–0205; –0213; –0214; –0226.)

OSHA agrees that the employer who conducts the monthly inspection should maintain the documentation. This revision clarifies the intent of C–DAC and is consistent with other provisions in this section.

A utility company commented that if the operating employer is not the inspecting employer, the operating employer should be provided with a copy of the inspection if requested. (ID–0226.) This comment suggests that some employers who operate rented equipment are concerned that the required documentation may not be available to them from other parties unless explicitly required in the regulatory text of this final rule. In some cases, one employer owns and operates the equipment used to perform construction activities. It is reasonable to require these employers to maintain the equipment inspection records. However, during the analysis of public comments and testimony, OSHA recognized that there would be situations where an employer rents or uses equipment owned by another party or where multiple employers use the same piece of equipment. The standard allows any employer to conduct the monthly inspection. The employer who conducts the inspection must document the items checked and the results of the inspection and must retain it for a minimum of three months. If employers whose employees use the equipment rely on another employer to conduct, document, and maintain the record of the monthly inspection, it is the responsibility of each employer engaged in construction activities to assure compliance with the standard.

OSHA determines that it is in the interest of all employers who conduct monthly inspections, whether they use or own equipment, to share the inspection results with each employer who uses the equipment. However, employers engaged in construction activities are responsible for assuring compliance with the standard. Therefore, if an employer engaged in construction activities is unable to assure that another employer has conducted the monthly inspection, then the employer engaged in construction activities must conduct a monthly inspection prior to using the equipment. The monthly inspection is similar to a shift inspection (with the addition of the monitoring of deficiencies that a qualified person deemed not to be a safety hazard in the annual inspection), but, unlike a shift inspection, the monthly inspection must be documented and maintained. Requiring an employer who uses the equipment to conduct a monthly inspection when that employer is unable to determine whether another employer conducted a monthly inspection is an insignificant burden compared to the safety benefit of ensuring this inspection is completed.

The SBREFA Panel also recommended that OSHA restate the corrective action provisions from the shift inspection (§ 1926.1412(d)(2) and (3)) in paragraph (e) of this section. Under § 1926.1412(e)(1), the monthly inspection must be conducted in accordance with § 1926.1412(d) on shift inspections, meaning that the corrective action provisions in § 1926.1412(d)(2) and (3) must also be followed in the monthly inspections. OSHA requested comment on whether the language in § 1926.1412(d)(2) and (3) should be repeated under § 1926.1412(e). Two trade associations believed that clarity would be improved if paragraph (e) of this subpart repeated the corrective actions provisions from the shift inspection paragraph. (ID–0205; –0213.) OSHA disagrees because § 1926.1412(e)(1) explicitly requires this inspection to be done in accordance with § 1926.1412(d). Paragraph (d) immediately precedes paragraph (e), and OSHA concludes that repeating the provisions will create, rather than alleviate, confusion by requiring employers to read two lists that contain identical information.

Paragraph (f) Annual/Comprehensive

Paragraph (f) of this section requires an annual (*i.e.,* once every twelve months), general inspection of the equipment, the third of the three regularly scheduled general inspections that are required by this standard. It promotes safety by ensuring that a thorough, comprehensive inspection of the equipment is performed to detect and address deficiencies that might not be detected in the shift and monthly inspections.

Under paragraph (f)(1), a qualified person must inspect the equipment. The Committee specified a qualified person because the items required in the shift inspection must be examined more thoroughly than during the shift or monthly inspections. The Committee, determined, and OSHA agrees, that the higher level of expertise of a qualified person would help to ensure that the inspector was able to identify deficiencies necessitating a greater degree of scrutiny than what would be required in the shift inspection; for example, a deficiency that is not apparent in a visual inspection but is detectable through taking apart equipment components. The Committee's decision to require a qualified person is consistent with COE–EM 385–1–1 (3 Nov 03) and ASME B30.5–2004, both of which call for a qualified person to perform those standards' "periodic" inspections.

OSHA notes that § 1926.1412(f) does not specify the level of scrutiny for the annual/comprehensive inspection. In drafting the proposed rule, OHSA determined that C–DAC intended for this inspection to be more thorough than the visual inspection for apparent deficiencies required of the shift and monthly inspections. OSHA therefore solicited comments from the public as to whether language specifying a higher level of scrutiny (for example, "thorough, including disassembly when necessary") should be added.

A railroad equipment supplier commented that this section does not additionally burden employers if it requires them to open covers to inspect for safety defects that could cause an incident or death. (ID–0124.) Therefore, they were in support of adding stronger language to paragraph (f) of this section to emphasize some disassembly is necessary to complete a thorough inspection of the equipment. In contrast, two trade associations believed that no additional language was need in the regulatory text to specify that a higher level of scrutiny is needed during an annual inspection. (ID–0205.1; –0213.)

OSHA determines that some disassembly of the equipment will be needed for the qualified person to complete the inspection. Therefore, OSHA has revised § 1926.1412(f)(2) accordingly.

The proposed rule did not require the individual who conducts the annual inspection to review any documentation related to the crane prior to or during the inspection. A labor representative suggested two types of documentation they believe the qualified person should review when conducting an annual inspection. (ID–0182.1.) First, the commenter wanted OSHA to include a requirement in paragraph (f) of this section that the inspector contact the manufacturer for any relevant information the manufacturer may have about the equipment. The commenter explains that the manufacturer may have information about recently discovered defects or deficiencies in the equipment or have recommended modification, which inspectors should take into account when performing the annual inspection.

Second, the commenter recommended that OSHA require the inspector to review all available information regarding the history of the piece of equipment. This information would include annual or periodic inspection reports, which would describe previously discovered defects or previously made modifications, to which the inspector should pay particular attention while conducting a comprehensive inspection. OSHA declines to impose the requirements suggested by the commenter because the Agency does not agree they would lead to better inspections. The annual inspection requirements are designed to ensure that the inspector thoroughly scrutinizes and evaluates the current condition of critical components of the equipment. Reviewing the maintenance history of the equipment will not further the value of this inspection, for defects previously discovered should have been repaired and defects not present in the past may now exist. For example, if a part such as a ball bearing is replaced with a new part, there is no reason to expect that the bearing will fail. To the contrary, the brand new part is less likely to fail than another ball bearing that has been subjected to heavy use for years. OSHA determines that the inspection will be more valuable if the inspector concentrates on thoroughly inspecting the items listed in the rule to determine whether they currently present any safety defects. Similarly, OSHA is not convinced that contacting the manufacturer will yield valuable information that will advance the annual inspection. OSHA determines that important safety information about their products is provided voluntarily by manufacturers to their customers and that a requirement to contact them each year is not likely to yield any further information of value.

Paragraphs (f)(2)(i) through (xxi) specify the parts of the equipment and the conditions the inspector must look for during the annual inspection. The Committee developed this list based on the members' experience and current industry practice as reflected in current consensus standards for annual/periodic inspections. The Committee concluded that each item plays an important role in the safe operation of equipment. Only a few of these items require discussion.

Proposed paragraph (f)(2)(xiv) listed "[o]utrigger pads/floats" for excessive wear or cracks." The purpose of the inspection of outrigger pads/floats is to make certain that these pads (which are attached to the outrigger and used to distribute the weight of the load to the ground) will not fail and leave the outrigger without proper support. In the final rule, OSHA is referring to "outrigger or stabilizer pads/floats" because some types of equipment, such as articulating cranes, are designed to use stabilizers instead of outriggers to add stability at their bases. A full discussion of the comments that prompted this regulatory text change is provided in the explanation of the rule for § 1926.1404(q).

Proposed paragraph (f)(2)(xv) listed "slider pads for excessive wear or cracks." The word "cracks" had not been included in the C–DAC Consensus Document for this item, and two trade associations (ID–0205.1; –0213.1) commented that "cracks" should be removed from the provision to be consistent with the intent of C–DAC. After examining how the word came to be included in the proposed rule, OSHA concludes that the word "cracks" was added inadvertently to this provision and, lacking an evidentiary basis to include it, is removing the words "or cracks" from paragraph (f)(2)(xv) in the final rule.

Section 1926.1412(f)(2)(xviii) has been modified from the proposed rule. Upon review of this requirement, the Agency found that it was necessary to clarify this requirement to allow the use of a seat that is equivalent to the original operator's seat. This provision requires the employer to replace the original seat with one that provides function and safety that is equivalent to the original seat. The text of the final rule has been modified accordingly.

In § 1926.1412(f)(2)(xix) the term "unserviceable" is replacing the term

"unusable" to clarify that the operator's seat must be in good working condition to allow the operator to safely work at the controls of the equipment. The text of the final rule has been modified accordingly.

Paragraph (f)(3) requires functional testing as part of the annual/comprehensive inspection. No comments were received on this provision.

Paragraphs (f)(4) through (6) delineate the follow-up procedures that apply when a deficiency is identified during the annual/comprehensive inspection. The purpose of these provisions is to ensure that a deficiency that is not yet a safety hazard but may develop into one is monitored on a monthly basis, and that a deficiency that is a safety hazard is corrected before the equipment is returned to service.

Paragraph (f)(4) provides that immediately following the identification of a deficiency, the qualified person must determine "whether the deficiency constitutes a safety hazard, or though not yet a safety hazard, needs to be monitored in the monthly inspections." No comments were received and paragraph (f)(4) is promulgated as proposed.

Paragraph (f)(5) requires that equipment with a deficiency identified as a safety hazard by the qualified person be removed from service until the deficiency is corrected. Paragraph (f)(6) requires the employer to check the deficiencies in the monthly inspections that the qualified person had identified as needing monitoring.

In the proposed rule, OSHA discussed an apparent conflict between § 1926.1412(f)(4) and § 1926.1416. Paragraph (f)(2)(v) lists operational aids among the items that must be included in the annual inspection.[73] Section 1926.1416 permits equipment with operational aids that are not functioning properly to continue to be used for limited periods of time as long as specified alternative measures are used while the operational aids are being repaired. By contrast, under § 1926.1412(f)(4), if any deficiency is identified in the annual inspection, the qualified person must make an immediate determination as to whether the deficiency constitutes a safety hazard. If it does, under § 1926.1412(f)(4), the equipment must be removed from service immediately. OSHA requested public comment on whether § 1926.1412(f)(4) should explicitly provide that the corrective action in § 1926.1416 applies if an operational aid is found to be malfunctioning during an annual inspection. Two trade associations agreed that § 1926.1412(f) should state that the corrective action required for malfunctioning operational aids is that specified in § 1926.1416. (ID–0205.1; –0213.1.) OSHA also notes that § 1926.1435(e) specifies the temporary alternative measures that must be implemented when operational aids on tower cranes malfunction, and § 1926.1412(f)(5) applies to tower cranes as well as equipment covered by § 1926.1416. Paragraph (f)(5) of the final rule is modified accordingly.

Moreover, OSHA is adding text to paragraph (f)(1) of this section to emphasize that paragraphs (d)(2) and (d)(3) of this section do not apply to annual inspections.

Paragraph (f)(7), *Documentation of annual/comprehensive inspection,* requires the employer that conducts the inspection to complete and maintain, for a minimum of twelve months, documentation that contains "[t]he items checked and the results of the inspection," and "[t]he name and signature of the person who conducted the inspection and the date of the inspection." Section 1926.1413(c)(4), which pertains to the annual/comprehensive wire rope inspection, contains a similar documentation requirement. In the proposed rule, the 12-month retention requirement was located in paragraph (f)(7)(iii). OSHA has incorporated that requirement into the introductory sentence to clarify that it is the employer who conducts the inspection who must retain the documents for 12 months. OSHA has also clarified that the date of the inspection, not the date on which the document was signed, must be entered on the document.

During the SBREFA process, several Small Entity Representatives objected to the requirement for documentation of monthly and annual inspections, stating that such documentation would be unduly burdensome and would not, in their opinions, add to worker safety. The Panel recommended that OSHA solicit public comment on the extent of inspection documentation the rule should require. OSHA requested comment on this issue.

A local government supported annual/comprehensive inspection documentation. (ID–0156.) It also commented that daily logs should be maintained and submitted to the crane owner to capture when maintenance has been performed on the equipment, and maintained by the equipment owner for the life of the crane. This commenter did not, however, explain how such a retention requirement would produce safety benefits, and OSHA declines to adopt it.

The Committee determined that the documentation of the annual inspection, signed by the person who conducted the inspection and retained for 12 months, would have several effects. First, it would increase the likelihood that more employers would implement systems for conducting and responding to inspections. Second, the failure to do so would be more readily apparent if a record was not made, and the signature of the person who conducted the inspection would be an inducement to that person to ensure that the inspection was done correctly.

The Agency notes that the three month retention period reflects the Committee's decision to have a retention period that is consistent with Department of Transportation truck inspection documentation requirements.

The documentation of these inspections serves as references that inspectors can use to monitor the condition of items critical to the safe operation of the equipment. It has been a longstanding industry practice to maintain annual inspection documentation as a reference that the inspection was completed, to identify who performed the inspections, and to document the results of that inspection.

Paragraph (g) Severe Service

Paragraph (g) of this section requires the employer to inspect the equipment when the severity of use/conditions—"such as loading that may have exceeded rated capacity, shock loading that may have exceeded rated capacity, [or] prolonged exposure to a corrosive atmosphere"—creates a "reasonable probability of damage or excessive wear." In such instances, the employer is required to stop using the equipment and have a qualified person "inspect the equipment for structural damage;" determine whether, in light of the use/conditions of the severe service, any items listed in the annual/comprehensive inspection need to be inspected and if so, inspect them; and if a deficiency is found, follow the correction/monitoring procedures set forth in § 1926.1412(f)(4)–(f)(6).

Upon review of this paragraph, the Agency determines that

[73] Paragraph (f)(2)(v), as proposed and in the final rule, distinguishes between deficiencies that result in "significant inaccuracies" in the operation of any of the safety devices or operational aides, and those that do not. The phrase "significant inaccuracies" reflects the fact that such devices normally operate within a tolerance range. Corrective actions are not required if the inaccuracy is so small as to be irrelevant regarding the safe operation of the equipment. In contrast, significant inaccuracies in these devices could mislead the operator and contribute to actions that could result in the equipment being inadvertently used in an unsafe manner.

§ 1926.1412(g)(1) needs clarification; therefore, OSHA added a phrase to the provision requiring that a determination be made to ensure the equipment remains safe for continued use. This revision emphasizes that this inspection must determine the capability of the equipment to operate continuously under severe conditions. No comments were received on this paragraph, and it is promulgated as proposed, with the exception of the clarification to § 1926.1412(g)(1).

Paragraph (h) Equipment Not in Regular Use

Paragraph (h) of this section requires that equipment that sits idle for three months or more be inspected by a qualified person in accordance with the monthly inspection provisions of § 1926.1412(e) before being used. This would ensure that deficiencies that may arise as a result of the equipment standing idle are checked before its subsequent use. The Committee determined that this inspection would need to be done by a qualified person, rather than a competent person, because some of the deficiencies that may arise from sitting idle require the qualified person's higher level of ability to detect and assess. (*See* further discussion at 73 FR 59775, Oct. 9, 2008.) No comments were received on this paragraph. It is promulgated as proposed.

Paragraph (i) [Reserved]

Paragraph (j)

Proposed paragraph (j) of this section required that any part of a manufacturer's inspection procedures relating to safe operation that is more comprehensive or has a more frequent schedule than that required by this section must be followed. These inspection procedures include any information provided by the manufacturer. Examples are provided in the provision of the types of items that would be considered to relate to safe operation ("a safety device or operator aid, critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism"). The proposed paragraph goes on to state: "Additional documentation requirements by the manufacturer are not required."

Several commenters asked that OSHA delete the line in the regulatory text of § 1926.1412(j) that reads "Additional manufacturer documentation requirements need not be followed." (ID–0165; –0232; –0235.) OSHA acknowledges that the intent of this sentence is unclear and is not including it in the final rule.

A safety association and a trade association commented that the thorough and equipment-specific frequency of inspections required by the manufacturer are well suited for the equipment used in their trades. (ID–0184; –0206.) The safety association asserted that compliance with equipment manufacturers' inspection recommendations assure a greater degree of safety than compliance with a list of shift, monthly, and annual inspections, which may be deficient with regard to thoroughness and frequency. The two commenters asked that OSHA revise § 1926.1412 to allow employer-documented compliance with the inspection recommendations of the equipment manufacturer as an alternative to meeting the requirements of § 1926.1412.

OSHA agrees with the commenters that manufacturer's equipment-specific inspection requirements can help promote safety. For this reason, § 1926.1412(j) provides that any additional inspection requirements recommended by the manufacturer must be followed by employers. However, OSHA does not agree with the commenters regarding their assessment that the minimum inspection requirements and schedules specified in § 1926.1412 are more burdensome for employers who use articulating lifting equipment in particular. There is no evidence in the record that inspections recommended by manufacturers are as thorough as those provided in this section. To the extent that they are, there is no additional burden to employers in requiring them to follow this section than to follow the manufacturer's recommendations.

Paragraph (k)

OSHA determines that the competent person or persons who conduct shift and monthly inspections, and the qualified person who conducts annual inspections, must have access to all written documents produced under this section, during the time for which the employer is required to retain those documents, so that they are made aware of any components of the equipment that may require special attention during their inspections. Accordingly, OSHA is adding a new paragraph (k) at the end of § 1926.1412.

Section 1926.1413 Wire Rope—Inspection

Cranes and derricks use wire rope to lift and support their loads and parts of the equipment. If the rope is worn or damaged, it can break, causing the equipment to fail and/or the load to fall, which can kill or injure workers. Approximately 3% of crane fatalities in construction work result from wire ropes snapping. *J.E. Beavers et al, Crane-Related Fatalities in the Construction Industry,* 132 Journal of Construction Engineering and Management 901, 903 (Sept. 2006). (ID–0011.) Accordingly, C–DAC concluded it would improve crane/derrick safety to establish updated requirements for wire rope inspections.

The definition C–DAC developed for proposed § 1926.1401 defined "wire rope" as "rope made of wire." In the preamble of the proposed rule, OSHA noted that this definition could be read to exclude rope made with a fiber core, which, as discussed below under § 1926.1414, may be used for purposes other than boom hoist reeving. OSHA requested public comment on whether a more appropriate definition would be the following one used by the Specialized Carriers & Rigging Association:

> A flexible rope constructed by laying steel wires into various patterns of multi-wired strands around a core system to produce a helically wound rope.

(73 FR 59739, Oct. 9, 2008.) Three commenters supported this revised definition, and none were opposed. (ID–0187.1; –0205.1; –0213.1.) Accordingly, OSHA is revising the definition in § 1926.1401 to that quoted above.

One of the commenters supporting the revised definition also stated that OSHA should not exclude wire rope with a synthetic or fiber core and should include definitions of these terms. (ID–0187.1.) However, as OSHA explained in the proposed rule, the revised definition is designed to encompass cores other than wire, and OSHA determines it is not necessary to include separate definitions for each type of such rope to make clear that they fall within the definition of "wire rope."

The proposed rule provided for wire rope inspections at the same frequency—shift, monthly, and annually—that would apply for other crane components under § 1926.1412. It also proposed that, like inspections of other components, the shift and monthly inspections be conducted by a "competent person," and the annual inspection by a "qualified person." As discussed below, OSHA is retaining this equivalence of frequency and qualifications in the final rule.

Paragraph (a) Shift Inspection

Paragraph (a)(1) of this section of the proposed rule required a shift

inspection by a competent person. One commenter recommended that this provision require the shift inspection to be conducted "each shift the equipment is used" rather than "each shift," to clarify that the equipment does not have to be inspected when it will not be used on a shift. (ID–0226.0.) This suggested change is consistent with the intent of the proposed rule, and OSHA is adding similar language to § 1926.1413(a)(1) to clarify that intent.

Another commenter stated that it was unnecessary to require a wire rope inspection each shift. (ID–0203.1.) This commenter believed that per-shift wire rope inspections were an unnecessary burden for employers with good maintenance programs who have not experienced wire rope failures. The commenter recommended that OSHA adopt the protocol in sec. 5–2.4 of ASME B30.5–2004, which allows the periodic inspection frequency to be determined by a qualified person based on factors that affect rope life.

OSHA rejects this commenter's suggestion which could, at a qualified person's discretion, result in less frequent wire rope inspections than were required under former subpart N. Section 5–2.4.1 of ANSI B30.5–1968, which was incorporated by reference in subpart N, provided for wire rope inspections "once each working day." The current version of B30.5, in sec. 5–2.4.2(a) of ASME B30.5–2004, similarly provides for daily wire rope inspections. The commenter's reference to the provision in ASME B 30.5–2004 that allows the inspection frequency to be determined by a qualified person refers to the type of comprehensive inspection that is similar to the annual inspection required by § 1926.1413(c), not to the shift inspections required under § 1926.1413(a).

As discussed below, the purpose of this inspection is to ensure that deficiencies are identified and that, depending on the competent person's evaluation of those deficiencies, appropriate action is taken. C–DAC wanted to make clear, however, that the inspection was not to be so comprehensive and time-consuming that it would be unrealistic to conduct it for each shift. To clarify that the inspection was one that was reasonable for a shift inspection, the provision states that neither "untwisting (opening of wire rope)" nor "booming down" is required during this inspection. OSHA believes that requiring a realistic level of inspection each shift will encourage compliance and ultimately serve to reduce accidents. No comments were received on this aspect of the proposed rule.

Proposed § 1926.1413(a)(1) referred to wire ropes (running and standing) that are "reasonably likely" to be in use during the shift. OSHA is also removing the word "reasonably" to avoid ambiguity. Accordingly, § 1926.1413(a)(1) is promulgated as proposed except for the minor changes noted above.

Paragraph (a)(2) Apparent Deficiencies

Paragraph (a)(1) of this section requires the competent person to conduct a "visual inspection * * * for apparent deficiencies, including those listed in paragraph (a)(2)." Proposed paragraph (a)(2) established three categories (I, II, and III) of apparent wire rope deficiencies. The likelihood that a deficiency is hazardous increases as the number of the category increases from I to III. The basis for categorizing apparent deficiencies in this way was discussed in detail in the proposed rule (73 FR 59776–59777, Oct. 9, 2008). As discussed further below, the category determines the options or "next steps" available to or required of the employer under paragraph (a)(4), *Removal from service.*

The Agency is providing minor clarifications for the two apparent deficiencies that relate to damage from electricity. As proposed, paragraph (a)(2)(i)(C) read: "Electric arc (from a source other than power lines) or heat damage." C–DAC intended that both "electric arc" and "heat" would modify "damage." To make this more clear, OSHA is adding the word "damage" after "electric arc." Proposed paragraph (a)(2)(iii)(B) read: "Electrical contact with a power line." OSHA is adding the word "prior" at the beginning of the paragraph to clarify that the inspector must note a deficiency whenever he or she is aware, through observation or from any other information, that the wire rope has previously made electrical contact with a power line.

OSHA notes that a wire rope can be damaged in two ways from electrical contact. First, if the source of electrical power contacts the wire rope, the electricity can arc to the wire rope and cause a localized burn. The extent of the damage will depend on the amount of electrical energy involved. A low energy arc will typically cause little damage; a high energy arc may cause significant damage. When the arc results from a source other than a power line, the extent of the damage will vary, and the inspector must determine whether the rope is damaged to the extent that repair or replacement is necessary.

If a power line arcs to a wire rope, there will usually be sufficient localized burn damage that the rope must be removed from service. However, a wire rope may make electrical contact with a power line and leave no visible damage. For example, if the load contacts a power line and is not insulated from the wire rope, a large current can flow through the rope. The current may be large enough to damage the internal structure of the rope and weaken it without leaving any visible evidence on the rope itself that this has happened. There is no realistic way to assess the internal damage that such electrical contact has caused to the wire rope. Therefore, C–DAC determined that any wire rope that came into electrical contact with a power line must be removed from service.

Only one comment was submitted regarding proposed paragraph (a)(2). The commenter suggested adding two additional conditions to the list of Category II deficiencies. (ID–0121.1.) The first is where one outer wire is broken at the point of contact with the core of the rope and protrudes or loops out from the rope structure. The second is where one outer wire is broken at the strand to strand contact point and is raised up from the body of the rope or looped out of the rope structure.

OSHA disagrees with the commenter because this commenter did not offer any rationale to justify these additional provisions. Therefore, OSHA is deferring to the expertise of the Committee. Section 1926.1413(a)(2) is promulgated as proposed except for the clarifications noted above.

A "running wire rope" is a wire rope that moves over sheaves or drums. This definition is included in § 1926.1401 of this final rule to make clear the nature of the wire rope that is subject to this inspection provision. These criteria are the same as those contained in sec. 5–2.4.3 of ASME B30.5–2004, and those for running wire ropes and pendant or standing wire ropes are also contained in sec. 5–2.4.2 of ANSI B30.5–1968, which is incorporated by reference in subpart N. One issue that was left unanswered during the Committee discussions is whether these broken wire criteria are equally applicable when using plastic sheaves. The Agency requested public comment on this issue. However, no comments were received. OSHA notes that the proposed broken wire criteria did not depend on the type of sheave involved and would therefore include plastic as well as metal sheaves. Since the paragraph is being promulgated as proposed, the criteria apply regardless of the material of which the sheave is made.

Paragraph (a)(3) Critical Review Items

Under paragraph (a)(3) of this section, the competent person must give particular attention to certain "Critical Review Items" during the shift inspection (as well as, as discussed below, in the monthly and annual inspections). Proposed paragraph (a)(3)(iii) listed, among the critical review items, "wire rope at flange points, [and] crossover points." These terms were defined in proposed § 1926.1401, *Definitions.*

One commenter suggested that each wrap of the rope is a crossover point such that the crossover points will line up across the face of the drum. (ID–0121.) The Agency disagrees with this view. As defined in the standard, a crossover point occurs "where one layer of rope climbs up and crosses over the previous layer * * *." While the rope climbs up at the drum's flange, it does not climb up as it then spools across the previous (lower) layer towards the other flange, *i.e.,* as it wraps across the face of the drum.

In the proposed rule, OSHA noted that the items listed in §§ 1926.1413(a)(3)(iv) and (a)(3)(v) ("Wire rope adjacent to end connections" and "Wire rope at and on equalizer sheaves") are functionally equivalent to items requiring special scrutiny during the annual inspections required in proposed §§ 1926.1413(c)(2)(ii)(C) and (F) ("Wire rope in contact with saddles, equalizer sheaves or other sheaves where rope travel is limited" and "Wire rope at or near terminal ends"). The Agency stated that it planned to revise the language in proposed §§ 1926.1413(a)(3)(iv) and (a)(3)(v) to match the language in §§ 1926.1413(c)(2)(ii)(C) and (c)(2)(ii)(F). This would enable OSHA to delete §§ 1926.1413(c)(2)(ii)(C) and (c)(2)(ii)(F) because § 1926.1413(c)(2)(ii)(A) incorporates by reference the critical review items listed in §§ 1926.1413(a)(3)(iv) and (a)(3)(v), thereby making the items listed in §§ 1926.1413(c)(2)(ii)(C) and (c)(2)(ii)(F) redundant. OSHA did not receive any adverse comment on modifying §§ 1926.1413(a)(3)(iv) and (a)(3)(v) in this manner and modified § 1926.1413(a)(3) accordingly.

Paragraph (a)(4) Removal From Service

Paragraph (a)(4) of this section of the proposed rule set out remedial steps to be taken once the competent person performing the inspection identifies an apparent deficiency. Those steps depended upon whether, under § 1926.1413(a)(2), the deficiency falls under Category I, II, or III. Under this approach, immediate removal from service would be required for certain deficiencies, while continued use under prescribed circumstances would be allowed for others before the rope must be removed from service. When removal from service is required, the provisions of § 1926.1417 (Operation) apply, and the inspector must either tag out the entire equipment or the hoist with the damaged wire rope. This approach was adopted by C–DAC because, in the Committee's collective experience, different types of deficiencies warrant different responses, with some deficiencies being so serious that continued use of the rope must be prohibited while other deficiencies may, if adequately evaluated and monitored, allow continued use of the rope for a limited time.

Paragraph (a)(4)(i) applies to Category I apparent deficiencies. Paragraph (a)(4)(i)(B) allows the rope to be severed under some circumstances and the undamaged part to be used. Two commenters suggested that language be added to require the user to verify that the drum will still have at least two wraps of rope around it when the block is lowered to its lowest position. (ID–0122; –0178.1.) The concern of these commenters is that shortening the rope too much might not leave enough rope to allow a sufficient margin of safety (two wraps) to remain on the drum and prevent the rope from becoming disconnected from the drum.

Another provision of the final rule, § 1926.1417(t), addresses this potential safety hazard by requiring that neither the load nor the boom be lowered below the point where less than two full wraps of rope remain on their respective drums. Normally, newly installed ropes are long enough to ensure compliance with § 1926.1417(t) when the load or boom are in their lowest positions, and these commenters are concerned that shortening the rope could result in the rope becoming disconnected if the remaining part of the rope is not long enough to always ensure that two wraps remain on the drum.

OSHA agrees with this comment and is adding language to paragraph (a)(4)(i)(B) (and also to paragraphs (a)(4)(iii)(B) and (c)(3)(i)(B) of this section, which contain a similar provision) to specify that if a wire rope is shortened under this paragraph, the employer is required to ensure that the drum will still have two wraps of wire rope when the load and/or boom is in its lowest position.

OSHA also notes that paragraph (a)(4)(i)(B) twice refers to power line contact in the phrases "other than power line contact" and "repair of wire rope that contacted an energized power line is also prohibited." OSHA is concerned that these phrases could be misleading in a paragraph devoted to remedial steps for a Category I deficiency, as power line contact can never be a Category I deficiency. It is a Category III deficiency that requires immediate replacement of the rope. To avoid any implication that power line contact could be a Category I deficiency and that a competent person could determine that the rope does not constitute a safety hazard under paragraph (a)(4)(i), OSHA is deleting the words in proposed paragraph (a)(4)(i)(B) referring to power line contact.

Paragraph (a)(4)(ii) applies to Category II apparent deficiencies. In paragraph (a)(4)(ii)(A), OSHA is removing the references to safety hazards to make it clear that utilization of this option (compliance with manufacturer requirements) mandates removal of the rope from service whenever the manufacturer's criteria for removal from service are met, without the employer making an independent determination as to whether the rope is a safety hazard.

Paragraphs (a)(4)(ii)(B) and (C) allow the employer the option of either removing the wire rope from service or to implement the measures as described in paragraph (a)(4)(i)(B) above. In addition, OSHA is adding a cross-reference to § 1926.1417 (Operation), which includes a number of separate requirements that are triggered if the equipment is taken out of service.

The proposed rule would have allowed Category II wire-rope deficiencies [74] to remain in service up to 30 days when using specified alternative measures. Under former subpart N, these deficiencies would have resulted in removing the wire rope immediately from service. However, OSHA relied on C–DAC's expertise and proposed the provision as recommended by the Committee.

The Agency received comments regarding the alternative measures proposed for Category II wire-rope deficiencies from three commenters. All of the commenters objected to allowing continued use of wire rope with Category II deficiencies. Two of the commenters stated that the proposed option to continue using wire rope with the proposed alternative measures relaxed both national consensus standards and the instructions of wire rope manufacturers. (ID–0122.0; –0178.1.) They believed allowing the employer to use the damaged wire rope in service up to 30 days was a

[74] These measures were proposed at §§ 1926.1413(a)(4)(ii)(B) and 1926.1413(a)(4)(iii).

dangerous precedent because it based employee protection on conditions that could be difficult for a qualified person to assess accurately.

The third commenter (a crane manufacturer), which had a representative on C–DAC, also objected to the continued use of wire rope with Category II deficiencies. (ID–0292.1.) This commenter noted that such deficiencies indicate that the wire rope does not meet the "acceptable life" criteria accepted by the wire-rope industry. Further, the commenter noted that, if the wire rope continued to be used with the Category II deficiencies, "failure could occur without further indication."

OSHA finds these comments persuasive with respect to the protection of employee safety. The integrity of the wire rope is critical to the safety of any lift performed by equipment covered by this subpart. For example, a break in the rope can result in a dropped load which endangers employees on the worksite. Based on these comments and the requirements of former subpart N, OSHA is changing the requirements in the final rule for wire rope with Category II deficiencies. The Agency notes that this revision is consistent with the requirements of former subpart N. Accordingly, the alternative measures outlined in the proposed rule at § 1926.1413(a)(4)(iii) have been deleted and subsequent paragraphs renumbered.

Paragraph (a)(4)(iii)[75] applies to Category III apparent deficiencies. Two commenters suggested that Category III is unnecessary because paragraph (a)(4)(iv)(B) is the same as for Category I. (ID–0122; –0178.1.) As noted above, the corresponding proposed provision for Category I, paragraph (a)(4)(i)(B), is being changed to remove the references to power line contact. Moreover, Category III differs from Category I because the competent person may decide that rope with a Category I deficiency does not constitute a safety hazard and allow the rope to continue to be used. However, rope with a Category III deficiency must either be replaced or, if the deficiency is localized and did not result from power line contact, be severed and the undamaged part to be used.

As discussed above in relation to paragraph (a)(4)(i)(B), OSHA is changing paragraph (a)(4)(iii)(B)[76] to state that, if the rope is severed and the undamaged portion used, the rope in use must be long enough to ensure that two full wraps remain on the drum at all times.

Proposed paragraph (a)(4)(iv)[77] specified that where a wire rope must be removed from service under this section, the equipment (as a whole) or the hoist with that wire rope must be tagged-out as provided in proposed § 1926.1417(f)(1) until the wire rope is replaced or repaired. No comments were received on this provision, and it is being promulgated as proposed.

A commenter suggested adding that the competent person who conducts the shift inspection must receive such information in writing. (ID–0132.1.) OSHA concludes that the competent person or persons who conduct shift and monthly inspections, and the qualified person who conducts annual inspections, must have access to all written documents produced under this section so that they are made aware of any components of the equipment that may require special attention during their inspections.

Accordingly, OSHA is adding a new paragraph (e) at the end of § 1926.1413 that specifies that all documents produced under this section must be available to all persons who conduct inspections under this section.

Paragraph (b) Monthly Inspection

Proposed paragraph (b) required a monthly inspection of wire rope that would be, in both the level of scrutiny and the expertise required of the inspector, a documented shift inspection.

A commenter pointed out that paragraph (c)(3)(ii) requires that certain deficiencies identified during the annual inspection must be monitored during the monthly inspection and suggested that this requirement be specifically stated in paragraph (b). (ID–0226.) OSHA agrees and is adding paragraph (b)(2), which states that the inspection must include any deficiencies identified in the annual inspection as needing to be monitored.

Paragraph (c) Annual/Comprehensive

Proposed § 1926.1413(c) required an annual inspection (at least every 12 months) for wire rope, conducted by a qualified person. The annual inspection would be considerably more thorough and comprehensive than the shift and monthly inspections required by paragraphs (a) and (b) of this section. In addition, it would be conducted by a "qualified person," who would have greater expertise than the "competent person" who must conduct the shift and monthly inspections. The timing and inspector qualifications for the annual wire rope inspection coincide with those for the general equipment annual/comprehensive inspection. C–DAC believed that the use of corresponding timeframes and personnel will allow inspections to be conducted efficiently and thereby promote effectiveness and compliance.

Under proposed paragraph (c)(1), all apparent deficiencies and critical review items required to be checked in a shift inspection would have to be checked in the annual/comprehensive inspection (*see* paragraphs (a)(2) and (a)(3)). No comments were received on this provision, and it is being promulgated as proposed.

Proposed paragraph (c)(2) provided for a more thorough inspection than that required under paragraph (c)(1). Under proposed paragraph (c)(2), a complete and thorough inspection, covering the surface of the entire length of the wire ropes, would be required. One commenter, which had nominated a member of C–DAC, stated that the entire length of the rope needed to be inspected more frequently than annually and suggested that this requirement should be included in the monthly inspection provision. (ID–0 292.1.) This commenter did not provide any evidence to support this assertion or explain why it was deviating from the position its nominee took in favor of the provision in the C–DAC negotiations. This comment is accorded diminished weight in light of this inconsistency of position. OSHA defers to the expertise of the full Committee and is retaining the requirement that the entire length of the rope be inspected during the annual inspection; it is not adding such a requirement to the monthly inspection provision.

As discussed in relation to § 1926.1413(a)(3), OSHA has, in the final rule, modified proposed §§ 1926.1413(a)(3)(iv) and (a)(3)(v) to read the same as proposed §§ 1926.1413(c)(2)(ii)(C) and (F) ("Wire rope in contact with saddles, equalizer sheaves or other sheaves where rope travel is limited" and "Wire rope at or near terminal ends"). Section 1926.1413(c)(2)(ii)(A) now incorporates by reference the critical review items listed in §§ 1926.1413(a)(3)(iv) and (a)(3)(v), thereby making the items listed in §§ 1926.1413(c)(2)(ii)(C) and (c)(2)(ii)(F) redundant.

Two commenters supported keeping paragraphs (c)(2)(ii)(C) and (F), even though they are also included in paragraph (a)(3) of this section, saying that annual inspections are more comprehensive and, in their view,

[75] This was § 1926.1413(a)(4)(iv) in the proposed rule (73 FR 59930, Oct. 9, 2008).

[76] This was § 1926.1413(a)(4)(iv)(B) in the proposed rule (73 FR 59930, Oct. 9, 2008).

[77] This was § 1926.1413(a)(4)(v) in the proposed rule (73 FR 59930, Oct. 9, 2008).

should be treated separately. (ID–0205.1; –0213.1.) However, the modification made by OSHA does not change the proposed requirements for annual inspections; it only avoids redundant language. Accordingly, OSHA is deleting proposed §§ 1926.1413(c)(2)(ii)(C) and (F) from the final rule and is renumbering proposed paragraphs (D) and (E) to (C) and (D).

Proposed paragraph (c)(2)(iii) established an exception to the timing of the annual/comprehensive inspection where that inspection is infeasible due to "existing set-up and configuration of the equipment (such as where an assist crane is needed) or due to site conditions (such as a dense urban setting)." The provision sets a timetable for annual/comprehensive inspections in such cases that requires the inspection to be performed "as soon as it becomes feasible, but no longer than an additional 6 months for running ropes and, for standing ropes, at the time of disassembly." The provision reflects C–DAC's concern that, particularly in densely developed urban settings, the inability to boom down would prevent the employer from completing a comprehensive wire rope inspection.

Two commenters objected to the length of the six-month period and suggested it be reduced to one month. (ID–0122.0; –0178.1.) Neither commenter provided any evidence of explanation to support its recommendation, so OSHA is deferring to C–DAC's collective judgment and is retaining the six-month period in the proposed rule.

Proposed paragraph (c)(3) listed the next steps to be taken once the qualified person performing the annual/comprehensive inspection discovers a deficiency. The qualified person must immediately determine whether the deficiency constitutes a safety hazard. If it does, under proposed paragraph (c)(3)(i), the rope would either have to be replaced or, if the deficiency is localized, the damaged part may be severed and the undamaged portion may continue to be used. As with paragraph (a)(4)(i)(B), joining lengths of wire rope by splicing would be prohibited.

As discussed under paragraph (b)(3), a commenter recommended that the requirement of paragraph (c)(3)(ii) should be explicitly referenced in the monthly inspection reports, and OSHA has made an addition to paragraph (b)(3) to accomplish this. (ID–0226.) Also, as discussed under paragraph (a)(4)(i)(B), OSHA is adding a requirement to paragraph (c)(3)(i)(B) that at least two full wraps of wire rope must remain on the drum when the load and/or boom is in its lowest position.

Paragraph (c)(4) requires the annual/comprehensive inspection to be documented according to § 1926.1412(f)(7), which is the documentation provision for the annual general inspection. As with other parallel requirements in this section, C–DAC intended to ensure consistency with other recordkeeping requirements and thus facilitate compliance. Section 1926.1412(f)(7), which is incorporated by reference, requires the employer that is conducting the inspection to document and retain for 12 months, "the items checked and the results of that inspection" and "the name and signature of the person who conducted the inspection and the date." No comments were received on paragraph (c)(4), and it is promulgated as proposed.

Paragraph (d)

Proposed § 1926.1413(d) provided that employers may not use rope lubricants that are of the type that hinder inspection.

This provision would prohibit, for example, rope lubricants that are opaque or so dark that they mask the wire rope inside them. A commenter suggested adding to this provision the following sentence: "The rope surface and strand valleys must be cleaned of dirt, lubricant or other material that will hinder inspection." (ID–0121.1.) OSHA determines that this addition is unnecessary. Section 1926.1413 requires various inspections, and the requirement to conduct an inspection inherently means that where foreign material that would prevent the inspection is present, it must be removed. The prohibition against rope lubricants that are of the type that hinder inspection is needed because they are difficult to remove and pose an unnecessary obstacle to compliance. Section 1926.1413(d) is promulgated in the final rule as proposed.

Paragraph (e)

A commenter suggested adding that the competent person who conducts the shift inspection must receive such information in writing. (ID–0132.1.) Similarly, OSHA determines that the competent person or persons who conduct shift and monthly inspections, and the qualified person who conducts annual inspections, must have access to all written documents produced under § 1926.1413. In response to this comment, OSHA is adding paragraph (e) to ensure that persons who conduct inspections have access to documentation required by § 1926.1413 during the period for which those documents must be retained. This documentation serves as a reference for conditions that must be monitored in subsequent inspections. OSHA concludes that this documentation will ensure that only safe equipment is put into service.

Section 1926.1414 Wire Rope—Selection and Installation Criteria

This section sets forth requirements for selecting and installing wire rope. C–DAC determined, and OSHA agrees, that the proper selection and installation of wire rope is integral to the safe operation of equipment that uses such rope. Improper selection or installation could cause the wire rope to fail, resulting in any number of hazards from uncontrolled movement of the equipment or the load. As discussed in the proposed rule, § 1926.1414, in addition to addressing safety concerns related to wire rope selection and installation, provides greater flexibility in the selection process than previous requirements under subpart N (73 FR 59781, Oct. 9, 2008). This flexibility reflects and takes advantage of new developments in wire rope technology.

Paragraph (a)

Proposed paragraph (a) of this section stated that "selection of replacement wire rope shall be in accordance with the requirements of this section and the recommendations of the wire rope manufacturer, the equipment manufacturer, or a qualified person." In the proposed rule, OSHA noted that proposed paragraph (a)'s mention of only "replacement rope" could mislead some readers to conclude that all of § 1926.1414 applies only to replacement rope, whereas C–DAC clearly intended that § 1926.1414 would apply to both original equipment rope and replacement rope. OSHA proposed to reword § 1926.1414(a) to read as follows: "Original equipment wire rope and replacement wire rope shall be selected and installed in accordance with the requirements of this section. Selection of replacement wire rope shall be in accordance with the recommendations of the wire rope manufacturer, the equipment manufacturer, or a qualified person."

OSHA requested public comment on such a revision. OSHA received no comment on proposed § 1926.1414(a) or on its proposed rewording. Accordingly, OSHA modified § 1926.1414(a) of the final rule to reflect the proposed rewording.

Paragraph (b)

The proposed rule, in § 1926.1414(c), included design factors for rotation resistant rope but did not include design factors for standard (that is, non-rotation resistant) rope. In the proposal, OSHA stated its determination that, in light of the importance of design factors for wire rope, the omission of design factors for standard rope was inadvertent (73 FR 59781, Oct. 9, 2008). OSHA proposed to include the design factors for standard rope in sec. 5–1.7.1 of ASME B30.5–2004. OSHA requested public comment on the issue.

Comments were received from two parties, both of whom nominated C–DAC members. (ID–0205.1; –0213.1.) They stated that the omission was intentional, believing that C–DAC did not include design factor criteria for standard wire rope because technology is continually evolving and including design criteria in the rule may hamper future crane operations. The commenters stated that the proposed rule had provisions requiring end users to conform with requirements or criteria established by the wire rope manufacturer, equipment manufacturer, or a qualified person.

OSHA notes that C–DAC determined it was important for this rule to allow flexibility to accommodate future technological changes. The commenters on this issue reiterated that determination, and OSHA shares that concern. Setting unduly restrictive specifications based on current technology could unnecessarily impinge on the use of future designs. The Agency also concludes, however, that some form of minimum criteria is necessary so that those selecting wire rope have a minimum benchmark available as a reference point.

To meet both of these objectives, the Agency has decided, in the final rule, to add a new paragraph (b) to § 1926.1414 to provide employers with two options with regards to wire rope design criteria. The first option would be to comply with an industry consensus standard (sec. 5–1.7.1 of ASME B30.5–2004) on design factors for standard wire rope. *See* § 1926.1414(b)(1). This is a well-established benchmark for standard wire rope design factors, and the Agency therefore determined that it is appropriate to include it as an option. Paragraph (c) of sec. 5–1.7.1 is excluded because that deals with rotation resistant rope, which is addressed in § 1926.1414(e).

The second option provides a performance benchmark that is based on the rope's compatibility with the rated capacity of the equipment and on the need to be able to rely on the inspections in § 1926.1413 as an effective means of ensuring the continued safety of the rope. *See* § 1926.1414(b)(2). Specifically, the design must be sufficient to ensure that, when the equipment is used in accordance with its rated capacity, the employer will be able to prevent a sudden failure of the rope by meeting the inspection requirements in § 1926.1413.

This concept reflects the underlying premise of § 1926.1413 that regular inspection of the rope can prevent catastrophic failure because the rope's degradation will take place over time and will be accompanied by indications of wear. Therefore, if the rope is appropriate for the equipment, the degradation that occurs with use will be sufficiently gradual so that its development can be identified in the required inspections and the rope can be removed from service before safety is compromised.

Paragraph (c)

The benchmarks in the two options in paragraph (b) of this section do not address an additional design issue, which is the suitability of the wire rope with respect to the proper functioning of the equipment. For example, selecting a rope with a diameter that is too large for a particular machine can result in the rope jumping a sheave. Such a condition could, among other adverse consequences, affect the operator's ability to control the load. Therefore, OSHA has added an additional provision, in new § 1926.1414(c), that requires the rope to be compatible with the safe functioning of the equipment.

Paragraph (d) Boom Hoist Reeving

With the addition of the two new paragraphs, (b) and (c), OSHA is redesignating proposed paragraphs (b) through (f) of this section as paragraphs (d) through (h) in the final rule.

Proposed paragraph (b) would have prohibited the use of fiber core ropes for boom hoist reeving, except for use on derricks. In the Committee's view, the composition of fiber core ropes makes them prone to degradation that is not completely detectable by normal inspection techniques. Nothing in the record contradicts that conclusion.

One commenter stated that there was no practical reason to allow the use of fiber core ropes for boom hoist reeving on derricks but not in other boom hoist applications. (ID–0121.1.) However, as explained in the proposed rule, the distinction between derricks and cranes is warranted because the sheaves on derricks are smaller than those on cranes and therefore require ropes that can accommodate reverse bending better than ropes used on cranes. Fiber core ropes are more pliable than ropes with a metal core and are therefore suited to applications requiring greater reverse bending, such as use on derricks. Moreover, the distinction between derricks and cranes is consistent with current national consensus standards. The 2004 version of ASME B30.5, in sec. 5.1.7.2(b), prohibits the use of fiber core wire ropes for boom hoist reeving for mobile and locomotive cranes. By contrast, the standard in the ASME B30 series that applies to derricks, ASME B30.6–2003, does not prohibit the use of fiber core wire rope for boom hoist reeving. Permitting the use of fiber core ropes for boom hoist reeving on cranes, as the commenter suggests, would reduce protection over that currently considered prudent in the industry, and OSHA is therefore promulgating paragraph (b)(1) as proposed, renumbering it as paragraph (d)(1).

Proposed paragraph (b)(2) prohibited the use of rotation resistant rope for boom hoist reeving except where the requirements of paragraph (c) (renumbered paragraph (e) in the final rule), are met. No comments were received on this paragraph (b)(2), and it is being promulgated as paragraph (d)(2) with the reference to paragraph (c) in the proposed rule changed to paragraph (e)

Paragraph (e) Rotation Resistant Ropes

Paragraph (e)(1)

Proposed paragraph (c)(1) of this section classified rotation resistant ropes into three "Types" ("Type I", "Type II", and "Type III"). Proposed paragraph (c)(2) specified use limitations and requirements for each type of wire rope. This approach differed from former subpart N, ANSI B30.5–1968 and ASME B30.5–2004, which did not distinguish between types of rotation resistant rope. By distinguishing between different types of rope, the Committee sought to ensure that ropes with different internal structures were subject to appropriate requirements and limitations that would enable them to be used safely. Types I, II, and III, which have different capabilities, were described in proposed paragraph (c)(1).

ASTM A 1023/A 1023M–02 has a similar classification system, although it divides rotation resistant ropes into "categories" rather than "types." One commenter noted that there is no meaningful difference between the classification in the proposed rule and that in ASTM A 1023. (ID–0060.1.) This

commenter urged OSHA to incorporate by reference the ASTM definitions rather than to state the definitions in the final rule. This would, the commenter suggested, avoid confusion among manufacturers and users who rely on the ASTM's classification system.

Although the provisions in the final rule are substantively similar to those in the ASTM standard, the Agency uses the term "category" in the wire rope provisions of subpart CC that relate to the classification of apparent deficiencies (*see, e.g.,* § 1926.1413(a)(2)). Therefore, to avoid confusion with those provision, OSHA uses the term "type" in classifying rotation resistant rope in § 1926.1414. OSHA concludes that the use of "category" in the ASTM standard would cause considerable confusion if OSHA were to incorporate the ASTM definitions directly. Accordingly, OSHA is promulgating proposed paragraph (c)(1) as paragraph (e)(1) of the final rule.

Paragraph (e)(2)

Paragraphs (e)(2) of this section sets forth use requirements of the three types of rotation resistant rope in terms of operating design factors (and in some instances activity). The purpose of these provisions is to ensure that the selection of the type of rotation resistant rope is suitable, in terms of safety, to its use.

These requirements are identical to those in proposed paragraph (c)(2). The preamble to the proposed rule explained in detail the basis for setting these design factors for rotation resistant rope (*see* 73 FR 59782–59783, Oct. 9, 2008). One commenter, stated that rotation resistant ropes should have a design factor of less than 5 only for single engineered lifts, but provided no rationale for this position. No other comments addressed the proposed design factors, and OSHA is deferring to the expertise of C–DAC and incorporating the design factors in paragraph (e)(2) of the final rule.

As discussed in the preamble to the proposed rule, paragraphs (e)(2)(i)–(iv) use the phrase "operating design factor." "Operating" is included to show that the factors specified in these provisions are to reflect how the rope is installed on the specific piece of equipment in which it is used. In other words, the operating design factor is calculated based on numerous considerations associated with both the rope's design and how it is installed on the equipment.

The prohibition on the use of rotation resistant rope for duty cycle and repetitive lifts does not apply to Type I rope because the Committee determined that such rope is significantly more resistant to rotation or torque compared with Types II and III. This reduces Type I's potential for internal wear during use and moves degradation from the inner wires to the outer wires, where damage is more easily detected during wire rope inspections. Accordingly, the Committee concluded that Type I rope can safely be used for duty cycle and repetitive lifts at an operating design factor below 5 (but no less than 3.5), as specified in proposed paragraph (c)(2)(ii). No comments addressed the distinction between the types of wire rope in paragraph (e)(2)(i) of this section.

In the proposed rule, OSHA noted that C–DAC did not include definitions for "duty cycle" or "repetitive lifts." The Agency asked for comment on whether definitions of these terms should be included in § 1926.1401 and proposed definitions that it determined were consistent with C–DAC's understanding and widely understood in the industry. OSHA proposed to define "duty cycle" as "a continuous operation in which approximately the same type and weight of load is handled." It gave dredging with a clamshell as an example of duty cycle work. OSHA proposed to define "repetitive lifts" as "a continuous operation with loads that may vary in size and weight." For an example, it noted that steel erection work typically involves repetitive lifts of various size and configurations of structural steel members.

Three commenters agreed that "duty cycle" and "repetitive lifts" should be defined, and no commenters suggested otherwise. (ID–0205.1; –0213.1; –0226.) The commenters on the subject did not object to OSHA's proposed definition of "repetitive lifts," but two recommended that OSHA's proposed definition of "duty cycle" be replaced with the following:

> A type of crane service in which bulk material is transferred from one point to another by rapidly lifting, swinging, booming, and placing the material. Typical types of duty cycle service are dragline, clamshell, grapple, and magnet. This type of service is differentiated from standard crane "lift service" in that cycle times are very short and continuous, often less than 1 minute per load, and loads are lifted and placed in general areas rather than precise positions to permit such rapid cycles.

(ID–0205.1; –0213.1.)

OSHA determines that in most respects the commenters' suggested definition is clearer and better reflects the intent of the Agency. Therefore, OSHA is adopting their definition with only minor modification (the reference to "lifting, swinging, booming and placing" is not necessary, since those actions simply describe typical crane movements). OSHA is therefore adopting a slightly modified version of the definition suggested by the commenters. This definition is being included in § 1926.1401, as is the definition for "repetitive lifts" proposed by OSHA and quoted above.

Paragraph (e)(3)

This proposed paragraph specified additional requirements that must be met when Types II and III rotation resistant wire rope are used with an operating design factor of between 3.5 and 5 (for non-duty cycle, non-repetitive lifts). The Committee concluded that these additional requirements are needed to ensure that use of such ropes would be safe.

Due to renumbering, proposed paragraph (c)(3) corresponds to final paragraph (e)(3). One commenter believed that the reference to "these provisions" in proposed paragraph (c)(3)(iii) was unclear and should be clarified to state whether it refers to the entire subpart CC or to specific provisions. (ID–0214.1.) As used here, "these provisions" refers to lifts under final paragraph (e)(3). To avoid any ambiguity, "these provisions" is being changed to "§ 1926.1414(e)(3)."

The same commenter who stated in regard to final paragraph (e)(2) that rotation resistant rope should have a design factor of less than 5 only for single engineered lifts recommended that paragraph (e)(3) also be changed to reflect its recommendation. (ID–0292.1.) OSHA is rejecting that suggestion for the same reason given in relation to paragraph (e)(2). No other objections to proposed paragraph (c)(3) (final paragraph (e)(3)) were received. Accordingly, with the single exception just mentioned in regard to final paragraph (e)(3)(iii), proposed paragraph (c)(3) is being promulgated as final § 1926.1414(e)(3).

Paragraph (e)(4) Additional Requirements for Rotation Resistant Rope for Boom Hoist Reeving

Paragraph (e)(4)(i) of this section prohibits rotation resistant rope from being used for boom hoist reeving except where the requirements of paragraph (e)(4)(ii) of this section are met. C–DAC members determined that the general prohibition was necessary because, in their experience, rotation resistant rope used for boom hoist reeving tends to twist and thereby suffer internal damage when it passes over sheaves that are close together. However, C–DAC concluded that safety would not be compromised when

rotation resistant rope is used for boom hoist reeving as long as the conditions in paragraph (e)(4)(ii) of this section are met.

The Committee also determined that the exception would serve a practical purpose, especially when using attachments such as luffing jibs. The auxiliary hoist is typically used as a boom hoist for such attachments, and is normally rigged with rotation resistant rope. The exception enables the employer to avoid the need to change the rope when using such attachments when safety could be assured by meeting the specified conditions for its use.

The conditions under which rotation resistant rope may be used for boom hoist reeving were contained in proposed paragraph (c)(4). No substantive objections to that proposed paragraph were received. Two commenters stated that the phrase "rated capacity" in proposed paragraph (c)(4)(ii)(F) should be replaced with "rated load capacity." (ID–0205.1; –0213.1.) As noted in the proposed rule, the C–DAC proposal attributed the same meaning to both "rated capacity" and "rated load capacity," and OSHA is consistently using the term "rated capacity" wherever C–DAC used either term to avoid any confusion (*see* 73 FR 59738, Oct. 9, 2008). Accordingly, proposed paragraph (c)(4) is being promulgated as final paragraph (e)(4) without substantive change.

Paragraph (f)

Proposed paragraph (d) of this section specified that wire rope clips used with wedge sockets may only be attached to the unloaded dead end of the rope, except that devices specifically designed for dead ending rope in a wedge socket are also permitted.

The Committee concluded that this provision was necessary to ensure attachment strength, reliability and prevention of cable damage. No comments concerning this provision were submitted, and OSHA is promulgating it as § 1926.1414(f).

Paragraph (g)

Proposed paragraph (e) of this section stated that socketing must be done according to the specifications of the manufacturer of the wire rope or fitting. No comments regarding this provision were received, and OSHA is promulgating it as § 1926.1414(g).

Paragraph (h)

Proposed paragraph (f) of this section specified that seizings must be placed on each side of the point to be cut before the wire rope is cut. It also specified that the length and number of seizings must be in accordance with the instructions of the wire rope manufacturer.

Seizings are needed to hold the wire in the strands and the strands in place during handling while cutting, thereby keeping the rope beyond the area of the cut intact. In the Committee's experience, the instructions and procedures for seizing differ among various wire rope manufacturers. The Committee decided to require employers to follow the manufacturer's instructions because it concluded that wire rope manufacturers have the knowledge and expertise to best determine the length and number of seizings that are needed to maintain the integrity of their wire ropes during cutting. No comments regarding this provision were received, and OSHA is promulgating it as § 1926.1414(h).

Section 1926.1415 Safety Devices

This section sets forth the requirements for equipping cranes and derricks with certain safety devices and prohibits the use of the equipment if those devices are not working properly.

The safety devices addressed by this section are devices that C–DAC determined are essential for the safe operation of cranes and derricks and therefore, required to be present and in proper working order during all equipment operations with no alternative measures permitted. Those devices considered less critical to equipment safety are designated as operational aids and are governed by § 1926.1416. That section allows equipment to continue operating if the operational aid fails or malfunctions but requires certain temporary alternative protective measures in such cases. Those devices designated as safety devices in this section, however, are so essential and integral to safe equipment operation that C–DAC determined that there is no acceptable alternative to having them in proper working order.

Paragraph (a) Safety Devices

Paragraph (a) of this section lists the safety devices that are required on all equipment covered by this subpart and specifications and conditions applicable to those devices (including the exemption of certain equipment from the requirements of the listed devices).

Crane Level Indicator: Paragraph (a)(1) requires that a crane level indicator be on all equipment covered under this subpart. C–DAC determined that level equipment is a key factor in ensuring equipment safety. Using a crane level indicator is necessary because it has the requisite accuracy for leveling the equipment. C–DAC members stressed the need to use a crane level indicator because, if the equipment is not properly leveled, it will not have all the capacities indicated in the load charts. Reliance on the charts in such situations could cause the equipment to overturn or otherwise fail.

Section 1926.1415(a)(1)(i) specifies that a crane level indicator must either be built into the equipment or available on it. One commenter requested clarification of whether the rule allows for the use of a carpenter's level to satisfy the requirements of proposed § 1926.1415(a)(1)(i). (ID–0292.1.)

A carpenter's level of sufficient length (such as a four-foot level), available to the operator, that gives an accurate reading, meets the requirements of this paragraph as proposed; such a level is typically used in the industry for this purpose. Therefore, it is not necessary to revise the text of the rule and OSHA is promulgating paragraph (a)(1)(i) as proposed.

Section 1926.1415(a)(1)(ii) addresses the hazard posed by false readings from non-operational crane level indicators remaining on the equipment. The Agency is requiring built-in (*i.e.,* integral) crane level indicators that are not working properly to be tagged-out or removed. Similarly, removable crane level indicators must be removed from the equipment if they are not working properly. Both requirements are intended to avoid confusion and the operator's inadvertent reliance on a device that is not working correctly. OSHA received no comment on this provision. Therefore, OSHA promulgated it as proposed, with the additional specification that a removable crane level indicator must be removed prior to operation if it is not working properly.

Paragraph (a)(1)(iii) exempts portal cranes,[78] derricks, floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels, or other means of flotation from the requirements of § 1926.1415(a)(1). C–DAC members indicated that these types of equipment are leveled and then fixed in place when installed, precluding the need for a crane level indicator.[79] OSHA

[78] Section 1926.1401 defines "portal crane" as a "type of crane consisting of a rotating upperstructure, hoist machinery, and boom mounted on top of a structural gantry which may be fixed in one location or have travel capability. The gantry legs or columns usually have portal openings in between to allow passage of traffic beneath the gantry."

[79] Note that, § 1926.1437(e) requires barge, pontoon, vessel or other means of flotation list and trim device for floating cranes/derricks and land cranes/derricks.

received no comment on this provision. Therefore, OSHA is promulgating paragraph (a)(1)(iii) as proposed.

Boom Stops: Paragraph (a)(2) requires boom stops on all equipment except for derricks and hydraulic booms (*see* the discussion of this provision in 73 FR 59785, Oct. 9, 2008). "Boom stop" is defined in § 1926.1401 as a device that restricts the boom from moving above a certain maximum angle and toppling over backwards. OSHA received no comment on this provision or definition. Therefore, OSHA is promulgating paragraph (a)(2) as proposed.

Jib Stops: Section 1926.1415(a)(3) requires jib stops on all equipment where a jib is attached, except for derricks (*see* the discussion of this provision in 73 FR 59785, Oct. 9, 2008). The standard defines "Jib stop (also referred to as a jib backstop)" in § 1926.1401 as the "same type of device as a boom stop but used for a fixed or luffing jib." OSHA received no comment on this provision or definition. Therefore, OSHA is promulgating paragraph (a)(3) as proposed.

Foot Pedal Brake Locks: Proposed paragraph (a)(4) required that equipment with foot pedal brakes have locks, except for portal cranes and floating cranes. Such locks prevent the unintentional disengagement of a foot pedal brake, which could lead to unintended equipment movement and consequent injuries and fatalities. Due to the physical effort needed to keep the pedal engaged, this is particularly important where the brake is applied for long periods.

The rationale for exempting portal cranes and floating cranes from this requirement discussed by C–DAC was that there are instances in which, due to the pitching of a floating crane and the pitching of the vessel or object in the water with which a portal crane works, the operator may have to immediately release the brake. The concern is that, if the foot pedal brake lock has been activated, the operator may not be able to release the brake quickly enough to prevent the equipment from being overloaded or to prevent unintended movement of the load.

As explained in the proposed rule, upon review of the exemption in the provision, the Agency realized that C–DAC assumed that the locking device would always be of the type that is located on the brake pedal. That type of device can be difficult to disengage, thereby delaying the operator's ability to release the brake. However, there are other types of brake locking mechanisms that do not present this problem (for example, a brake lock that is hand-actuated). This raised the issue of whether the exemption is needed. Consequently, OSHA asked for public comment on whether to change proposed § 1926.1415(a)(4) by deleting the exemption and requiring a hoist brake locking mechanism for all cranes.

OSHA received no comment on this issue. Therefore, OSHA has not included the exemption in the final rule. The final paragraph (a)(4) is published as proposed except that OSHA has removed the phrase "except for portal cranes and floating cranes."

Integral Holding Device/Check Valve: Paragraph (a)(5) requires that hydraulic outrigger jacks have an integral holding device/check valve. Such a device is necessary to prevent the outrigger jack from collapsing in the event of a hydraulic failure. (*See* the discussion of this provision in 73 FR 59786, Oct. 9, 2008.) OSHA is promulgating this provision as proposed.

Two commenters, both of which had nominated C–DAC members, suggested moving this requirement to § 1926.1433 (Design, construction and testing) due to their belief that an integral holding device/check valve is a design feature. (ID–0205.1; –0213.1.) Neither of these organizations' nominees dissented on this issue. Both organizations indicated in their comments that they supported the recommendations of C–DAC and were not providing any negative comments on provisions that mirrored the C–DAC consensus document. Since this provision is unchanged from the C–DAC consensus document, the Agency assumes that the commenters believe that they are suggesting a non-substantive formatting change.

The commenters are mistaken in that regard. By locating this provision in the *Safety Devices* section of the standard, the employer is required to inspect the integral holding device/check valve (*see, e.g.,* § 1926.1412(d)(1)(xiv)) and, if it is not functioning properly, to not use the crane until it is repaired (*see* § 1926.1415(b)). If this provision were moved to the *Design, construction and testing* section, it would no longer be considered a safety device. If it was not functioning, it would be left to the competent person conducting the shift and monthly inspections (and the qualified person conducting the annual inspection) to determine if the deficiency constituted a safety hazard (*see, e.g.,* § 1926.1412(d)(2)). C–DAC determined, and OSHA agrees, that an integral holding device/check valve is essential for the safe operation of hydraulic outrigger jacks and therefore needs to be designated as a safety device.

Rail Clamps and Rail Stops: Paragraph (a)(6) specifies that equipment on rails have rail clamps and rail stops, except for portal cranes. (*See* the discussion of this provision in 73 FR 59786, Oct. 9, 2008.) OSHA received no comment on this provision. Therefore, it is promulgated as proposed.

Horn: In the proposed rule, a horn was not listed as a safety device. One commenter requested that the standard require a horn. (ID–0156.1.) ASME B30.5–2004 requires that an "audible signal device" be provided, within reach of the operator. OSHA agrees that a horn is an important safety feature; it is typically a standard feature on cranes and is used to warn workers of imminent dangers. Therefore, OSHA has included a horn in the list of safety devices in § 1926.1415(a)(7) of the final rule.

The horn need not be permanently installed on the equipment, but it must be in a location where the operator can access and use it immediately to warn workers of imminent danger. An operator may use a removable device, such as a hand-held air horn that is stored near the operator in a manner that would not interfere with the operation of the equipment, if it satisfies those requirements.

OSHA is also requiring in § 1926.1415(a)(7)(ii) that built-in (*i.e.,* integral) horns be removed or tagged out when they are not working properly. Similarly, a removable horn must be removed from the equipment when it is not working properly. As noted in the previous paragraph, the operator would be permitted to resume operation if an operational horn, such as a hand-held air horn, is added to the cab in the proper location. It is therefore critical that the operator, and operators in subsequent shifts, not be confused about which horn is operational. A non-operational horn must be tagged out or removed, prior to the resumption of operation, to avoid the operator's inadvertent reliance on the nonoperational horn. The horn is often required when an unexpected hazard presents itself, and the operator must therefore locate and use it quickly.

Paragraph (b) Proper Operation Required

Paragraph (b) prohibits the operation of the equipment if any of the safety devices listed in this section are not in proper working order. Under OSHA's existing § 1926.20(b)(3), employers must tag out or remove any equipment that is not in compliance with any applicable requirement in part 1926. In § 1926.1417(f), OSHA makes it clear that when equipment is "taken out of

service," the employer must place a tag in the cab to provide clear notice to all employees that the equipment is out of service. To avoid any potential ambiguity about whether equipment is "taken out of service" when its operation is prohibited because of an inoperational safety device, OSHA is inserting new text in § 1926.1415(b) and a cross reference to § 1926.1417 (Operation). Specifically, final paragraph (b)(2) requires that equipment be "taken out of service" when one of the safety devices in § 1926.1415 is not operating properly. The general tagout requirement in § 1926.1417(f)(1) will apply whenever any of the safety devices are not operating properly.

The Agency notes that the specific tagout/removal requirements for crane level indicators (§ 1926.1415(a)(1)(ii)) and horns (§ 1926.1415(a)(7)(ii)) are intended to supplement this general requirement. Unlike the safety devices addressed in §§ 1926.1415(a)(2) through (a)(6), which are not as likely to be left on the equipment once they are non-operational, §§ 1926.1415(a)(1)(ii)) and 1926.1415(a)(7)(ii)) address the additional hazard that non-operational equipment might remain in the cab, and be accidently relied on by the operator, once an operational version of the same device has been placed in the cab.

Section 1926.1416 Operational Aids

This section sets forth the requirements for equipping cranes and derricks with certain operational aids. "Operational aids" are defined in § 1926.1401 as "devices that assist the operator in the safe operation of the crane by providing information or automatically taking control of a crane function. These include, but are not limited to, the devices listed in § 1926.1416 ('listed operational aids')."

As discussed above regarding § 1926.1415, OSHA determines that the devices addressed in § 1926.1416 enhance safety. However, they are less essential to the safe operation of equipment than the safety devices addressed by § 1926.1415 because sufficient temporary alternative measures are available. Crane operators historically used these temporary alternative measures as safety precautions prior to the widespread availability and use of these operational aids.

Paragraph (a)

Proposed paragraph (a) of this section provided that the operational aids listed in this section are required on all equipment covered by subpart CC, unless otherwise specified.

Other sections of this rule provide exceptions for various types of equipment. Under § 1926.1435(e)(1), this section does not apply to tower cranes. Instead, the operational aids required for tower cranes are specified in § 1926.1435. Under § 1926.1436(f)(1), §§ 1926.1416(d)(1), (e)(1), and (e)(4) do not apply to derricks.

This section also does not apply to existing equipment manufactured before certain dates. Those dates are keyed either to the time an operational aid was first required by a national consensus standard or to the effective date of the standard. One year after the effective date of this final rule, the proposed rule would have required all operational aids on all equipment, with a single exception: proposed paragraph (e)(4) did not require load weighing or similar devices on derricks.

A trade association asked that articulating cranes be exempt from certain requirements of this section: the requirement for a boom angle or radius indicator in paragraph (e)(1) of this section; the requirement for a jib angle indicator in paragraph (e)(2) of this section; the requirement for a boom length indicator in paragraph (e)(3) of this section; and the requirement for an outrigger position sensor/monitor in paragraph (e)(5)(i) of this section. (ID–0206.1.) As to the first three, the commenter stated that these would not be practical on articulating cranes because of the boom configuration on such cranes. The commenter said that a boom angle indicator or jib angle indicator could not be used because articulating cranes can have up to three boom sections at different angles. Unlike cranes with straight booms, their capacity is determined by the combination of boom angles rather than a single angle. Similarly, the commenter stated, boom length indicators are not practical on articulating cranes because their lifting capacity is based on the position of the boom sections rather than the boom length. Finally, the commenter asserted that articulating cranes should be exempt from the requirement for outrigger position sensor monitors because such cranes use stabilizers rather than outriggers.

OSHA agrees with the commenter that boom angle indicators, jib angle indicators, and boom length indicators are not appropriate for articulating cranes for the reasons given by the commenter. Accordingly, OSHA is adding § 1926.416(a)(1), which excludes articulating cranes from the requirements in §§ 1926.1416(e)(1), (e)(2), and (e)(3).

OSHA is not exempting articulating cranes from the requirement of § 1926.1416(e)(5)(i). As discussed under § 1926.1404, for certain types of cranes, stabilizers serve the same function as outriggers and, where appropriate, provisions of the proposed rule that applied to outriggers are being changed in the final rule to also apply to stabilizers. One such provision is paragraph (e)(5)(i) of this section, which, as discussed below, has been modified from the proposed rule to require outrigger/stabilizer position sensor monitors rather than outrigger position sensor monitors on equipment manufactured more than one year after the effective date of the standard. As so modified, the provision appropriately applies to articulating cranes.

Another commenter stated that digger derricks do not typically have anti-two blocking devices (paragraph (d)(3)), radius indicators (paragraph (e)(1)), load weighing devices (paragraph (e)(4)), outrigger position indicators (paragraph (e)(6)(i)), and hoist drum rotation indicators (paragraph (e)(5)(ii).[80] (ID–0155.1.) This commenter does not state that such devices would be impractical on digger derricks but only that they are not currently equipped with the devices. OSHA notes that the ANSI standard applicable to digger derricks, ANSI/ASSE A10.31–2006, does not require the devices listed by the commenter. As noted above, this final rule is exempting certain older or existing equipment from the need to be equipped with certain operational aids when the consensus standard for such equipment has not required those devices. Consistent with this policy, OSHA is specifying that only those digger derricks manufactured more than one year after the effective date of this standard must be equipped with anti-two blocking devices, boom angle or radius indicators, and load weighing devices. Under § 1926.1416(e)(5), outrigger position indicators and hoist drum rotation indicators are not required on any equipment until one year after the effective date of the standard, so it is not necessary to single out digger derricks for special treatment for these devices. Accordingly, OSHA is adding § 1926.1416(a)(2) to the final rule, which provides that the requirements in §§ 1926.1416(d)(3), (e)(1), and (e)(4) only apply to those digger derricks manufactured more than one year after the effective date of this standard.

[80] The term "digger derrick" is defined in § 1926.1401. As discussed in § 1926.1400, digger derricks are not covered by the standard when used for work related to utility poles but are subject to this final rule when used covered for general lifting activities unrelated to utility poles.

Paragraph (b)

Proposed paragraph (b) of this section stated that operations shall not begin unless the listed operational aids are in proper working order, except where the employer meets specified temporary alternative measures. If the crane or derrick manufacturer specified more protective alternative measures, the employer would have to follow those measures.

Upon reviewing the proposed paragraph, OSHA believes it does not state its requirement as clearly as possible. As subsequent provisions of this section make clear, employers may only use temporary alternative measures while listed operational aids are being repaired, and then only for limited times. OSHA is rewording paragraph (b) in the final rule to make these requirements clearer.

Two hearing participants requested that, in general, OSHA remove any provision in the proposed rule that would require strict adherence to manufacturer's procedures. (ID–0341; –0342.) Compliance with manufacturer procedures is addressed in the discussion of § 1926.1417. In addition, OSHA determines that the rule addresses the hearing participants' concerns. Employers can fully comply with the standard by maintaining the listed operational aids in proper working order. For brief periods while such aids are being repaired, employers can generally comply by following the temporary alternatives listed in the rule. Only if manufacturers recommend safer alternatives, which OSHA concludes will rarely occur, will employers need to look to those recommendations rather than the precautions specified in the rule.

Paragraph (c)

Paragraph (c) of this section states that if a listed operational aid stops working properly during operations, the operator must safely stop operations until the temporary alternative measures are implemented or the device is again working properly. Further, if a replacement part is no longer available, a substitute device that performs the same type of function may be used, and the use of such a device is not considered a modification under § 1926.1434, *Equipment modifications.* Section 1926.1434 applies to modifications or additions that affect the capacity or safe operation of the equipment except where the requirements of paragraphs (a)(1), (a)(2), or (a)(3) of § 1926.1434 are met. OSHA determines that it is unnecessary to apply § 1926.1434 to the use of a substitute operational aid because, as long as the substitute device works properly, its use will not affect the capacity or safe operation of the equipment. No comments were received on this paragraph, and it is promulgated as proposed.

Paragraph (d) Category I Operational Aids and Alternative Measures

The standard categorizes operational aids by the amount of time permitted for the use of temporary alternative measures in place of the listed operational aids. Employers must ensure the repair of Category I operational aids, addressed by paragraph (d), no later than 7 days after the deficiency occurs. Category II operational aids, addressed below by paragraph (e), have a 30-day time limit for repair. Except where noted, C–DAC recommended each of these aids for the reasons set forth below. The Committee further determined that each of the temporary alternative measurers would be safe to use until the deficient operational aid was restored to proper service within the time required under the section. OSHA agrees. (For purposes of clarification, the Agency has added a reference to § 1926.1416(d) noting that the requirements of § 1926.1417(j) are applicable. *See* further discussion at § 1926.1417(j).)

Both Category I and II have an exception to the repair time limits. For Category I, if the employer documents that it has ordered the necessary parts within 7 days of the occurrence of the deficiency, the repair must be completed within 7 days of receipt of the part. For Category II, if the employer documents that it has ordered the necessary parts within 7 days of the date on which the deficiency was discovered, and does not receive the part in time to complete the repair in 30 days, the repair must be completed within 7 days of receipt of the part. OSHA determines that these time limits are both feasible and reflective of the amount of time that it is appropriate to rely on the temporary alternative measures in each category.

During the SBREFA Panel process, one Small Entity Representative stated that an extended time limit might be required to determine the appropriate part number for older equipment. Therefore, it might not be possible to order a replacement within 7 days of the occurrence of the deficiency. OSHA sought public comment on the extent to which this is a problem. OSHA further sought comment on how to accommodate employers when the unavailability of a part number hinders them from ordering a replacement part. OSHA did not receive comments on these issues.

The SBREFA Panel also questioned whether the number of "days" for ordering parts and completing repairs for operational aids refers to calendar days or business days. Absent a different definition in the standard, OSHA interpreted the word "days" to mean "working days" which, as discussed above in relation to proposed § 1926.1407(e), would mean Mondays through Fridays, excluding Federal holidays. OSHA sought public comment on whether a different definition of "days" should apply under this section.

One commenter stated that the use of the term "days" is unclear. (ID–0143.1.) Two commenters stated it was C–DAC's intention that the term "days" mean calendar days as opposed to business days. The commenters stated that the circumstances in § 1926.1407(e), where the rule uses business days, are unique because power companies are not open/available on weekends.

OSHA concludes that the 7 and 30 day time frames should refer to calendar days. The periods correspond to one calendar week and one typical calendar month, and it is, therefore, easy to determine when the period ends if they mean calendar days. Moreover, referring to "calendar" days will lead to faster repairs and help promote safety. Therefore, OSHA has clarified by adding the word "calendar" before each use of the word "days" in this section; the remainder of paragraph (c) is identical to the proposed rule.

Paragraph (d) lists the required Category I operational aids and the acceptable temporary alternative measures for these aids.

Boom Hoist Limiting Device: Paragraph (d)(1) requires that all equipment manufactured after December 16, 1969, have a boom hoist limiting device. As defined in § 1926.1401, a boom hoist limiting device "disengages boom hoist power when the boom reaches a predetermined operating angle" and also "sets brakes or closes valves to prevent the boom from lowering after power is disengaged." Section 1926.1401 also defines the term "boom hoist limiting device" to include "boom hoist disengaging device, boom hoist shutoff, boom hoist disconnect, boom hoist hydraulic relief, boom hoist kick-outs, automatic boom stop device, or derricking limiter." A boom hoist limiting device automatically prevents the boom hoist from pulling the boom past the minimum allowable radius (maximum boom angle). If the boom hoist pulls the boom past that point, a failure is likely (for example, the boom

could buckle from being forced against the boom stop).

The December 16, 1969, date reflects the effective date of ASME B30.5–1968. This was the first national consensus standard to require a boom hoist limiting device, and C–DAC regarded that date as a reasonable indicator of when the industry began to widely manufacture or equip cranes and derricks with such devices. OSHA agrees. Although the ASME standard only applies to crawler, locomotive, and truck cranes, OSHA is extending this provision to all equipment based on prevailing industry practice.

The standard includes three temporary alternative measures in paragraphs (d)(1)(A)–(C), of which the employer must use at least one if the boom hoist limiting device malfunctions: (A) Use of a boom angle indicator; (B) clearly marking the boom hoist cable at a point that will give the operator sufficient time to stop the hoist to keep the boom within the minimum allowable radius; and, (C) if a spotter is used, clearly marking the boom hoist cable at a point that will give the spotter sufficient time to signal the operator and have the operator stop the hoist to keep the boom within the minimum allowable radius. C–DAC recommended these measures because historically they were used by employers prior to the development of the boom hoist limiting device.

In the proposed rule, § 1926.1416(d)(1)(ii) specified that employers must, on a permanent basis, use at least one of these measures for equipment manufactured on or before December 16, 1969 that "was not originally equipped" with a boom hoist limiting device. OSHA notes that equipment not originally equipped with a boom hoist limiting device might have one added later, and that such a piece of equipment should be treated the same as equipment originally equipped with such a device. Accordingly, OSHA has modified § 1926.1416(d)(1)(ii) by replacing "was not originally equipped" with "is not equipped" and removing "on a permanent basis." If and when the equipment is modified to include the limiting device, it would fall under § 1926.1416(d)(1)(i). Until that point, it would remain under § 1926.1416(d)(1)(ii), and at least one of the measures in paragraphs (d)(1)(A)–(C) would be required at all times.

Luffing Jib Limiting Device: Paragraph (d)(2) requires that equipment with a luffing jib have a luffing jib limiting device. As defined in § 1926.1401, a luffing jib limiting device "is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib." These devices function similarly and are distinguished only as to the type of crane extension they are designed to limit automatically, the jib or the boom. The temporary alternative measures for a luffing jib limiting device are the same as those for a boom hoist limiting device in paragraphs (d)(1)(i)(A)–(C). For clarity, the Agency added the words, "rather than the boom hoist" to paragraph (d)(2)(i).

Anti Two-Blocking Device: Paragraph (d)(3) sets forth the requirements for anti two-blocking devices. Section 1926.1401 defines "two-blocking" as "a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component." As the definition indicates, two-blocking can cause the crane to drop the load, the headache ball, or another component, creating a hazard to employees below. When hoisting personnel, an anti two-blocking device had been required by former § 1926.550(g)(3)(ii)(C) since October 3, 1988, but was not otherwise required under subpart N. OSHA concludes that requiring the use of anti two-blocking devices will reduce the number of crane-related injuries and fatalities.

There are two forms of anti two-block devices: an automatic prevention device or a warning device. The automatic prevention device automatically stops two-blocking from occurring. The warning device warns the operator when two-blocking is about to occur. OSHA determines that an automatic prevention device provides better protection than a warning device for employees, since it automatically stops two-blocking. As discussed below, the standard ultimately requires automatic prevention devices on all equipment manufactured after February 28, 1992, under a phase-in schedule. The standard takes into account of the date the national consensus standard, ASME B30.5, began to require such devices for telescopic boom cranes, and that B30.5 continues to allow lattice boom cranes to be equipped with either automatic prevention devices or warning devices.

ASME B30.5, effective February 28, 1992, states that telescopic boom cranes must have automatic prevention devices. For lattice boom cranes, ASME B30.5 states that they must have two-block protection but allows greater flexibility, allowing them to be equipped with either automatic prevention devices or warning devices. The additional protection for telescopic boom cranes in the ASME standard reflects the fact that such cranes are more likely to two-block because telescoping the boom out (an action that does not occur with lattice boom cranes) moves the boom's block closer to the load end of the hoist cable, which can cause two-blocking.

Because February 28, 1992 is the date that ASME B30.5 first stated that telescopic boom cranes must have anti two-block devices and is when the industry first began widely manufacturing or equipping such cranes with such devices, proposed paragraph (d)(3)(i) requires automatic prevention devices on all telescopic boom cranes manufactured after February 28, 1992. However, because ASME B30.5 allows lattice boom cranes to have either an automatic prevention device or a warning device since February 28, 1992, paragraph (d)(3)(ii)(A) gives employers the option of using either device on lattice boom cranes manufactured between February 28, 1992, and one year after the effective date of this standard.

OSHA concludes that an automatic prevention device provides better protection than a warning device because it directly addresses the hazard, rather than alerting an operator and requiring an additional step by the operator to address the hazard. Therefore, lattice boom cranes manufactured more than one year after the effective date of this standard must be equipped with an automatic prevention device.

Paragraph (d)(3)(ii)(C) excludes lattice boom equipment used during certain activities from the anti two-block requirements of (d)(3)(A) and (B). The provision exempts lattice boom equipment when used for dragline, clamshell (grapple), magnet, drop ball, container handling,[81] concrete bucket, marine operations that do not involve hoisting personnel, and pile driving work. C–DAC indicated that most of these operations involve heavy repetitive motion, and anti-two-block devices used during these activities consistently malfunction (that is, the device "trips" even though two-blocking has not occurred) and are frequently damaged.

However, note that § 1926.1437(f)(1) requires anti two-block devices on floating cranes/derricks and land

[81] In most situations hoisting containers are regulated under 29 CFR part 1918; this standard applies to hoisting containers only where that activity is construction work. For example, hoisting a container of construction material from a ship onto a concrete pier that is part of a bridge construction project is a construction activity covered by this standard.

cranes/derricks on barges when hoisting personnel or hoisting over an occupied cofferdam or shaft. The Agency determines that cranes need anti two-block devices to prevent employees from being dropped and to prevent loads from striking employees in the confined work environment of a cofferdam or shaft. These safety considerations outweigh any concern for damage to a device or unnecessary "tripping" during marine operations.

The temporary alternative measures available when an anti two-block device on a lattice-boom crane or derrick malfunctions are to clearly mark the cable so that it can easily be seen by the operator at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or to use a spotter to warn the operator to stop the hoist.

For telescopic boom cranes, the temporary alternative measures required are to clearly mark the cable so that it can easily be seen by the operator at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking and to use a spotter when extending the boom. OSHA determines that the alternative measures for telescopic boom cranes must require the use of a spotter when extending the boom because two-blocking can occur even when the cable hoist is not being operated. As noted above, telescoping the boom out moves the boom's block closer to the load end of the hoist cable, which can cause two-blocking. A mark on the hoist cable in such instances will not warn the operator that two-blocking is about to occur. Therefore, when extending the boom, a spotter is required.

The proposed rule did not address the issue of anti two-block protection for articulating cranes. Many such cranes are equipped with forks at the end of the boom and do not have the potential for two-blocking. However, those equipped with a load hoist present the same potential for two-blocking as other cranes with load hoists. A trade association pointed out that the ASME standard for articulating cranes, ASME B30.22–1998, first required two-block protection effective December 31, 1999. (ID–0206.1.) OSHA infers that articulating cranes with boom hoists manufactured after December 31, 1999, were routinely equipped with automatic two-block protection after that date. Therefore, to treat such cranes in a manner similar to lattice boom cranes and telescopic boom cranes, OSHA is adding § 1926.1416(d)(3)(iii) to the final rule.

Paragraph (e) Category II Operational Aids and Alternative Measures.

Paragraph (e) of this section lists the required Category II operational aids and the acceptable temporary alternative measures for these aids. If any of these aids is not working properly, it must be repaired no later than 30 days after the deficiency occurs. As noted above, if the employer documents that it has ordered the necessary parts within 7 calendar days from the occurrence of the deficiency, and does not receive the part in time to complete the repair in 30 calendar days, the repair must be completed within 7 calendar days of receipt of the part. (For purposes of clarification, the Agency has added a reference to § 1926.1416(e) noting that the requirements of § 1926.1417(j) are applicable. *See* further discussion at § 1926.1417(j).)

Boom Angle or Radius Indicator: Paragraph (e)(1) requires a boom angle or radius indicator that is readable from the operator's station on all equipment. Section 1926.1401 defines "boom angle indicator" as "a device which measures the angle of the boom relative to the horizontal." This definition is identical to that in the SC&RF Handbook. It is necessary to know the boom angle to determine the crane's capacity from its load chart. The temporary alternative measure is to measure the radii or boom angle with a measuring device.

Jib Angle Indicator: Paragraph (e)(2) requires a jib angle indicator on all equipment with a luffing jib. The temporary alternative measure is to measure the radii or jib angle with a measuring device.

Boom Length Indicator: Paragraph (e)(3) requires a boom length indicator on all equipment equipped with a telescopic boom. Section 1926.1401 defines a "boom length indicator," as a device that, "indicates the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments." OSHA did not receive any comments on the definition and is promulgating it as proposed. The operator must know the length of the boom because it affects the crane's capacity, as shown on the load chart. At least one of the following must be used as a temporary alternative measures: mark the boom with measured marks to calculate boom length; calculate boom length from boom angle and radius measurements; or measure the boom with a measuring device.

Load Weighing and Similar Devices: Proposed paragraph (e)(4) required load weighing and similar devices on all equipment with a rated capacity over 6,000 pounds and manufactured after March 29, 2003 (except derricks; a comparable provision for derricks is in § 1926.1436(f)(3), discussed below). The framework of this proposed paragraph was similar to the approach taken in sec. 5–1.9.9.2 of ASME B30.5–2004, respecting these aids. The proposed standard permitted employers to choose to outfit its equipment with either a load weighing device, load moment (or rated capacity) indicator, or a load moment or rated capacity limiter. The latter two terms are defined in § 1926.1401. All three devices are intended to help the operator avoid exceeding the equipment's rated capacity and thereby prevent the crane from tipping over.

This proposed provision was limited to equipment (other than derricks) manufactured after March 29, 2003. That was the date when ASME B30.5 first called for all mobile cranes with a rated capacity over 6,000 pounds to be equipped with load weighing devices. The proposed provision was thus keyed to the date when the industry first began widely manufacturing or equipping mobile cranes with load weighing or load moment devices.

A trade association pointed out that ASME B30.5 does not apply to articulating cranes and that the applicable consensus standard, ASME B30.22, does not require the devices specified in paragraph (e)(4). (ID–0206.1.) The commenter stated, however, that these are likely to be required by the 2010 update of ASME B30.22.

As discussed in § 1926.1400, evidence in the record shows that many articulating cranes are currently equipped with automatic overload prevention devices which, like the devices specified in this section, are designed to avoid the possibility of tipover. Therefore, the tipover hazard addressed by paragraph (e)(4) can be addressed for newly-manufactured articulating cranes by requiring such cranes to be equipped with either automatic overload prevention devices or one of the devices specified in paragraph (e)(4). To achieve this objective, OSHA is therefore revising proposed paragraph (e)(4). The requirement in proposed paragraph (e)(4) is revised to exclude articulating cranes and is renumbered paragraph (e)(4)(i) in the final rule. New paragraph (e)(4)(i) includes temporary alternative measures based on calculations from sources recognized by the industry. The proposed rule had provided for calculations based on a "reliable" source or calculation method, or "by other equally reliable means." To avoid the

potentially subjective interpretations of "reliable," OSHA is instead requiring that the measurements be from a source typically relied on in the industry.

A new paragraph (e)(4)(ii), applicable to articulating cranes, is added. This new paragraph requires articulating cranes manufactured more than one year after the effective date of the standard to be equipped with either an automatic overload prevention device, a load weighing device, a load moment (or rated capacity) indictor, or a load moment (or rated capacity) limiter. Paragraph (e)(4)(ii) will protect workers against articulating cranes tipping over while giving employers a choice of means to achieve this objective. The temporary alternative measure required under paragraph (e)(4)(ii) is the same as that required under paragraph (e)(4)(i).

A commenter informed OSHA that New York City requires a load weighing or similar device on cranes manufactured after December 30, 1993, and requested that the final rule allow local governments to impose stricter requirements. (ID–0156.1.) Whether local governments can impose stricter requirements than provided under this final rule is discussed under federalism in section V.D of this preamble.

Proposed paragraph (e)(5) required two future operational aids—an outrigger position sensor/monitor and a hoist drum rotation indicator—on all equipment manufactured more than one year after the effective date of this standard.[82] As discussed in § 1926.1404, certain types of equipment are equipped with stabilizers rather than outriggers, and OSHA is modifying the language of proposed "outrigger" provisions to clarify that such provisions also apply to equipment with stabilizers. Therefore, paragraph (e)(5)(i) is being reworded in the final rule to apply to equipment with stabilizers as well as outriggers. Paragraph (e)(5)(ii), which requires hoist drum rotation indicators, is promulgated as proposed.

One commenter stated that deadman controls should be required on all cranes. (ID–0156.1.) Section 1926.1435(d)(2)(viii) requires that tower cranes have deadman controls, but C–DAC did not determined these should be required on other types of cranes. This commenter has not stated why it believes such controls are needed for safe operation of other types of cranes. Accordingly, OSHA defers to C–DAC's judgment that deadman controls should not be required on cranes other than tower cranes.

Section 1926.1417 Operation

Section 1926.1417 addresses hazards associated with general operation of equipment covered by this standard. Previously, 29 CFR part 1926, subpart N primarily addressed safe operation by incorporating national consensus standards and manufacturer recommendations. For example, former § 1926.550(b)(2) required crawler, truck, and locomotive cranes to comply with the operation requirements of ANSI B30.5–1968. The provisions in this section are designed to update such requirements, make them more comprehensive, and state them in a way that is clear and enforceable.

Paragraph (a)

Paragraph (a) of this section requires employers to comply with the manufacturer procedures applicable to the operational functions of all equipment covered by this standard, including the use of equipment with attachments. "Procedures" is defined in § 1926.1401 to include, but not be limited to, "instructions, diagrams, recommendations, warnings, specifications, protocols, and limitations."

Two commenters opposed this provision. The first, a representative from the building industry, stated that it was "problematic" to "literally require employers to become familiar with and obey to the letter anything written by a manufacturer related to a crane, no matter how unwise, unnecessary, or infeasible." (ID–0232.1.) The commenter also explained that crane manufacturers fear tort liability, which causes them to over-warn in their manuals, and suggested that employers needed to be able to use common sense to separate over-warning from serious recommendations. The commenter argued further that this provision constituted a delegation of authority inconsistent with the U.S. Constitution and the Occupational Safety and Health Act, and was unsupported by the rulemaking record. A building industry trade association agreed with the building industry representative's points and advocated amending this provision to require operation of equipment in a manner "consistent with manufacturers' recommendations." (ID–0214.1.) It also believed that the costs of complying with this provision would be excessive.

OSHA disagrees with the suggestion that this provision is problematic because of the possibility that some equipment manufacturer may conceivably develop procedures which are "unwise, unnecessary, or infeasible." Neither commenter provided any specific examples or data in support of this assertion, and it is unreasonable to think that crane manufacturers would develop such procedures. Like all product manufacturers, crane manufacturers want satisfied customers and repeat business, and OSHA has no basis to conclude, as the commenters suggest, that they will alienate their customers by recommending unnecessary procedures that will reduce the usefulness and productivity of their products. Moreover, there are sound reasons to determine that following manufacturer procedures will result in both the safe and productive use of cranes. The manufacturer of a large and complex piece of machinery such as a crane is thoroughly familiar with the machine's design, components, and capabilities and is well-positioned to develop the procedures that enable the crane to be used effectively and safely. The commenters provided no basis for OSHA to conclude that allowing crane users to pick and choose which manufacturer recommendations to follow will promote safety, and OSHA does not believe this is the case. Moreover, C–DAC's members had vast experience in crane manufacturing and use and were well-positioned to determine whether compliance with manufacturer's recommendations will promote crane safety. They concluded that it would. In the absence of additional evidence, OSHA defers to C–DAC's experience.

OSHA also finds no merit in the building industry representative's assertion that compliance with manufacturer recommendations should not be required because manufacturers "over-warn" out of liability concerns. The best way for manufacturers to avoid liability for accidents involving their products is to recommend the precautions that are needed to prevent such accidents, so their concern for tort liability is fully consistent with the objective of this standard.

Regarding the delegation of authority issue, OSHA notes that provisions similar to this one, including provisions in the prior cranes standard in former § 1926.550, have withstood judicial scrutiny on every occasion on which they have been challenged.[83] *See, e.g.,*

[82] The proposed rule would have required these aids on equipment manufactured after January 1, 2008. Here, as elsewhere, OSHA believes that devices not commonly installed on equipment should be not be required until more than one year after the effective date of the final rule.

[83] Among the many OSHA standards requiring compliance with manufacturer information are: § 1910.134, UI; § 1910.184, *Slings;* § 1910.265, *Sawmills;* § 1915.113, *Shackles and hooks;* § 1910.217, *Mechanical power presses;* § 1926.451, *Scaffolds: General requirements;* § 1926.302, *Power-*

Continued

Associated Builders & Contractors v. *Miami-Dade County,* 594 F.3d 1321; *Associated Builders & Contractors, Inc.* v. *Brock,* 862 F.2d 63, 68–69 (3d Cir. 1988); *Towne Constr. Co.* v. *Occupational Safety & Health Review Comm'n,* 847 F.2d 1187, 1189 (6th Cir. 1988) (finding the physical impossibility of requiring OSHA independently to set safety standards for every industry job classification and industrial substance in the country justifies reliance on the fruits of private efforts as governmental standards).

The requirement in § 1926.1417(a) to comply with manufacturers' operating procedures is essentially the same as that imposed by former § 1926.550(a)(1) of the prior rule. As the commenter from the building industry notes, former § 1926.550(a)(1) was upheld against a challenge that requiring compliance with manufacturer's specifications and operating limitations is an illegal delegation of authority to private persons. (ID–0232.1, citing *Towne Construction,* 12 BNA OSHC 2185 (OSHRC 1986) *aff'd* 847 F.2d 1187 (6th Cir. 1988).) The Review Commission and the Sixth Circuit found that the prior rule's delegation to manufacturers was circumscribed by other regulatory requirements governing the design and construction of cranes. (*See, e.g.,* 12 BNA OSHC at 2186 noting design specifications in 29 CFR 1910.180(c)(1) applied to cranes covered by former § 1926.550.) The final rule contains design, construction and testing requirements that are more comprehensive than those applicable under the prior rule. These limitations on manufacturers' discretion are sufficient to defeat a facial delegation challenge. 12 BNA OSHC at 2186, 847 F.2d at 1189. *See also Associated Builders and Contractors,* 2010 WL 276669 *3 (OSHA's adoption of consensus specifications for safe operation of cranes "conforms with an intelligible principle" and is therefore valid). To require OSHA to independently determine and codify every safety procedure for every configuration of every make and model of crane or other equipment covered by this standard, as well as every attachment or device that could be used with that equipment, would be unrealistic, inefficient, and contrary to all jurisprudence on this issue. In light of C–DAC's recommendations to include manufacturer procedures in subpart CC, and based on the record as a whole, OSHA concludes that requiring compliance with manufacturer procedures is an efficient and appropriate means of ensuring safe maintenance, assembly and disassembly, configuration, and operation of equipment covered by this subpart. Therefore, OSHA is incorporating manufacturers' procedures and recommendations into § 1926.1417, and several other provisions of this standard, where the Agency determines that it is the most effective and appropriate way to accomplish the OSH Act goals.

Two commenters objected to OSHA's inclusion of manufacturer "recommendations" in the definition for equipment criteria. (ID–0205.1; –0213.1.) The commenters, however, provide no justification for distinguishing manufacturer recommendations from other manufacturer procedures. C–DAC determined that manufacturer recommendations were an appropriate means of ensuring the safe use of equipment, and OSHA agrees. Manufacturer recommendations, like procedures, specifications, prohibitions, *etc.,* instruct the user how to use the equipment safely and in a manner most consistent with the equipment's design.

Moreover, there is nothing novel in OSHA's reliance on manufacturer recommendations. A number of OSHA standards already require compliance with manufacturer recommendations. *See, e.g.,* § 1910.134, *Respirator protection;* § 1910.184, *Slings.* As noted above, the former crane standard (in former § 1926.550(a)) replaced by this final rule included a broad prohibition based solely on manufacturer recommendations: "Attachments used with cranes shall not exceed the capacity, rating, or scope recommended by the manufacturer." Yet no court has invalidated an OSHA standard requiring compliance with manufacturer recommendations, even though several containing such language have been challenged. The commenters offer no new compelling legal arguments for why OSHA should delete provisions requiring compliance with manufacturer recommendations, and do not identify a meaningful distinction between a manufacturer's recommendation, procedure, instruction, or specification. Accordingly, OSHA is requiring compliance with manufacturer recommendations as proposed.

Finally, with respect to the suggestion to permit alternate procedures provided they are "consistent with" manufacturers' procedures, the Agency concludes that amending this provision in that manner would be unacceptable because it would lead to uncertainty over what procedures are "consistent with" the manufacturers' recommended procedures. Therefore, this provision is promulgated as proposed.

Paragraph (b) Unavailable Operation Procedures

Under paragraph (b)(1) of this section, in the event that the manufacturer procedures for operation are unavailable, the employer will be required to develop procedures necessary for the safe operation of the equipment and its attachments. The employer will also be required to ensure compliance with such procedures. "Unavailable procedures" is defined in § 1926.1401 as procedures that are no longer available from the manufacturer, or have never been available from the manufacturer. For instance, procedures that are in the employer's possession but are not on the job site, would not be considered unavailable under §§ 1926.1417(b) and 1926.1441(c)(2), where the same term is used.

An example of a situation where procedures might be unavailable is old equipment where the manufacturer is no longer in business. Even where the original manufacturer became part of another company that is still in business, in some cases the successor company no longer has the original manufacturers' procedures for that equipment. In such instances the employer will be required to develop and follow substitute procedures.

Paragraphs (b)(2) and (b)(3) of this section specify qualifications criteria for those who develop two aspects of the substitute procedures. Under § 1926.1417(b)(2), procedures for the operational controls will have to be developed by a qualified person. As defined in § 1926.1401 of this standard, "operational controls" are levers, switches, pedals and other devices for controlling equipment operation. A qualified person has the requisite level of expertise to develop such procedures in light of both the complexity of the factors that must be considered and the nature of the operational controls.

Under paragraph (b)(3), operational procedures related to equipment capacity would have to be developed and signed by a registered professional engineer familiar with the equipment. The type and complexity of engineering analysis that is needed to develop safe procedures related to capacity necessitates that this work be done by a registered professional engineer (RPE). In addition, because capacity is so critical to safe operation, a signature by the RPE is needed to ensure that this work is done with the requisite care. No comments were submitted on this

operated hand tools; and § 1917.43, *Powered industrial trucks.*

provision; therefore, it is promulgated as proposed.

Paragraph (c) Accessibility of Procedures

Paragraph (c)(1) of this section requires employers to provide the operator with ready access in the cab to the procedures applicable to the operation of the equipment, including the following: Rated capacities (load charts), recommended operating speeds, special hazard warnings, and the instructions and operator's manual.

For the purposes of this standard, "special hazard warnings" are warnings of site-specific hazards (for example, proximity of power lines). This term is defined in § 1926.1401 to differentiate these site-specific warnings from all other general hazard warnings which are common to typical construction worksites.

Previously, former § 1926.550(a)(2) of subpart N required rated capacities, recommended operating speeds, and special hazard warnings to be posted on the equipment, and instructions and warnings to be visible at the operator's station. Unlike § 1926.1417(c)(1) of this standard, it did not require the operator's manual to be accessible to the operator.

OSHA concludes that the information in these materials, including the operator's manual, is essential for safe crane operation. C–DAC determined that this information is needed to help the operator avoid performing operations beyond a crane's capacity and recommended operating speed, and by increasing operator awareness of special hazards related to a specific piece of equipment. In addition, C–DAC determined that this information needs to be available to the equipment operator in the cab so that the operator can obtain the information as the need arises. If the information were not available in the cab, operations would have to be delayed for the operator to leave the cab and obtain the information elsewhere (or for someone else to obtain them and bring them to the operator). The prospect of such a delay would serve as a disincentive to obtaining the information and increase the chance that operations would proceed without it.

A building industry trade association stated its belief that the cost of obtaining and maintaining manufacturers procedures applicable to operation of the equipment would be excessive, and stated that OSHA's contention that such costs would be "modest" was not supported by the rulemaking record. (ID–0214.1.) This commenter did not provide any substantiation for this claim. Based on the absence of this support, and on the absence of other comments raising a cost objection related to this requirement, OSHA concludes that the cost of obtaining and maintaining manufacturers' procedures for equipment operations is not generally viewed as significant, especially when weighed against the potential economic and human costs of a crane accident. Moreover, as noted below, the trend toward providing operating manuals and procedures via digital media and over the Internet is substantially lowering costs for acquiring and maintaining such information. Therefore, OSHA defers to C–DAC's experience and is promulgating this provision as proposed.

It has become increasingly common for equipment to be supplied by manufacturers with load capacities in electronic form. Because of the potential for an electronic or other failure to occur that would make that information inaccessible, § 1926.1417(c)(2) addresses a situation in which electronic or other failure makes such information unavailable. Under this paragraph, where load capacities are available in the cab only in electronic form and a failure makes the load capacities inaccessible, this paragraph requires that the operator immediately cease operations or follow safe shut-down procedures until the load capacities become available again (in electronic or other form). No comments were submitted on this provision; therefore it is promulgated as proposed.

Paragraph (d)

This paragraph requires that operators refrain from engaging in any practice that would divert their attention while operating the crane. This includes the use of cell phones except when cell phones are used for signal communications. Operating a crane is a complex task that requires an operator's full attention to be performed safely. This paragraph addresses the risk that an accident can occur if the operator's full attention is not directed toward that task.

During the hearing, a witness from a lumber trade association described the practice in which the operator controls an articulating boom crane with a forklift attachment via remote controls and then assists with the off-loading of the materials. (ID–0341.) He expressed concern that the operator's participation in the off-loading of the crane would violate § 1926.1417(d)'s prohibition on "any practice that diverts his/her attention while actually engaged in operating the crane." (ID–0341.) As a result, his company would need to use an additional person for the delivery, raising costs. (ID–0341.)

Section 1926.1417(d) would not necessarily prohibit the activity that the witness described. If the operator uses the remote controls to position the articulating crane and lock it into position before off loading the materials, and does not simultaneously operate the controls and offload the materials, the operator would not be "actually engaged in operating the crane" at the same time as he is off-loading the crane. The operator would also not be considered to "leave the equipment unattended" so long as the operator has immediate access to the remote controls. *See* discussion of § 1926.1417(e) below. No other comments were submitted on this provision; therefore it is promulgated as proposed.

Paragraph (e) Leaving Equipment Unattended

Paragraph (e)(1) of this section specifies when the operator must be at the controls for safety-related reasons. These include making necessary adjustments to keep the load in a safe position, moving the load where necessary for reasons of safety (such as for the safety of employees working with or near the load), and responding to emergencies that may arise during lifting operations. Previously, under 29 CFR part 1926, subpart N, the operator of a crawler, locomotive, or truck crane was prohibited from leaving the controls while a load is suspended.

In the experience of C–DAC members, this requirement was routinely breached when the load is "held suspended," that is, without need for adjustment of the load's or the equipment's position for an extended period. In such circumstances, the operator does not need to manipulate the controls for the period of time that the load is suspended and it was a common practice for the operator to leave the controls. To address this problem, C–DAC proposed that OSHA establish criteria that allow the operator to leave the controls when it is safe to do so rather than to simply continue the existing rule unchanged. (Note that the suspension of working gear, such as slings, spreader bars, ladders, and welding machines, is addressed separately in § 1926.1417(e)(2).)

Several commenters from the materials delivery industry noted that various types of equipment in that industry can be operated by remote control and expressed concern that § 1926.1417(e)(1) would prohibit the use of those remote controls and thereby require additional personnel to perform the same task. (ID–0184.1; –0206.1.) To

be clear, the new standard does not prohibit the use of remote controls. During the hearing on this rulemaking, a witness from a lumber trade association testified that the use of portable radio remote controls is common, and provided examples of operators with their remotes strapped around their waists or their shoulders. (ID–0341; –0345.13.) He explained that the "operator is physically located at the same location as the remote control and is therefore able to perform controlled operations as quickly as an operator who is seated at the top seat controls" and "can also be positioned to ensure that there's no obstructed view." (ID–0341.) Such use would not be prohibited. Where an operator takes the remote controls out of the cab, keeps the controls within reach in the same manner as if in the cab, and is able to use the remote controls to control the equipment as effectively as if in the cab, the operator has not left the controls within the meaning of § 1926.1417(e). Therefore, the operator is not subject to the conditions of §§ 1926.1417(e)(1)(i) through (iv).

Section 1926.1417(e) requires that the operator not leave the controls while the load is suspended except when four conditions, outlined in §§ 1926.1417(e)(1)(i) through (e)(1)(iv), are met. OSHA has revised the introductory text to make it clear that each one of the conditions in §§ 1926.1417(e)(1)(i) through (e)(1)(iv) must be met for the operator to leave the controls.

Paragraph (e)(1)(i) requires the operator to remain adjacent to the equipment and not engage in any other duties. This paragraph will not only prevent unauthorized use of the crane by persons who are not competent crane operators but also allow the operator to quickly access the controls in case the equipment or load inadvertently moves.

Paragraph (e)(1)(ii) requires the load to be held suspended for a period of time exceeding normal lifting operations. As explained above, these are instances when the load is "held suspended," that is, without need for adjustment of the load's or the equipment's position—for an extended period. These are circumstances in which the operator will not need to manipulate the controls. Such circumstances must be for a period of time in excess of the periods that occur during normal lifting operations.

For example, during the construction of a structure, a large subassembly is being attached to another part of the structure. After the subassembly has been initially connected, it is held suspended (that is, without need for adjustment of position) for support for several hours while the final connections are made. This period exceeds normal lifting operations. In this example, the criterion of § 1926.1417(e)(1)(ii) would be met.

Another, contrasting example is the following: A steel structure is being erected. When installing the steel beams, the operator holds the beam suspended (typically for several minutes) while it is initially connected. Holding the beam suspended in such instances is a normal part of the steel erection process. In this example the criterion in § 1926.1417(e)(1)(ii) would not be met and the operator cannot leave the controls.

Paragraph (e)(1)(iii) requires the competent person to determine that it is safe for the operator to leave the controls and implement measures necessary to restrain the boom hoist and telescoping, load, swing, and outrigger functions. This provision addresses the hazard of inadvertent movement while the controls are unattended.

Paragraph (e)(1)(iv) requires barricades or caution lines, and notices to be erected to prevent all employees from entering the fall zone. Furthermore, under this paragraph no employees would be permitted in the fall zone, including those listed in §§ 1926.1425(b)(1) through (3), (d), or (e). This is necessary because the added margin of safety that results from the operator being at the controls would not be present in these circumstances.

A labor representative recommended retention of the previous prohibition of leaving any unattended loads suspended because it believed that the four conditions for the exemption were unclear and unenforceable. (ID–0199.1.) Specifically, the commenter stated that (1) The term "adjacent to the equipment" needed to be further explained or quantified; (2) further guidance was needed to explain the meaning of the phrase "a period of time exceeding normal operations;" (3) the Agency needs to clarify that the equipment operator can be the "competent person" referred to in this section; and (4) the proposed requirement to erect barriers or caution lines to prevent employees from entering fall zones are infeasible in many construction zones.

Regarding the commenter's first two points, in light of the extreme variability of equipment types, loads lifted, and construction site conditions, OSHA determines it is not possible to use more precise language without making the rule underinclusive and/or overinclusive. Specifying a precise distance in lieu of saying "adjacent to the equipment," and a precise time in lieu of "a period of time exceeding normal operations," as the commenter suggests, would not be practical in light of the numerous variables that affect these distances and times on construction sites. OSHA also rejects the commenter's suggestion that the previous prohibition be retained if it is not possible to use more precise language. OSHA concludes that this is an area where employers can be afforded flexibility without detracting from safety, and that the limited conditions under which it is permissible to leave a suspended load unattended will accomplish this objective.

Regarding the third point, the answer is "yes," an equipment operator can be a "competent person" for purposes of this section if he or she meets the requirements of the § 1926.1401 definition of that term. Finally, where conditions in a construction site exist that prevent erection of barriers or caution lines as prescribed by this section, § 1926.1417(e) prohibits employers from using this exception to the general prohibition of leaving suspended loads unattended.

Proposed paragraph (e)(2) stated that the provisions in paragraph (e) do not apply to working gear, which includes slings, spreader bars, ladders, and welding machines, where the load is not suspended over an entrance or exit.

The Agency noted in the proposal that the reference to paragraph (e) was a drafting error and that the appropriate reference was to paragraph (e)(1). In addition, the provision as proposed contained two incidences of the word "not" which could lead to confusion. Therefore, the Agency noted in the proposal that it was considering changing the language to state that the provisions in § 1926.1417(e)(1) do not apply to working gear where the working gear is suspended over an area other than an entrance or exit.

In the proposed rule, OSHA noted that it was common practice for employers to leave lightweight items suspended overnight to prevent theft and stated that this provision was only intended to apply to working gear whose weight was negligible relative to the capacity of the equipment. Four commenters believed that the proposed wording of § 1926.1417(e)(2) was overly broad to accomplish this purpose because it did not limit the weight of the suspended working gear relative to the capacity of the equipment and could therefore allow a load that placed a significant strain on the equipment to be suspended overnight. (ID–0122.1; –0172.1; –0178.1; –0199.1.) OSHA agrees with these commenters that this

provision should be clarified and, in the final rule, has made explicit what was stated in the preamble to the proposed rule: that the provision only applies where the weight of the working gear is negligible relative to the lifting capacity of the equipment.

Paragraph (f) Tag-Out

Paragraph (f)(1) Tagging Out of Service Equipment/Functions

Where the employer has taken the equipment out of service, this paragraph requires that the employer place a tag in the cab stating that the equipment is out of service and is not to be used. Where the equipment remains in service but the employer has taken a function out of service, this paragraph requires that the employer place a tag in a conspicuous position stating that that function is out of service and is not to be used. This paragraph is designed to prevent hazards associated with workers inadvertently attempting to use out-of-service equipment or a function that is out of service.

Paragraph (f)(2) Response to "Do Not Operate"/Tag-Out Signs

If there is a warning sign on the equipment or starting control, paragraph (f)(2)(i) of this section prohibits the operator from activating the switch or starting the equipment until the sign is removed by someone authorized to remove it or until the operator can verify that (A) no one is servicing, working on, or otherwise in a dangerous position on the machine, and (B) the equipment has been repaired and is working properly. Similarly, under § 1926.1417(f)(2)(ii), when there is a warning sign on any other switch or control, the operator will be prohibited from activating that switch or control until the sign has been removed by an individual authorized to remove it, or until the operator meets the two requirements of § 1926.1417(f)(2)(i), described above.

These provisions will prevent two types of hazards. First, since the machine is out of service, there is a risk that an employee servicing, working on, or otherwise in a dangerous position on it is not expecting it to be activated and would be injured if it were activated. Second, if an employee does not know that the equipment is malfunctioning or has a function that is not working properly, an employee could inadvertently try to operate it with the result that the equipment will not work as intended, causing unintended movement or a collapse.

Subpart N of the former rule addressed this issue through sec. 5–3.1.3g of ANSI B30.5–1968, which states: "If there is a warning sign on the switch or engine starting controls, the operator shall not close the switch or start the engine until the warning sign has been removed by the person placing it there." Instead of requiring that the sign be removed by the person who placed it, § 1926.1417(f)(2) permits it to be removed by an authorized person and, as an alternative, permits the operator to start the equipment after verifying that no worker is in a dangerous area and that the equipment has been repaired and is working properly. OSHA concludes that either alternative would achieve the safety purpose of the tag-out because it would ensure that a knowledgeable and responsible person, either the operator or another authorized person, verifies that repairs are complete and all workers are in a safe position before the equipment can be started.

As discussed above, the operator will be permitted to start equipment that is tagged out, or activate a tagged-out switch, only if the procedures specified in § 1926.1417(f)(2)(i) are met. In reviewing this provision during the proposal stage, the Agency noted that these procedures were not as comprehensive as those in the general industry standard for the control of hazardous energy (lockout/tagout), which are listed in §§ 1910.147(e)(3)(i) through (iii).[84] The Agency requested public comment on whether procedures similar to those in §§ 1910.147(e)(3)(i) through (iii)[85] would be feasible and appropriate for cranes/derricks used in construction.

Two commenters opposed broadening the requirements along the lines of the requirements in §§ 1910.147(e)(3)(i) through (iii), stating that the general industry standards were not appropriate for cranes and derricks used in construction. (ID–0205.1; –0213.1.) A third commenter believed that the § 1910.147(e)(3) procedures were feasible and appropriate. (ID–0144.1.) A fourth commenter recommended that the tag-out requirements be upgraded to a lock-out requirement to provide greater worker protection. (ID–0199.1.) A fifth commenter agreed that a lock-out requirement would provide superior protection to the proposed tag-out proposal, but that locking out was not feasible on some equipment, especially older equipment. (ID–0187.1.) That commenter recommended that the requirement be upgraded to a lock-out requirement where feasible, but remain a tag out procedure where lock out was not feasible. Upon consideration of all these comments, OSHA concludes that the record does not clearly indicate that adding a lock-out requirement as suggested by the last two commenters is needed to ensure safety and, as the one commenter noted, would not be feasible on all equipment. Instead, the Agency concludes that the tag-out requirement in the proposed rule contains clear and concise restrictions on the conditions under which equipment can be brought back into service and will ensure that equipment is not started when employees are in a danger zone. Therefore, this section is promulgated as proposed.

Paragraph (g)

This paragraph requires the operator to verify, before starting the engine, that all controls are in the proper starting position and that all personnel are in the clear. Requiring operators to check that all controls are in their proper starting positions will prevent unintended movement of the equipment when the engine is initially started. Similarly, requiring operators to ensure that all personnel are in the clear will prevent personnel from being injured in the event that some aspect of the equipment moves upon start-up. No comments were submitted on this paragraph; therefore it is promulgated as proposed.

Paragraph (h) Storm Warning

When a local storm warning has been issued, this paragraph requires the competent person to determine whether it is necessary to implement manufacturer recommendations for securing the equipment. This provision was designed to prevent hazards that could arise from severe weather including inadvertent movement and crane collapse. High-speed winds in particular can affect both the crane and the load, reducing the rated capacity of the crane and affecting boom strength. No comments were submitted on this paragraph; therefore it is promulgated as proposed.

Paragraph (i) [*Reserved.*]

Paragraph (j)

Under paragraph (j)(1) of this section, when the operator determines that an adjustment/repair is necessary, the

[84] Section 1910.147 is not applicable to construction (*see* § 1910.147(a)(ii)(A)).

[85] These general industry provisions state:

(i) Verification by the employer that the authorized employee who applied the device is not at the factory;

(ii) Making all reasonable efforts to contact the authorized employee to inform him/her that his/her lockout or tagout device has been removed; and

(iii) Ensuring that the authorized employee has this knowledge before he/she resumes work at that facility.

Section 1910.147(e)(3)(i) through (iii).

operator is required to promptly inform, in writing, the individual designated by the employer to receive such information, as well as the next operator in cases where there are successive shifts. OSHA revised the organization of the proposed provision for clarity. This reorganization involved removing the introductory sentence that operators be familiar with the equipment and its proper operation because this sentence merely described an enabling condition necessary for operators to identify any necessary repairs and adjustments.

This paragraph addresses the need to identify problems that may develop with the equipment during operations. Early recognition of such problems by the operator will help prevent accidents that could result from continued operation of equipment that needs adjustment and/or repair. In the Committee's experience, operators who are familiar with the equipment and its proper operation can recognize such equipment anomalies and problems. By requiring that information about needed adjustments and/or repairs be provided to the individual designated by the employer to receive it, this paragraph will facilitate the correction of those problems.

The rule does not specify any particular job title for the person to whom the operator would be required to provide this information because different employers may assign the responsibility of receiving such information to different job classifications.

Providing this information to the next operator in cases where there are successive shifts (that is, shifts that have no break between them) will ensure that the next operator is aware of this information and will be able to take appropriate action.

One commenter recommended that the information be transmitted in written form. (ID–0132.1.) OSHA agrees with this comment primarily because written information would be more easily passed on between shifts. OSHA has, therefore, revised § 1926.1417(j) to specify that the notification of necessary adjustments or repairs must be in writing.

Additionally, OSHA added § 1926.1417(j)(2) to require employers to notify, at the beginning of each shift, all affected employees of any necessary adjustments or repairs. This requirement will allow all employees affected by the operation of the equipment to be notified of any outstanding repairs or adjustments, and provides them with information about alternative measures implemented by the employer. Affected employees are any employees exposed to equipment-related hazards; such employees include, but are not limited to, any employee in the fall zone of the load, signal persons, riggers, operators, load handlers, and lift directors. OSHA concludes that this provision is necessary to allow employees to adjust their work practices following implementation of the alternative measures.

The Agency finds this modification to be consistent with the requirements throughout this subpart with respect to sharing information about equipment-related hazards. This added provision merely requires employers to take the information acquired under § 1926.1417(j)(1) and distribute it to affected employees. Employers may distribute this information by any effective means available.

Paragraph (k)

This paragraph prohibits safety devices and operational aids from being used as a substitute for the exercise of professional judgment by the operator. Such devices and aids do not displace the need for operators to apply their professional judgment because the devices and aids can malfunction and lead to the types of safety hazards they are designed to prevent. No comments were submitted on this paragraph; therefore it is promulgated as proposed.

Paragraph (l) [*Reserved.*]

Paragraph (m)

If the competent person determines that there is a slack rope condition requiring re-spooling of the rope, this paragraph requires that before starting the lift, it must be verified that the rope is seated on the drum and in the sheaves as the slack is removed. This will prevent a loose coil of rope from becoming cross-coiled on the drum, a portion of the rope coming off the drum altogether, or the rope being pulled alongside (instead of seating in) a sheave. Each of these conditions can lead to sudden failure of the rope. No comments were submitted on this paragraph; therefore it is promulgated as proposed.

Paragraph (n)

This paragraph requires the competent person to adjust the equipment and/or operations to address the hazards posed by wind, ice and snow on equipment capacity and stability. In the proposed rule, the person would have been required to "consider the effect" of those elements, but OSHA is clarifying in the final rule that the competent person must actually take steps such as re-calculating a lower load capacity, stabilizing the equipment, or even postponing a lift. Wind can reduce capacity by imposing loads on the equipment, which can also reduce stability. Ice and snow can also reduce capacity and stability when it accumulates on the equipment. There are numerous variables involved in determining the effects of wind, ice and snow in any particular circumstance, (for example, the extent to which the crane is operating below its rated capacity, the sail effect presented by the load, the rate at which ice or snow is accumulating, and whether the snow is wet or light). No comments were submitted on this paragraph; therefore it is promulgated as proposed with the one change noted above.

Paragraph (o) Compliance With Rated Capacity

Section 1926.1417(o)(1) requires employers to ensure that equipment is not operated beyond its rated capacity. Overloading a crane or derrick can cause it to collapse, with potentially catastrophic consequences. This basic safeguard has long been recognized in the industry as crucial and is designed to prevent such accidents. (*See* additional discussion at 73 FR 59792, Oct. 9, 2008).

Section 1926.1417(o)(2) requires employers to ensure that operators are not required to operate the equipment in a manner that would exceed its rated capacity, in violation of § 1926.1417(o)(1) above. This provision reinforces the general prohibition of § 1926.1417(o)(1) by making it a separate violation for an employer to expressly require an operator to exceed the equipment's rated capacity. It is designed to avoid a situation where an employer pressures an operator to conduct a lift that exceeds the equipment's rated capacity to avoid the time and expense associated with bringing in larger capacity equipment.[86]

In the experience of C–DAC members, employers sometimes will attempt to lift loads that exceed a crane's rated capacity in the belief that the rated capacity is sufficiently conservative to perform the lift. In some such cases, the employer assumes that a safety factor is built into the capacity rating and that the crane actually has a higher capacity than its rating. In the C–DAC discussions of this issue, members explained that while equipment capacity ratings are developed with

[86] In some instances the overcapacity problem can be avoided by repositioning the crane (for example, by moving the crane so that the lift can be performed at a higher boom angle). However, even in those instances some time (and associated expense) is involved.

consideration of a safety factor, that safety factor is not intended by the manufacturer to be treated as excess capacity. There are numerous, complex considerations used by manufacturers in setting the capacity rating. Employers cannot safely assume that, in any particular situation, they will not need the benefits conferred by the safety factor.

There continue to be a significant number of injuries and fatalities resulting from equipment overturning. Although it has long been a requirement not to exceed the equipment's rated capacity, a significant number of overturning incidents are caused by exceeding rated capacity. A study of fatal accidents involving cranes in the U.S. construction industry for 1984–1994, based on investigations of reported accidents conducted by OSHA and states with OSHA-approved safety and health programs, showed that 22 deaths resulted from overloaded cranes. A. Suruda, M. Egger, & D. Liu, "Crane-Related Deaths in the U.S. Construction Industry, 1984–94," p. 12, Table 9, The Center to Protect Workers' Rights (Oct. 1997). (ID-0013.) By stressing the need both to comply with the rated capacity and to separately preclude employers from requiring operators to exceed the rated capacity, paragraphs (o)(1) and (o)(2) should prevent this type of accident. No comments were received on these paragraphs, and they are promulgated as proposed.

Another cause of injuries and fatalities from overturning equipment is the use of unreliable information on load weight. OSHA concludes that one of the ways these incidents can be reduced is to require that load weight be verified by a reliable means.

Under § 1926.1417(o)(3), Load weight, the operator is required to verify that the load is within the rated capacity of the equipment by using the procedures in either § 1926.1417(o)(3)(i) or (ii). Under § 1926.1417(o)(3)(i), the weight of the load must be determined in one of three ways: from a source recognized by the industry, by a calculation method recognized by the industry, or by other equally reliable means. An example of verifying the load weight from a source recognized by the industry would be where the load is mechanical equipment and the weight is obtained from its manufacturer. The proposed rule had provided for the weight of the load to be based on a "reliable source." To avoid the potentially subjective interpretations of "reliable," OSHA is instead requiring in the final rule that the measurements be from a source typically relied on in the industry.

An example of a calculation method recognized by the industry would be the following: The load is a steel I-beam. After measuring the thickness of the steel and the I-beam's other dimensions, the operator uses an industry table that shows weight per linear foot for a beam of these dimensions. The operator then calculates the beam's weight using that information. In the proposed rule calculations would be based on a "reliable source." To avoid the potentially subjective interpretations of "reliable," OSHA is instead requiring in the final rule that the calculations be based on a source typically relied on in the industry.

If the weight of the load is determined under § 1926.1417(o)(3)(i), the information about how the load weight was determined must be provided to the operator, prior to the lift, upon the operator's request. This provision is included to help ensure that the operator has the information necessary to verify that the load is within the rated capacity of the equipment.

One commenter suggested that this section be amended to specifically include as a reliable source the personal experience of the operator with loads of similar size and materials. (ID-0232.1.) OSHA rejects that suggestion because it is not convinced by any evidence in the record that all operators, regardless of whether the operator is experienced or has been on the job for a few weeks, are capable of producing an accurate, reliable estimate of the load weights. For example, an operator may have recently lifted precast concrete sections that, based on date provided by the manufacturer, weighed 5 tons each. The operator may be called upon to lift other precast concrete sections of unknown weight that are actually 10% heavier than those lifted earlier. It is unlikely that the heavier sections would be significantly different in appearance than those that weigh 10% less, and the operator may mistakenly underestimate the weight of the sections if permitted to estimate load weight based on his or her personal experience with loads of similar size.

Paragraph (o)(3)(ii) establishes an alternative procedure that does not require the employer to determine the actual weight of the load under certain circumstances. Under paragraph (o)(3)(ii), the operator would have to begin hoisting the load to determine if it exceeds 75 percent of the maximum rated capacity at the longest radius that will be used during the lift operation, using a load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter. If the load does not exceed 75 percent of the maximum rated capacity, the lift can be conducted without determining the weight of the load. This verification procedure [87] incorporates a sufficient margin of error and would be adequate to ensure that the crane's rated capacity will not be exceeded. If, however, the load does exceed 75 percent of the maximum rated capacity, then the operator may not proceed with the lift until he/she verifies the weight of the load in accordance with § 1926.1417(o)(3)(i). No comments were received on this paragraph, and it is promulgated without change from the proposed rule.

Paragraph (p)

This paragraph requires that the boom or other parts of the equipment not contact any obstruction. No comments were submitted on this paragraph, and it is promulgated as proposed.

Paragraph (q)

This paragraph requires that the equipment not be used to drag or pull loads sideways. This is to prevent the sideloading that occurs when a load is dragged or pulled sideways. Sideloading can buckle the boom, damage the swing mechanism, or overturn the crane (such as when the boom is at a high angle). No comments were submitted on this paragraph, and it is promulgated as proposed.

Paragraph (r)

Paragraph (r) of this section applies to wheel-mounted equipment and requires that no loads be lifted over the front area, except as permitted by the manufacturer. Wheel-mounted equipment typically is not designed to lift loads over the front area. Equipment that is not so designed will likely tip over or otherwise fail when lifting loads over the front area. If the equipment is specifically designed for loads to be lifted over the front area (such as where equipped with a front outrigger for support and stabilization for this purpose), the operator must follow the

[87] The operator would still be required to use his or her professional judgment in determining whether the load exceeds the capacity of the equipment. As discussed above, proposed § 1926.1417 (k) would prohibit sole reliance by the operator on an operational aid, such as a load weight device, for ensuring that the equipment's capacity will not be exceeded. The procedure in proposed § 1926.1417(o)(3)(ii) is a verification procedure—it would verify that the operator's estimate is at least correct in terms of not exceeding 75% of the equipment's rated capacity (at the longest radius that will be used). If, for example, the load weight device yields a figure that is significantly below what the operator estimates to be the true weight, the operator would need to reliably determine the weight of the load before proceeding with the lift.

manufacturer's procedures for doing so. No comments were submitted on this paragraph; it is therefore promulgated as proposed.

Paragraph (s)

Each time an operator handles a load that is 90% or more of the maximum line pull, § 1926.1417(s) requires the operator to test the brakes by lifting the load a few inches and applying the brakes. In duty cycle and repetitive lifts where each lift is 90% or more of the maximum line pull, this requirement applies to the first but not to successive lifts, because the operator would have already determined from the initial test that the brakes are sufficient. The brake test required by this paragraph is designed to ensure that the brakes are sufficient to handle loads close to their design capacity before lifting the load high off the ground. No comments were submitted on this paragraph, and it is promulgated as proposed.

Paragraph (t)

This paragraph requires that neither the load nor the boom be lowered below the point where less than two full wraps of rope remain on their respective drums. This provision is designed to ensure that the rope is not unspooled to the point where the rope would become disconnected from the drum. No comments were submitted on this provision, and it is promulgated as proposed.

Paragraph (u) Traveling With a Load

Paragraph (u)(1) of this section prohibits traveling with a load if the practice is prohibited by the manufacturer. If the manufacturer does not prohibit this practice, the equipment may travel with a load, but only if the requirements of paragraph (u)(2) are met. Paragraph (u)(2) of this section sets forth three procedures that employers would have to follow when traveling with a load: a competent person must supervise the operation; the determinations of the competent person must be implemented; and for equipment with tires, the tire pressure specified by the manufacturer must be maintained.

During discussions of this issue, C–DAC members noted the dynamic effects of traveling with a load impose additional and/or increased forces on crane components. Unless the crane has been designed to handle these types of forces and force levels, they can cause component failure, collapse, instability or overturning. The Committee concluded that the manufacturer has the expertise to ascertain its equipment's capabilities. Therefore, the Committee recommended that where the manufacturer has prohibited traveling with the load, the operator must comply with such a determination to ensure safety. (For additional explanation, *see* 73 FR 59794, Oct. 9, 2008.) No comments were submitted on these provisions and they are promulgated as proposed.

Paragraph (v)

This paragraph requires that rotational speed of the equipment be such that the load does not swing out beyond the radius at which it can be controlled. Like paragraph (q) of this section, discussed above, this provision is designed to prevent the hazard of sideloading, which occurs when the load swings to either side of the boom tip, rather than its appropriate position directly beneath the boom tip. When the load is not directly under the boom tip, sideloading occurs and decreases capacity. This hazard can lead to tip-over or boom failure. No comments were submitted on this paragraph, and it is promulgated as proposed.

Paragraph (w)

This paragraph requires that a tag or restraint line be used if necessary to prevent the load from rotating if that would be hazardous. No comments were submitted on this paragraph, and it is promulgated as proposed.

Paragraph (x)

This paragraph requires that the brakes be adjusted in accordance with manufacturer procedures to prevent unintended movement. This requirement applies to all brakes on equipment covered by this standard, including brakes used to control the lowering of the load and those used to stop the equipment while it is traveling. C–DAC noted that improper adjustment can cause a delay in the onset of braking after the operator attempts to activate the brake and can also diminish the brake's capacity. Brakes are critical to the safe operation of the equipment and must be properly adjusted to serve their safety function. (*See* additional explanation at 73 FR 59795, Oct. 9, 2008.) No comments were submitted on this paragraph; it is promulgated as proposed.

Paragraph (y)

This paragraph requires that the operator obey a stop or emergency stop signal, regardless of who gives the signal. Any person on a worksite may observe a hazardous condition that is not visible to or recognized by the crane operator and that can only be avoided if the equipment stops immediately, so it is imperative that the operator respond immediately to any such signal by anyone. No comments were submitted on this paragraph; it is promulgated as proposed.

Paragraph (z) Swinging Locomotive Cranes

Pursuant to this paragraph, a locomotive crane must not be swung into a position where railway cars on an adjacent track could strike it, until it is determined that cars are not being moved on the adjacent track and that proper flag protection has been established. The Agency is including this paragraph to prevent contact between the locomotive cranes and railway cars, and notes comparable requirements in § 1910.180(i)(6) and sec. 5–3.4.4 of ANSI B30.5–1968. No comments were submitted on this paragraph, and it is promulgated with only one modification. The proposed rule incorporated an additional determination of whether it would be "reasonably foreseeable" that other railway cars on an adjacent track could strike the locomotive crane. OSHA concludes that when a locomotive crane swings into a position where it is physically possible for a railway car on an adjacent track to strike it, a hazard is present and the additional language would serve only to generate confusion about the appropriate response to that hazard. The concepts of reasonableness and forseeability are typically raised during legal processes and would be factored into those processes in accordance with law.

Paragraph (aa) Counterweight/Ballast

Section 1926.1417(aa)(1) contains counterweight/ballast requirements that apply to equipment other than tower cranes and are intended to prevent unintended movement, tipover, and collapse. As noted in § 1926.1417(aa)(2), requirements regarding counterweight/ballast for tower cranes are found in § 1926.1435(b)(8).

Section 1926.1417(aa)(1)(i) requires that equipment not be operated without the counterweight or ballast in place as specified by the manufacturer.

Section 1926.1417(aa)(1)(ii) prohibits the employer from exceeding the maximum counterweight or ballast specified by the manufacturer for the equipment. Exceeding that maximum could result in component failure, which could cause unintended movement, tipover or collapse. No comments were submitted on this provision, and it is promulgated as proposed.

Section 1926.1418 Authority To Stop Operation

This section provides that whenever there is a concern as to safety, the operator has the authority to stop and refuse to handle loads until a qualified person has determined that safety has been assured. Section 1926.1401 defines "qualified person" as a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.

Section 1926.1418 continues the long-standing requirements under subpart N and current consensus standards. (*See* former § 1926.550(b)(2), incorporating by reference ANSI B30.5–1968, sec. 5–3.1.3(d).[88]) As discussed in the proposed rule preamble, a capable equipment operator is highly knowledgeable in matters affecting equipment safety and is well qualified to determine whether an operation presents a safety concern (*see* 73 FR 59795–59796, Oct. 9, 2008). Under the provision, operations would be prohibited from resuming "until a qualified person had determined that safety has been assured," meaning that operations could resume only after the qualified person either: (1) assesses the factors that led the operator to stop and refuse to handle the load and determines that there is not, in fact, a safety hazard, or (2) after corrective action has been taken, determines that there is no longer a safety hazard.

One commenter argued that OSHA lacks the authority to promulgate § 1926.1418.[89] (ID–0232.1.) First, the commenter contended that the provision exceeds the Agency's standards-setting authority under sec. 3(8) of the OSH Act. Second, it expresses concern that § 1926.1418 circumvents the limitations on OSHA's ability to grant employees (*i.e.,* crane operators) stop-work authority. In support of its position, the commenter cited the U.S. Supreme Court opinions in *Industrial Union Dep't, AFL–CIO* v. *American Petroleum Institute*[90] and *Whirlpool Corp.* v. *Marshall*[91].

OSHA disagrees with the commenter's contention that OSHA lacks the authority to promulgate § 1926.1418. Under sec. 3(8) of the OSH Act and applicable case law,[92] the Agency has broad authority to promulgate standards that are reasonably necessary or appropriate to provide safe or healthful places of employment. In *Whirlpool Corp.,* the U.S. Supreme Court stated that the Act "does not wait for an employee to die or become injured."[93] Section 1926.1418 is an essential mechanism for preventing fatalities and injuries. It enables the person who has the expertise to recognize a safety concern and is best positioned to act quickly to do so where such a concern arises.[94]

OSHA also disagrees with the commenter's contention that § 1926.1418 impermissibly grants stop-work authority, as well as a different commenter who asserted that the wording of the provision is too vague and could lead to an abuse of the operator's authority. Both commenters suggested that OSHA limit the operator's authority to specific reasons involving a potential violation of a requirement in subpart CC. (ID–0218.1; 0232.1.)

The provision does not authorize an operator to stop operations for reasons unrelated to a good faith belief that there may be a safety problem. In this respect the provision is similar to other provisions in the standard (and elsewhere in 29 CFR part 1926) in which an employer is required to have a person in a specialized role perform specific tasks involving the application of expertise (*e.g.,* competent and qualified persons performing inspections under § 1926.1412). In each case compliance with the standard is predicated on the good faith application of that expertise.[95]

C–DAC thoroughly discussed the wording of this provision, mindful of the need for both clarity and sufficient flexibility to enable the operator to address myriad circumstances. The Committee's wording strikes an appropriate balance. The word "concern" refers to a good faith belief that safety may be in jeopardy. The word "assured" means that the qualified person has assessed whatever triggered the crane operator's belief that there was a concern as to safety and either: (1) Determines that there is not, in fact, a safety hazard, or (2) after corrective action is taken, determines that there is no longer a safety hazard.

OSHA disagrees with the commenter's suggestion to link the authority to a violation of subpart CC. While C–DAC and the Agency have made every effort to address the hazards associated with crane and derrick operation, there may be circumstances that present hazards that have not been anticipated here.

In addition, a particular situation may not be immediately recognized as falling within one of subpart CC's provisions. An operator's uncertainty in that regard could lead him/her to hesitate to exercise the authority even where it needs to be applied. Also, the determination by a qualified person to proceed with operations needs to be based on whether safety is assured, not on the resolution of a debate about whether the operator's concern fits within a provision of this standard.

Another commenter expressed the following concerns: "qualified person" should be better defined; the qualified person would feel undue pressure from the controlling entity or crane employer to find that safety had been assured, and that the qualified person's scope of responsibility once operations resume is unclear. (ID–0218.1.)

As explained in the preamble to the proposed rule, the definition of "qualified person" in § 1926.1401 corresponds to the definition of "qualified" in § 1926.32(m) and reflects the fact that the duties assigned to "qualified persons" here are similar to those assigned under other construction standards. The Committee intentionally used the same definition to make it clear that employers could rely on their current understanding of "qualified person." OSHA sees no reason to deviate from that definition where the commenter did not explain how it viewed the definition as vague or provide alternative language.

[88] Current consensus standards specify that an operator with a safety concern must raise that concern with a supervisor before proceeding with a lift. *See* sec. 5–3.1.3(d) of ASME B30.5–2004, "Mobile and Locomotive Cranes," sec. 2–3.1.7 of ASME B30.2–2001, "Overhead and Gantry Cranes," sec. 3–3.1.3(d) of ASME B30.3–1996, "Construction Tower Cranes," sec. 6–3.2.3 of ASME B30.6–2003, "Derricks," and other standards in the ASME B30 series.

[89] The commenter nominated a C–DAC member who did not dissent on this section of the standard. The commenter has not explained why it has changed its position from the one taken by their C–DAC member during negotiations. In light of the unexplained inconsistency of its position, the Agency accords diminished weight to the commenter's comment and is hesitant to rely on it to undermine the product of the negotiation.

[90] 448 U.S. 607 (1980).

[91] 445 U.S. 1 (1980).

[92] *E.g., Indus. Union Dep't, AFL–CIO,* 448 U.S. at 611–12.

[93] 445 U.S. at 12.

[94] As stated above, current consensus standards manifest the industry's recognition of the necessity for a crane operator to have such authority. In concert with § 1926.1400(f), § 1926.1418 requires the employer to authorize its crane operator to halt operations upon a safety concern until a qualified person determines that safety has been assured.

[95] Two organizations that nominated C–DAC members reminded the Agency in their comments that OSHA had committed during the C–DAC negotiations to include a discussion in the preamble regarding this principle of good faith. (ID–0205.1; –213.1.) The Agency believes that the foregoing paragraph satisfies that agreement.

With respect to the issue of undue pressure on the qualified person, C–DAC shared the commenter's concern; the Committee identified pressure placed by some employers on operators to proceed with unsafe lifts as a significant problem in the industry. This led C–DAC, for example, to include the specific prohibition in § 1926.1417(o)(2) against requiring an operator to operate the equipment in excess of its rated capacity (*see* the discussion of § 1926.1417(o)(2) in 73 FR 59792–59793, Oct. 9, 2008). The commenter did not suggest, and OSHA is not aware of, any additional measures that could be included in the standard to help prevent the application of that type of pressure.

As to the commenter's final point, after a crane operator stops and refuses to proceed with operations due to a concern as to safety, the qualified person would then assess the situation and determine whether or when safety has been assured. At that point, the qualified person's responsibilities under § 1926.1418 would be completed unless and until the crane operator identifies another concern as to safety. The Agency, therefore, is promulgating this provision as proposed.

Sections 1926.1419 Through 1926.1422 Signals

Sections 1926.1419 through 1926.1422 address the circumstances under which a signal person must be provided, the type of signals to be used, criteria for how signals are transmitted, and other criteria associated with the use of signals.

OSHA has decided to replace the term "lift supervisor" with the term "lift director" in §§ 1926.1419(c)(2), 1926.1421(a), and 1926.1421(c). This decision was made to be consistent with the similar change from "A/D supervisor" to "A/D director" in § 1926.1404(a). For an explanation of the change, *see* the discussion of § 1926.1404(a).

Section 1926.1419 Signals—General Requirements

This section sets requirements regarding signals when using equipment covered by this standard. C–DAC determined that addressing these issues is one of the means by which the number of injuries and fatalities caused by "struck-by" incidents, in which the equipment or load strikes an employee, can be reduced.

Paragraph (a)

Paragraphs (a)(1) through (a)(3) of this section address the circumstances that require the use of a signal person: (1) When the point of operation, meaning the load travel path or the area near or at load placement, is not in full view of the operator (§ 1926.1419(a)(1)); (2) when the equipment is traveling and the operator's view in the direction of travel is obstructed (§ 1926.1419(a)(2)); and (3) when, due to site specific safety concerns, either the operator or the person handling the load determines it is necessary (§ 1926.1419(a)(3)). The first two of these circumstances involve an obvious hazard—limited operator visibility. With respect to the third circumstance, C–DAC determined that other situations arise that, from a safety standpoint, necessitate the use of a signal person (*see* examples in the preamble to the proposed rule at 73 FR 59796, Oct. 9, 2008).

One commenter, representing the interests of the material delivery industry, suggested that § 1926.1419(a) be changed to specify that, if a signal person is needed at the site due to the obstructed view of the operator when delivering building materials, then the construction site customer (not the material delivery employer) would be responsible for providing the signal person. (ID–0184.1.) OSHA concludes that the question of whether the material delivery employer or the construction site customer should bear the cost of providing the signal person when required is an economic issue that is most appropriately left to the parties to resolve.

During the public hearing, a labor representative stated that his organization believes that a signal person is always necessary when working with cranes. (ID–0343.) Two commenters representing the materials delivery industry disagreed (ID–0184.1; –0218.1.)

OSHA has decided to defer to the expertise of the Committee, which found that a signal person should only be required in the three circumstances listed in § 1926.1419(a). Moreover, OSHA notes the requirement in § 1926.1419(a)(3), which provides that a signal person must be provided if the crane operator or person handling the load determines a signal person is necessary due to site specific safety concerns. This provision, in particular, ensures that a signal person will be required when necessary.

One commenter asked for clarification on the meaning of "full view of the operator" in § 1926.1419(a)(1). (ID–292.1.) In particular, the commenter asked whether mirror or camera systems would meet this requirement. Another commenter suggested adding language allowing the use of boom mounted video cameras for blind lifts. (ID–0120.0.)

A live video system that provides a full view to the crane operator—*i.e.,* provides a sufficiently broad, clear and detailed view to enable the operator to see all that is needed to operate the equipment safely—would meet the "full view of the operator" requirement. Mirrors, on the other hand, typically distort images or distances and thus would not normally be sufficient to provide a "full view."

The sufficiency of any system will depend on the particular needs posed by each situation. For this reason, OSHA has decided to rely on C–DAC's clear and succinct phrase, "full view of the operator," rather than to attempt to further define that concept or to list acceptable devices in the regulatory text.

Paragraph (b) Types of Signals

As explained in the proposed rule preamble, under paragraph (b) of this section, signals to crane operators would have to be by hand, voice, audible, or "new" signals (*see* 73 FR 59796–59797, Oct. 9, 2008). As used in this standard, these terms refer to the type of signal, not the means by which the signal is transmitted. For example, signaling by voice refers to oral communication, not whether the oral communication is done with or without amplification or with or without electronic transmission. The manner of transmission of the signal is addressed separately. No comments were received on this paragraph; it is promulgated as proposed.

The criteria for the use of these signal types are set out in §§ 1926.1419(c)–(m) (additional voice signal requirements are in § 1926.1421, *Signals—voice signals—additional requirements*). The Committee's intent was to reduce the potential for miscommunication, which can lead to injuries and fatalities, particularly from "struck-by" and "crushed-by" incidents. In setting parameters for the use of the various types of existing signal methods, and for signal methods that may be developed in the future, the Committee sought to promote a degree of standardization while still allowing appropriate flexibility. In addition, the provisions are designed to ensure that the selection of signal type and means of sending the signals are appropriate under the circumstances and reliable.

Paragraph (c) Hand Signals

Paragraph (c) of this section addresses the use of hand signals. The industry has long recognized the need for consistent, universal hand signals to

minimize the potential for miscommunication between signal persons and operators. ANSI B30.5–1968, "Crawler, Locomotive and Truck Cranes," contains illustrations of hand signals that are the same as the current 2004 edition of ASME B30.5 and that are consistent with hand signals for other types of cranes in ASME B30 standards. The same hand signals have been expressed in similar charts published by a variety of other groups. (*See, e.g.,* Construction Safety Association of Ontario, MIOSHA, MSHA.)

Because of the industry's long familiarity with these standard hand signals, C–DAC determined that, when using hand signals, the standardized version of the signals should continue to be required. These signals, which are located in Appendix A, are referred to as the "Standard Method," and this term is defined in § 1926.1401 as "the protocol in Appendix A for hand signals." However, the Committee recognized that there are instances when use of the Standard Method is either infeasible or where there is no Standard Method signal applicable to the work being done.

In such instances, under this paragraph, non-standard signals may be used. To avoid confusion when non-standard signals are used, proposed § 1926.1419(c)(2) requires that the signal person, crane operator, and lift director (where there is one) meet prior to the operation to agree upon the signals that will be used.

At the public hearing, one witness commented that the use of non-standard hand signals should not be allowed because it would unnecessarily confuse contractors and utility workers, and because standard signals are already used in the industry. (ID–345.17.) OSHA defers to the expertise of the Committee, which found that a non-standard signal may be needed on occasion (*see* 73 FR 59797, Oct. 9, 2008, in which the Agency described examples of such situations). Additionally, it should be noted that § 1926.1419(c) requires the use of Standard Method hand signals and permits an exception only where the Standard Method signals are infeasible or where there is no Standard Method signal for the particular attachment.

One commenter pointed out that there are currently no hand signals specific to articulating cranes and asked which signals OSHA intended to be used with articulating cranes. (ID–0206.1.) The record contains no information on the extent to which hand signals for articulating cranes may differ from those used for other cranes. If the use of Standard Method hand signals is either infeasible for articulating cranes, or if the use or operation of an attachment is not covered by the Standard Method, then the exception in § 1926.1419(c)(1) and the requirements for non-standard hand signals in § 1926.1419(c)(2) would apply.

OSHA is only making two changes, neither of which is substantive, from § 1926.1419(c) as proposed. The first is a grammatical correction, and the second merely removes the superfluous direction that "[t]he following requirements apply to the use of non-standard hand signals," which is already clear from the text of § 1926.1419(c)(2).

Paragraph (d) New Signals

Paragraph (d) of this section allows signals other than hand, voice, or audible signals to be used if certain criteria are met. As explained in the discussion of § 1926.1419(b) in the preamble to the proposed rule, C–DAC included § 1926.1419(d) to allow for the development of new signals in the future (*see* 73 FR 59796–59797, Oct. 9, 2008). To ensure that any new signals developed by a particular employer are as effective as hand, voice, or audible signals, §§ 1926.1419(d)(1) and (d)(2) require the employer to demonstrate that the new signals are as effective as existing signals for communicating. Alternatively, an employer may use signals that comply with a national consensus standard.[96] OSHA decided to change the language of paragraph (d)(2) to clarify that an employer's signals must comply with the national consensus standard signals. C–DAC determined it was appropriate to allow reliance on signals in a national consensus standard because their inclusion in such a standard shows a high degree of standardization and widespread acceptance by persons who are affected by the signals, thereby ensuring that the signals can be used safely to control equipment operations and preventing the "on the fly" development of signals cited as dangerous by the commenter. (ID–0110.1.)

Paragraph (e) Suitability

Under paragraph (e) of this section, the type of signal (hand, voice, audible, or new) and the transmission method used must be suitable for the site conditions. For example, hand signals would not be suitable if site conditions do not allow for the signal person to be within the operator's line of sight. Radio signals would not be suitable if electronic interference on the site prohibits the signals from being readily understood.

One commenter requested that the determination of which type and means of signaling is appropriate for the site conditions be made by the crane operator or other qualified person. (ID–0172.1.)

The Agency concludes that this is a straight-forward determination that does not require the specialized expertise of a qualified person. Also, the crane operator will typically be involved in this determination, since there are several requirements relating to effective communication that, as a practical matter, will typically involve input from the operator (*see,* for example, §§ 1926.1419(f), 1926.1420(a), and 1926.1421(c)).

Paragraph (f)

Paragraph (f) of this section requires the ability to transmit signals between the operator and signal person to be maintained. If that ability is interrupted, the operator is required to safely stop operations until signal transmission is reestablished and a proper signal is given and understood. No comments were received on this provision; it is included in the final rule without change.

Paragraph (g)

As explained in the preamble to the proposed rule, paragraph (g) of this section requires the operator to stop operations if the operator becomes aware of a safety problem and needs to communicate with the signal person (*see* 73 FR 59797, Oct. 9, 2008). Operations may only be resumed after the operator and signal person agree that the problem has been resolved.

No comments were received on this provision; it is included in the final rule without change.

Paragraphs (h) and (j)

Paragraph (h) of this section requires that only one person at a time signal the operator. As explained in the preamble to the proposed rule, C–DAC determined this provision was needed to prevent confusion with respect to which signals the operator is supposed to follow (*see* 73 FR 59797, Oct. 9, 2008). An exception is provided in § 1926.1419(j) to address situations when somebody becomes aware of a safety problem and gives an emergency stop signal. Under § 1926.1417(y), the operator is required to obey such a signal. No comments were received on either of these provisions; they are

[96] The C–DAC draft refers to an "industry consensus standard." OSHA has changed this to "national consensus standard" to conform to the terminology used in the OSH Act. *See* definition in section 3(9) of the Act.

included in the final rule without substantive change. OSHA has modified paragraph (h) to clarify that it is a requirement.

Paragraph (i) [*Reserved.*]

Paragraph (k)

As explained in the preamble to the proposed rule, paragraph (k) of this section requires that all directions given to the operator by the signal person be given from the operator's direction perspective, meaning that the signal person must provide the signals as if he or she was sitting in the operator's seat and facing the same direction as the operator (*see* 73 FR 59797, Oct. 9, 2008). In the Committee's experience, the operator will tend to react to a directional signal, such as "forward," by acting on the signal from the operator's perspective. This provision ensures that the signal that is given will be consistent with that natural tendency. No comments were received on this provision; it is included in the final rule without change.

Paragraph (l) [*Reserved.*]

Paragraph (m) Communication With Multiple Cranes/Derricks

Paragraph (m) of this section addresses a situation where one or more signal person(s) is in communication with more than one crane or derrick (for example, during multiple crane lifts). It requires each signal person to use an effective means of identifying which crane or derrick the signal is for. Sections 1926.1419(m)(i) and (ii) set out alternate means of complying with this requirement. Under § 1926.1419(m)(i), for each signal the signal person must, prior to giving the function/direction, identify the crane/derrick for which the signal is intended. Alternatively, under § 1926.1419(m)(ii), the employer could implement a method of identifying the crane/derrick for which the signal is intended that is as effective as the system in § 1926.1419(m)(i). For example, under § 1926.1419(m)(ii), the signal person could simultaneously identify the crane and provide the signal. Because of the potential for confusion, it is essential that an alternative system under § 1926.1419(m)(ii) be equally effective as § 1926.1419(m)(i) in clearly conveying, on a consistent basis, the crane/derrick to which each signal is directed. No comments were received on this provision; it is included in the final rule without substantive change. The wording of the paragraph has been modified with several minor grammatical changes.

Section 1926.1420 Signals—Radio, Telephone, or Other Electronic Transmission of Signals

C–DAC concluded that certain criteria are needed to ensure the reliability and clarity of electronically transmitted signals; these criteria are listed in §§ 1926.1420(a) through (c). Paragraph (a) of this section requires the testing of the transmission devices prior to the start of operations to make certain that the signals are clear and that the devices are reliable. This helps ensure that the operator receives, and can understand, the signals that are given, and will prevent accidents caused by miscommunication.

One commenter, remarking that a second or two of delay may still pose a significant safety hazard, suggested that § 1926.1420(b) be amended to read, "Signal transmission must be through a dedicated channel without noticeable delay * * *." (ID–0172.1.)

OSHA agrees that a noticeable delay in transmission of an electronic signal could pose a significant hazard and has decided to address this concern by adding the requirement that signal transmission be "effective." To be effective, a transmitted signal must produce or be capable of producing the intended result. In other words, a signal must be transmitted and understood by the crane operator in such a way and within such a time as would allow the operator to respond to the signal and operate the crane in a safe manner.

Paragraph (b) of this section requires that signals be transmitted through a dedicated channel. As defined in § 1926.1401, a "dedicated channel" is "a line of communication assigned by the employer who controls the communication system to only one signal person and crane/derrick or to a coordinated group of cranes/derricks/signal person(s)." Use of a dedicated channel ensures that the operator and signal person are not interrupted by users performing other tasks or confused or distracted by instructions not intended for them.

An exception to § 1926.1419(b) allows more than one signal person and more than one crane/derrick operator to share a dedicated channel in multiple crane/derrick situations for coordinating operations. The Committee determined, and OSHA agrees, that this exception is needed because, in those situations, it may be advantageous to share a single dedicated channel. For example, in some situations several cranes may be operating in an area in which their booms, loads or load lines could come in contact with each other. In such cases it is crucial that the movements of each crane be properly coordinated. By sharing a single channel, each operator can hear what each crane is being asked to do, which can facilitate that coordination.

Several commenters representing the railroad industry raised concerns about the dedicated channel requirement as it relates to the use of cranes on or adjacent to railroad tracks. (ID–0170.1; –0176.1; –0291.1.) These commenters pointed out that the actions of crane operators often have to be coordinated with other moving equipment (*e.g.* trains) and that the use of a dedicated channel in these circumstances would actually be more dangerous.

The commenters' points in this regard are persuasive; OSHA has accordingly added § 1926.1420(b)(2). This allows an exception to the use of a dedicated channel when a crane is being operated on or near railroad tracks and the crane operator must coordinate with the movement of other equipment on or near the railroad tracks.

Paragraph (c) of this section requires that the operator's reception be by a hands-free system. In other words, the operator must not have to depress a button, manipulate a switch, or take any action for the incoming signal to be received. C–DAC determined that this provision is needed because the operator must have both hands free to manipulate the equipment's controls. No comments were received on this provision; it is included in the final rule without change.

Section 1926.1421 Signals—Voice Signals—Additional Requirements

C–DAC considered whether the rule should include a standardized set of voice signals. Unlike hand signals, which have become standardized to a large extent within the industry, in the Committee members' experience there is significant variation in the phrases used to convey the same instructions. Consequently, C–DAC was concerned that words or phrases that it might have chosen to be "standard" voice signals could be unfamiliar to many employees in the industry or contrary to common usage in some parts of the country. In light of this, the Committee determined that it would be better to use a different approach to address the problem of miscommunication when using voice signals. This approach, which establishes criteria for whatever voice signals are used, is set out in §§ 1926.1421(a)–(c).

Under paragraph (a) of this section, prior to beginning operations, the personnel involved with signals—the crane operator, signal person and lift director (if there is one)—are required to

meet and agree on the voice signals that will be used. Because of the lack of standardization and the variety of languages that are in use in the construction industry, the Committee concluded that it is essential that the persons who give and/or receive voice signals agree in advance on the signals that will be used to avoid miscommunication. OSHA agrees. Once the parties have met and agreed on the voice signals, another meeting is not required to discuss them unless another worker is added or substituted, there is some confusion about the signals, or a signal needs to be changed.

Section 1926.1421(b) requires that each voice signal contain the following three elements, given in the following order: function (such as hoist, boom, *etc.*), direction; distance and/or speed; function, stop command. For example: hoist up; 10 feet; hoist stop. As discussed above, the Committee considered it impractical to attempt to standardize the voice signals themselves (that is, to require the use of particular words to represent particular functions, directions or other instructions). However, the Committee concluded that the chance of miscommunication could nonetheless be reduced if certain parameters were established for the type of information and order of information that would be given. OSHA agrees.

Section 1926.1421(c) requires the crane operator, signal person, and lift director (if there is one) to be able to effectively communicate in the language used. Voice signals will not serve their intended purpose if they cannot be understood, or can be misinterpreted. The inability of these workers to understand each other could lead to accidents that occur when, for example, the crane operator moves a load in a different direction than the signal person intends.

One commenter suggested that uniform verbal signals were necessary to limit the likelihood of miscommunications resulting from language barriers. (ID–0379.1.) Three commenters suggested that OSHA establish uniform verbal signals enhanced by diagrams and pictures. (ID–0110.1; –0115.1; –0178.1.) Two of these commenters suggested that OSHA require these verbal signal charts to be conspicuously posted in the vicinity of the hoisting operations. (ID–0110.1; –0115.1.)

As discussed above, C–DAC considered whether the rule should include a standardized set of voice signals and decided that it would not be practical to do so. It did, however, address the potential for miscommunication by developing the requirements in § 1926.1421(a) (requiring a meeting between the operator, signal person and lift director to determine which verbal signals will be used). Having received no evidence to the contrary, OSHA has decided to defer to the expertise of the Committee, and is promulgating this requirement without substantive change. The word "shall" is replaced with "must" in paragraphs (b) and (c) to remove any doubt that the sentences are imperative commands, rather than descriptive.

Section 1926.1422 Signals—Hand Signal Chart

Section 1926.1422 requires that hand signal charts be posted on the equipment or readily available at the site. OSHA is requiring the charts to be posted to serve as a reference for operators and signal persons of the mandatory hand signals and thereby help avoid miscommunication.

Three commenters suggested that § 1926.1422 be rewritten to require that the hand signal charts be "conspicuously posted in the vicinity of" the hoisting operations, rather than merely making them "readily available at the site" as proposed. (ID–0110.1; –0115.1; –0178.1.)

Upon further reflection, the Agency acknowledges that the original language (that the hand signal chart could be "readily available at the site") did not afford the same amount of protection afforded by "conspicuously posted in the vicinity of the hoisting operations." For example, a hand signal chart stored in a shop trailer on the other side of the site or obscured from sight by other objects might be "readily available at the site," but it would do little to ensure that the chart would be accessed by employees where it is needed. It is the Agency's intent that employees be able to access the chart quickly. OSHA therefore decided to modify the language of § 1926.1422 to require that signal charts be conspicuously posted in the vicinity of hoisting operations, or on the equipment.

Section 1926.1423 Fall Protection

This section contains provisions designed to protect workers on equipment covered by this subpart from fall hazards. (*See* § 1926.1431, *Hoisting Personnel,* for fall protection provisions that apply when equipment is used to hoist personnel).

Falls have traditionally been the leading cause of deaths among construction workers. BLS data for 2004 and 2005, the latest years for which complete figures are available, shows 445 fatalities from falls in 2004 (ID–0023) and 394 in 2005 (ID–0024). In 2004, 20 fatalities resulted from falls from nonmoving vehicles and in 2005, such falls caused 18 deaths. A recent study of crane-related fatalities in the U.S. construction industry found that 2% resulted from falls. J.E. Beavers, J.R. Moore, R. Rinehart, and W.R. Schriver, "Crane-Related Fatalities in the Construction Industry," 132 Journal of Construction Engineering and Management 901 (Sept. 2006). (ID–0012.) Falls from cranes, particularly when the operator is entering or leaving the crane, also cause numerous non-fatal injuries to construction workers. (OSHA–S030–2006–0663–0422.)

As discussed in the preamble to the proposed rule, the Committee determined that safety would be enhanced by addressing the problem of fall hazards associated with cranes and derricks comprehensively and that putting all such requirements in subpart CC would make it easier for employers to readily determine the applicable fall protection requirements (*see* 73 FR 59799, Oct. 9, 2008). Accordingly, under the final rule, subpart M does not apply to equipment covered by subpart CC except where § 1926.1423 incorporates requirements of subpart M by reference.

In this regard, the Agency has amended subpart M at § 1926.500(a)(2)(ii) to make clear that subpart CC specifies the circumstances in which fall protection must be provided to workers on equipment covered by subpart CC. The Agency has also amended § 1926.500(a)(3) to state that the criteria for fall protection systems required under subpart CC are as set forth in § 1926.1423 of subpart CC. In addition, § 1926.500(a)(4) has been amended to specify that the training requirements in § 1926.503 do not apply to the use of equipment covered by subpart CC. These amendments to § 1926.500 are discussed in the explanation of amendments to subpart M.

Definition of "Fall Protection Equipment"

"Fall protection equipment" is defined in § 1926.1401, and is limited to guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, and fall restraint systems. One commenter stated that this definition should be changed to that found in ANSI/ASSE Z359.0—2007, *Definitions and Nomenclature used for Fall Protection and Fall Arrest,* which defines "fall protection" more broadly to include any equipment, device, or system that either prevents a fall or mitigates the effect of a fall. (ID–0178.1.) However, as OSHA explained in the proposed rule, the proposed definition

was chosen to use the same terminology found in other OSHA standards to ensure that employers would be familiar with the terminology (*see* 73 FR 59799, Oct. 9, 2008). Moreover, OSHA notes that sec. 1.3.1 of ANSI/ASSE Z359.0—2007 provides that the scope of that standard does not include the construction industry. Accordingly, OSHA is retaining the proposed definition in the final rule.

Definition of "Positioning Device System"

A trade association objected to the lack of definitions for "fall arrest" or "positioning systems." (ID–0178.1.) OSHA notes that proposed § 1926.1401 did contain a definition for "personal fall arrest system," and that definition is included in the final rule. OSHA agrees that a definition of "positioning device system" is needed and is adding a definition to § 1926.1401 in the final rule that is the same as the definition found in subpart M.

Paragraph (a) Application

Section 1926.1423(a) specifies which provisions in this section apply to all equipment, including tower cranes (§§ 1926.1423(c)(1), (c)(2), (d), (g), (j) and (k)); which provisions apply to all equipment except tower cranes (§§ 1926.1423(b), (c) (3), (e) and (f)); and which provisions apply only to tower cranes (§§ 1926.1423(c)(4) and (h)).

Paragraph (b) Boom Walkways

For the reasons explained in the preamble to the proposed rule, § 1926.1423(b) addresses the hazard of falls from lattice booms by establishing when walkways must be incorporated into lattice booms, and the criteria for such walkways (*see* 73 FR 59799–59800, Oct. 9, 2008). No comments were received on this paragraph; it is included in the final rule without change.

Paragraph (c) Steps, Handholds, Ladders, Grabrails, Guardrails and Railings

Section 1926.1423(c) in the final rule specifies criteria for the use and maintenance of steps, handholds, ladders, grabrails, guardrails and railings. The Agency notes that proposed paragraph (c) inadvertently omitted "ladders" from the list of devices in the paragraph's heading. Accordingly, OSHA has revised final paragraph (c) to include the word ladders.

Section 1926.502(b) generally provides criteria for guardrail systems, with some exceptions (*see* discussion of amendments to § 1926.500). C–DAC concluded, however, that specific criteria for steps, handholds, ladders, grabrails, guardrails and railings were necessary to address the design characteristics of equipment covered by subpart CC and the particular fall hazards associated with the use of such equipment.

OSHA agrees, and is therefore adding § 1926.1423(c)(1), which states that § 1926.502(b) (guardrail systems) must not apply to equipment covered by subpart CC, to the final rule. It makes clear that the guardrail criteria requirements in § 1926.502(b) for those items do not apply to equipment covered by subpart CC. Instead, §§ 1926.1423(c)(2), (3), and (4), discussed below, provide the applicable criteria for such equipment. Because of the addition of paragraph (c)(1), which was not in the proposed rule, paragraphs (c)(2), (3), and (4) have been renumbered from the proposal, where they were paragraphs (c)(1), (2), and (3).

Paragraph (c)(2) of this section requires that the employer maintain in good condition originally-equipped steps, handholds, ladders and guardrails/railings/grabrails.[97] The failure to properly maintain such devices could pose dangers to the workers who use them. For example, a grabrail would not be maintained in good condition if it has become weakened from rust. A weakened guardrail could fail when an employee uses it, which could cause the employee to fall. Likewise, a railing would not be maintained in good condition if all or part of the railing is missing. A manufacturer that integrated a railing into its boom design may have relied on the presence of the railing and provided a walking surface that would otherwise be too narrow to be safe.

Paragraphs (c)(3) and (c)(4) of this section require that equipment manufactured more than one year after the effective date of this standard be equipped to provide safe access and egress on equipment covered by this subpart by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. Tower cranes must be equipped to provide safe access and egress between the ground and the cab, machinery platforms, and tower (mast) (*see* below discussion of paragraph (c)(4)). All other equipment covered by this subpart must be equipped to provide safe access and egress between the ground and the operator work station(s), including the forward and rear operator positions. As discussed below, §§ 1926.1423(c)(3)(i) and 1926.1423(c)(4)(i) require the steps, handholds, ladders and guardrails/railings/grabrails used to comply with this section to meet updated design criteria.

Prior to this final rule, former § 1926.550(a)(13)(i) in subpart N required that guardrails, handholds, and steps be provided on cranes for easy access to the car and cab and specified that these devices conform to ANSI B30.5. The 1968 version of ANSI B30.5, which was in effect at the time subpart N was issued, specifies that the construction of these devices must conform to the 1946 U.S. Safety Appliance Standard. C–DAC recognized that many pieces of equipment now in use would have been manufactured with handholds and steps but was concerned that the handholds and steps may have been designed to meet outdated criteria.

The Committee determined, and OSHA agrees, that it would be unduly burdensome to require all equipment to be retrofitted with new steps, handholds, and railings simply because the existing design may vary from what is required under the final rule. Accordingly, § 1926.1423(c)(3) only applies to equipment manufactured more than one year after the effective date of this standard. This gives equipment manufacturers adequate time to incorporate the requirements of § 1926.1423(c)(3)(i) into their new products.[98]

Paragraph (c)(3)(i) requires that steps, handholds, ladders and guardrails/railings/grabrails meet the criteria of SAE J185 (May 2003) or ISO 11660–2:1994(E). As explained above in the discussion of amendments to subpart X, OSHA amended subpart X to clarify that subpart X does not apply to integral components of equipment covered by subpart CC. The specifications in SAE J185 (May 2003) are referenced in other industry consensus standards, such as ASME B30.5–2004, "Mobile and Locomotive Cranes" and ASME B30.3–2004, "Construction Tower Cranes," and crane manufacturers are familiar with those requirements. Section 1926.1423(c)(3)(i) alternatively allows compliance with ISO 11660–2 because those provisions are sufficiently protective and employers also use equipment built by foreign manufacturers who have been following that standard.

[97] OSHA has changed the location of the words "in good condition" in § 1926.1423(b) to make it clear that it applies to maintenance of all of the listed items.

[98] OSHA had added the word "devices" in the last sentence of paragraph (c)(3) for grammatical clarity.

OSHA notes that proposed § 1926.1423(c)(2)(i) [99] inadvertently omitted handholds from the listed devices that must meet the criteria of SAE J185 (May 2003) or ISO 11660–2:1994(E). Accordingly, OSHA has added handholds to the final rule in § 1926.1423(c)(3)(i). Additionally, OSHA has replaced the word "requirements" in proposed § 1926.1423(c)(2)(i) with "criteria" in the final § 1926.1423(c)(3)(i). The Agency determines this change clarifies that the listed devices must comply with the design criteria contained in the referenced standards and that, for the purposes of § 1926.1423(c)(3)(i), other provisions in the referenced standards do not apply. To illustrate, both SAE J185 (May 2003) and ISO 11660–2:1994(E) contain provisions relating to the scope of those standards. However, § 1926.1400 sets forth the scope of equipment covered by subpart CC (*see* discussion above of § 1926.1400, *Scope*). Consequently, § 1926.1423(c)(3)(i) requires that steps, handholds, ladders, and guardrails/railings/grabrails on equipment covered by subpart CC (other than tower cranes) meet the criteria for such devices in SAE J185 (May 2003) or ISO 11660–2:1994(E), irrespective of the scope provisions in those consensus standards.

Paragraph (c)(3)(ii) of this section requires that walking/stepping surfaces, except for crawler treads, have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint). Former § 1926.550(a)(13)(iii) of subpart N required platforms and walkways to have anti-skid surfaces. C–DAC recommended that OSHA retain this requirement as a complement to the use of guardrails, handholds, grabrails, ladders and other engineered safety features that are required by new § 1926.1423. OSHA concludes that compliance with this provision will minimize the number of slips and falls for employees who must travel point to point to access the operator workstations on equipment covered by this section.

Paragraph (c)(4) of this section applies to fall protection on tower cranes. For the same reasons explained above with respect to § 1926.1423(c)(3), § 1926.1423(c)(4) likewise only applies to tower cranes manufactured more than one year after the effective date of this standard. Such equipment must be equipped so as to provide safe access and egress between the ground and the cab, machinery platforms, and tower (mast), by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. In the preamble to the proposed rule, OSHA stated the Agency's intent to include a requirement to provide safe access and egress on tower cranes, similar to the requirement in final paragraph (c)(3) to provide safe access and egress on other equipment covered by subpart CC, and requested public comment on the issue (73 FR 59800, Oct. 9, 2008).

Three commenters responded, all stating that the final rule should include the requirement to provide safe access and egress on tower cranes. (ID–0182.1; –0205.1; –0213.1.) Accordingly, OSHA has added paragraph (c)(4) to the final rule.

Paragraph (c)(4)(i) of this section requires steps, handholds, ladders, and guardrails/railings/grabrails on these tower cranes to meet the criteria of ISO 11660–1:2008(E) and ISO 11660–3:2008(E), or SAE J185 (May 2003), except where infeasible. For the same reasoning discussed above with respect to § 1926.1423(c)(3)(i), paragraph (c)(4)(i) allows employers to use equipment designed to the specifications of SAE J185 (May 2003) or, alternatively, ISO 11660–1:2008(E) and ISO 11660–3:2008(E).

The Agency notes that ISO 11660–1:2008(E) provides criteria applicable to cranes in general while ISO 11660–3:2008(E) provides criteria particular to tower cranes. The Agency reads the particular criteria in ISO 11660–3:2008(E) as supplementing the general criteria in ISO 11660–1:2008(E).[100] Therefore, paragraph (c)(4)(i) would only be satisfied under this alternative if the steps, handholds, ladders and guardrails/railings/grabrails on the tower crane meet the criteria in both ISO 11660–1:2008(E) and ISO 11660–3:2008(E).

Paragraph (c)(4)(ii) of this section requires walking/stepping surfaces on tower cranes to have slip-resistant features/properties, such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint. Similar to paragraph (c)(3)(ii) (*see* above discussion of paragraph (c)(3)(ii)), paragraph (c)(4)(ii) carries forward the anti-skid protections from former § 1926.550(a)(13)(iii).

Paragraph (d) Personal Fall Arrest and Fall Restraint Systems

Paragraph (d) of this section addresses personal fall arrest systems and fall restraint systems used to satisfy the requirements under subpart CC to provide fall protection.

Paragraph (d) was not in the proposed rule but has been added to the final rule to make clear that certain appropriate requirements of subpart M apply to subpart CC. Paragraph (d) requires the use of personal fall arrest system components in personal fall arrest and fall restraint systems required by subpart CC. These systems must conform to all of the criteria in § 1926.502 of subpart M, except § 1926.502(d)(15). Section 1926.502(d)(15) provides general criteria for anchorages for personal fall arrest systems, but OSHA is choosing to apply the anchorage criteria in § 1926.1423(g)(3) rather than the criteria in § 1925.502(d)(15). This approach is consistent with the approach to requirements for personal fall arrest and fall restraint systems provided in § 1926.760(d)(2) of subpart R, except for the exclusion of § 1926.502(d)(15).

Paragraph (e) Fall Protection Requirements for Non-Assembly/Disassembly Work

Paragraph (e) of this section addresses fall protection requirements for employees engaged in work other than assembly/disassembly work ("non-A/D" work). For such work, in certain circumstances, employers are required to provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level.

C–DAC discussed different trigger heights for fall protection requirements for particular types of cranes and derricks. Ultimately, C–DAC concluded that the requirements for fall protection should remain consistent with 29 CFR part 1926 subpart M, which generally requires fall protection at heights at and above 6 feet, as much as possible. (As discussed below, for assembly/disassembly (A/D) work, the Committee recommended fall protection beginning at 15 feet.) C–DAC also determined that operators do not need to be tied off while moving to and from their cabs, and paragraph (e)(1) of this section, discussed below, therefore requires fall protection equipment only when employees are moving point-to-point on booms or while at a work station (with certain exceptions). The Committee determined that the steps, handholds, and railings required under

[99] Proposed § 1926.1423(c)(2)(i) corresponds with § 1926.1423(c)(3)(i) in the final rule.

[100] The Agency notes that the approach for the 2008 editions of ISO 11660–1 and ISO 11660–3 appears to differ from that of the ISO 11660–2:1994(E). The Agency interprets ISO 11660–2:1994(E) as addressing steps, handholds, ladders and guardrails/railings/grabrails independent of ISO 11660–1:2008(E).

§ 1926.1423(c) protect operators moving to and from their workstations and eliminate the need for additional fall protection equipment.

Paragraph (e)(1) Non-Assembly/Disassembly: Moving Point to Point

Paragraph (e)(1)(i) of this section requires employers to provide and ensure the use of fall protection equipment at 6 feet and above when an employee is moving point to point on non-lattice booms (whether horizontal or not horizontal). Moving point to point is defined in § 1926.1401 and refers to when an employee is going to or coming from a work station.

C–DAC determined that non-lattice booms generally present more hazards to workers who must walk them to reach other work areas, devices, and equipment attached to it than lattice booms. Non-lattice booms are typically of the extensible type. As a result, as members noted, the walking/working surfaces on these types of booms are often oily (from the hydraulic mechanisms). Also, since the boom sections extend and retract, it is typically infeasible to provide boom walkways and other safety features. Because they tend to be slippery from oil, the Committee concluded that they are especially hazardous to move across even when horizontal. Therefore, where an employee is required to move point to point on a non-lattice boom, the Agency decided to remain consistent with the requirements in 29 CFR part 1926 subpart M to require fall protection at heights at or above 6 feet and the final rule requires fall protection when the fall distance is greater than 6 feet.

Paragraph (e)(1)(ii) applies the same fall protection requirements to point to point movement on lattice booms that are not in a horizontal position. The Committee found that in non-A/D work, an employee may, for example, need to move point-to-point on a lattice boom to inspect a part that is suspected to need repair, or to make a repair (such as replacing a broken or missing cotter pin). In many of these situations, the boom will not be horizontal, since space limitations often make it difficult to lower the boom to do this work.

The Committee determined that it is both necessary and feasible for fall protection to be used in such instances. Typically, the fall protection that would be used would consist of a double-lanyard or similar personal fall arrest system. Since the boom in these instances would be elevated, there would usually be a point on the boom above the level of the employee's feet to which the lanyard could be attached.

In contrast, it is uncommon for an employee to need to move point-to-point on a horizontal lattice boom for non-A/D work. If work does need to be done, such as making an inspection or repair as discussed above, the employee would usually get access to their work station with a ladder. In those instances when the employee must traverse the boom itself, the Committee concluded that it would be inappropriate to require fall protection for the reasons discussed below.

The key difficulty in providing fall protection in such instances stems from the lack of a tie-off point above the level of the employee's feet. The Committee discussed that most lattice booms when horizontal would be less than 15 feet above the next lower level. At heights below 15 feet, a personal fall arrest system tied off at the level of the employee's feet, with a lanyard long enough to afford the employee the range of movement necessary for this work, might not prevent the employee from falling to the next lower level.

In construction work the problem of providing personal fall protection in this height range, when there is no higher tie-off point, is usually solved in one of three ways (apart from the use of ladders, scaffolds, aerial lifts, and similar devices). One way is to use a restraint system, which is anchored at a point that prevents the employee from moving past an edge. The Committee discussed that this type of system could not be used while on a boom because the boom is too narrow. Another method is to set up a personal fall arrest system that would arrest the employee's fall before hitting the next lower level by using stanchions to support an elevated, horizontal life-line. However, such stanchions must be securely fastened and whatever they are fastened to must be able to withstand considerable forces in an arrested fall. On a crane's lattice boom, the stanchions would have to be attached either to the chords or the lacings.

The chords and lacings are engineered to be as light as possible, and an engineering analysis would be needed in each case to determine if the attachment point was sufficiently strong to withstand those forces. Also, the Agency determines that manufacturers would be unlikely to approve clamp-on type systems because of the likelihood of the clamping forces damaging these critical structural components. Similarly, the Agency determines that manufacturers would not approve the repeated weld/removal/re-weld cycles that would be involved in attaching and removing stanchions because this could adversely affect the boom's structural components.

The third method commonly used in construction work is a temporary guardrail system, but that also would require attaching stanchions to the boom, which would be infeasible for these same reasons.

The Committee concluded that, in light of such factors, it would not be appropriate to require fall protection when an employee moves point-to-point on horizontal lattice booms. However, in the preamble to the proposed rule, the Agency noted that, although it may rarely be necessary for an employee moving point-to-point on a horizontal lattice boom to be 15 feet or more above the next lower level, there is the possibility of such an occurrence, such as where a horizontal boom spans a large gap in the ground surface. At such heights a personal fall arrest system tied off at the level of the employee's feet would allow sufficient room for the arrest system to operate without allowing the employee to strike the next lower level. Therefore, the Agency requested public comment on whether proposed § 1926.1423(d)(1)(ii) [101] should be expanded to require fall protection when an employee, engaged in non-A/D work, is moving point-to-point on a boom that is horizontal and the fall distance is 15 feet or more.

OSHA received three comments on this issue. (ID–0182.1; –0205.1; –0213.1.) These commenters stated that the final rule should require fall protection when an employee, engaged in non-A/D work, is moving point-to-point on a boom that is horizontal and the fall distance is 15 feet or more. Accordingly, the Agency has added paragraph (e)(1)(iii) to the final rule to require fall protection under these circumstances. No comments were received on proposed paragraphs (d)(1)(i) and (ii), and they are included in the final rule without change as paragraphs (e)(1)(i) and (ii).

Paragraph (e)(2) Non-Assembly/Disassembly: While at a Work Station

Paragraph (e)(2) of this section requires employers to provide and ensure the use of fall protection while an employee is at a work station on any part of the equipment (including the boom, of any type), except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck (*see* the discussion of this in the preamble of the proposed rule, where this paragraph was denominated as § 1926.1423(d)(2); 73

[101] Proposed § 1926.1423(d)(1)(ii) corresponds with final § 1926.1423(e)(1)(ii).

FR 59802, Oct. 9, 2008). No comments were received on this paragraph; it is included in the final rule without change other than its redesignation.

Paragraph (f) Assembly/Disassembly

Paragraph (f) of this section requires the employer to provide and ensure the use of fall protection equipment during assembly and disassembly (A/D) work for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck (*see* the discussion of this in the preamble of the proposed rule, where this paragraph was denominated as § 1926.1423(e); 73 FR 59802, Oct. 9, 2008). No comments were received on this paragraph; it is included in the final rule without change other than its redesignation.

Paragraph (g) Anchorage Criteria

Paragraph (g) of this section requires the use of, and specifies criteria for, anchorage points in personal fall arrest systems, positioning device systems, and fall restraint systems.[102] Paragraph (g)(1) provides that §§ 1926.502(d)(15) and 1926.502(e)(2) of subpart M apply to equipment covered by subpart CC only to the extent delineated in paragraph (g)(2). Sections 1926.502(d)(15) and 1926.502(e)(2) provide, respectively, anchorage criteria for personal fall arrest systems and positioning device systems. As discussed below with respect to paragraph (g)(2), C–DAC determined that the particular circumstances associated with the use of personal fall arrest systems and positioning device systems on equipment covered by subpart CC necessitate specific criteria for the anchorages of such systems. Therefore, OSHA added paragraph (g)(1) to this section of the final rule to make clear that the general anchorage criteria in § 1926.502 apply to equipment covered by subpart CC only as delineated in paragraph (g)(2), discussed below (*see* also discussion above of § 1926.500).

Paragraph (g)(2) of this section, *Anchorages for personal fall arrest and positioning device systems,* contains requirements for anchorage points used in personal fall arrest and positioning device systems (this was denominated paragraph (f) in the proposed rule). Sections 1926.1423(g)(2)(i) and 1926.1423(g)(2)(ii) permit personal fall arrest systems and positioning systems to be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the applicable criteria in § 1926.502 of subpart M of this part would not be met. An apparently substantial part of the equipment is a part that would appear substantial to a reasonable competent person. The subpart M criteria include, for personal fall arrest systems, 5,000 pounds per employee or twice the potential impact load of an employee's fall (in addition to other requirements) (§ 1926.502(d)(15)); for a positioning device, 3,000 pounds or twice the potential impact load of an employee's fall, whichever is greater (in addition to other requirements) (§ 1926.502(e)(2)).

Most of the equipment covered by the standard is designed to lift and support weights much heavier than these. Apparently substantial parts of the equipment are, therefore, typically capable of meeting the subpart M capacities. Consequently, C–DAC determined that the criteria in §§ 1926.1423(g)(2)(i) and 1926.1423(g)(2)(ii) are appropriate and would avoid burdening employers with what it considered to be the unnecessary expense of obtaining engineering analyses for each part that would serve as an anchor. (*See* the discussion of these provisions in the preamble of the proposed rule under proposed rule paragraph (f) of this section, 73 FR 59802, Oct. 9, 2008.)

One commenter suggested revising the provision to require a competent person to supervise the selection, use, and inspection of fall arrest and positioning anchorages. (ID–0178.1.) This commenter suggested that this revision was needed to avoid compatibility issues and to emphasize the competent person's planning role. OSHA declines to adopt the commenter's suggestion. As explained above, this provision is included because the suitability of substantial parts of the equipment for anchoring fall arrest and positioning device systems will often be readily apparent, and the employer will only need to seek a competent person's judgment if there is some question as to the anchorage's suitability. The revision suggested by the commenter would contravene this intent.

Paragraph (g)(2)(iii) requires that attachable anchor devices (portable anchor devices that are attached to the equipment) meet the applicable anchorage criteria in § 1926.502(d)(15) for personal fall arrest systems and § 1926.502(e)(2) for positioning device systems. These criteria are the same as those discussed with respect to paragraph (g)(2) for personal fall arrest and positioning device systems.

Paragraph (g)(3), *Anchorages for fall restraint systems,* requires fall restraint systems to be anchored to any part of the equipment that is capable of withstanding twice the maximum load that a worker may impose on it during reasonably anticipated conditions of use. Since fall restraint systems do not arrest a worker's fall (instead they prevent a fall from occurring), the anchorage does not need to be able to support the significantly greater force generated during an arrested fall. OSHA relies on C–DAC's determination that having the anchorage support twice the maximum anticipated load provides an adequate margin of safety when a fall restraint system is used.

The Agency made several changes to text originally proposed as paragraph (f) of this section, and now designated as final paragraph (g) for the purposes of clarity and consistency. OSHA devoted final paragraphs (g)(2)(i) and (g)(2)(ii) to personal fall arrest systems and positioning device systems, respectively, and added references to §§ 1926.502(d)(15) and 1926.502(e)(2) to specify which of the criteria in § 1926.502 of subpart M are applicable to anchorages used to comply with this section. OSHA concludes these changes improve the clarity of the final rule. In addition, final paragraph (g) uses the terms "personal fall arrest" instead of "fall arrest" and "fall restraint systems" instead of "restraint systems" to use the defined terms from § 1926.1401 and maintain consistency with other construction standards.

Paragraph (h) Tower Cranes

Paragraph (h) of this section specifies fall protection requirements specific to tower cranes. Note that the final rule uses the terminology "erecting, climbing, and dismantling" with regard to tower cranes rather than "assembly" and "disassembly;" or the term "erecting/dismantling" used in the proposed rule, because this terminology reflects the industry's use of these terms.

Paragraph (h)(1) Work Other Than Erecting, Climbing, and Dismantling

Paragraph (h)(1) of this section addresses fall protection requirements for work other than erecting, climbing, and dismantling. The employer is required to provide and ensure the use

[102] "Personal fall arrest system" and "Positioning device system" are defined in § 1926.1401. These definitions parallel those in § 1926.500(b) of subpart M. "Fall restraint system" is also defined in § 1926.1401. This definition parallels the one in § 1926.751 of subpart R. As with other definitions applicable to this section, C–DAC endeavored, to the extent possible and appropriate, to use terminology that is familiar to the industry.

of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level. The exceptions to this requirement would be when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck. (*See* the discussion of this provision in the preamble of the proposed rule at 73 FR 59803, Oct. 9, 2008, where it was designated as paragraph (g)(1)). No comments were received on this paragraph; it is included in the final rule without change other than its revised heading and redesignation from paragraph (g)(1) in the proposed rule to (h)(1) in the final rule.

Paragraph (h)(2) Erecting, Climbing, and Dismantling

Proposed § 1926.1423(g)(2) (redesignated § 1926.1423(h)(2) in the final rule) specified that, for erecting/dismantling work, employers must provide, and ensure the use of, fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level. (*See* the discussion of that provision in 73 FR 59803, Oct. 9, 2008.) OSHA noted in the proposed rule that C–DAC did not include the exceptions that were included in proposed § 1926.1423(g)(1) for when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck. The Agency stated that it was unaware of any reason why those exceptions would not be equally applicable for § 1926.1423(g)(2), and asked for public comment on this issue (*see* 73 FR 59803, Oct. 9, 2008).

OSHA received responses from three commenters, all of whom stated that this exception should be added to the final rule. (ID–0187.1; –0205.1; –0213.1.) Accordingly, OSHA has included the exception in § 1926.1423(h)(2) of the final rule.

Paragraph (i) [*Reserved*.]

Paragraph (j) Anchoring to the Load Line

Paragraph (j) of this section permits an employer, under prescribed conditions, to anchor a fall arrest system to the hook or other part of a load line of a crane or derrick. Previously, § 1926.502(d)(23) of subpart M prohibited personal fall arrest systems to be attached to "hoists except as specified in other subparts of this part." Former § 1926.550 in subpart N did not contain any provisions specifically addressing this issue. Therefore, since the hook or other part of a load line is connected to a hoist in the crane or for the derrick, attaching a personal fall arrest system in this manner had been prohibited by subpart M.

Prior to this rulemaking, OSHA received inquiries asking whether a crane's hook or load line may be used as an anchorage point for fall protection. Using a crane for such purpose would be particularly useful in many situations, especially where establishing a suitable anchor point would be otherwise very difficult. OSHA asked C–DAC to consider whether there is any reason to prohibit using a crane or derrick for such purpose. C–DAC determined that the hook or load line of a crane could be used safely as an anchor point under the conditions set forth in paragraph (j).[103]

Paragraph (j)(1) allows the hook or load line to be used as an anchorage point when a qualified person has determined that the set-up and rated capacity of the crane/derrick (including the hook, load line and rigging) meets or exceeds the requirements in § 1926.502(d)(15). C–DAC concluded that, as long as the crane or derrick has sufficient capacity to meet those criteria, there is no reason to prohibit its use for this purpose.

C–DAC did conclude, however, that the expertise of a qualified person is required to determine whether specific criteria are met when anchoring to the hook or load line. The criteria in § 1926.502(d)(15) were developed to ensure that fall protection anchorages provide adequate employee protection. Anchorages used for personal fall arrest systems must be capable of supporting at least 5,000 pounds or designed, installed, and used as part of a complete personal fall arrest system which maintains a safety factor of at least two. A number of factors related to the crane's capacity in the particular configuration and set-up involved would need to be considered, including, in some cases, the angle of the fall arrest lanyard to the boom if a fall were to occur. In addition, the qualified person would need to determine whether the set-up is such that it would not cause an equipment failure, such as a broken cable or chain, for the load line to serve as an anchorage for a personal fall arrest system. These determinations necessarily would include consideration of the characteristics of the particular equipment involved and the limitations of its operation. OSHA agrees that a qualified person must determine whether the criteria are met, and has included that requirement in paragraph (j)(1).

Paragraph (j)(2) requires that the equipment operator be at the work site and informed that the equipment is being used to anchor a personal fall arrest system. This would ensure that the operator is available to make any necessary adjustments, such as moving the boom or load lines. Further, in the event of an emergency that results in a tied-off employee being suspended from the hook or load line, the operator would be available to bring the worker to the ground safely.

OSHA received three comments on the provisions relating to anchoring to the load line, and one member of the public submitted written testimony on the provisions prior to the hearing on the proposed rule. Two of the commenters responded positively to the provisions (ID–0155.1; –0203.1) and one commenter stated the provisions were a necessary improvement that would allow employers to provide fall protection in the narrow circumstances where there are no viable options other than the crane hook (ID–0203.1).

The third commenter was opposed to the provisions and stated that anchoring to the load line should be prohibited. (ID–0178.1.) This commenter stated that cranes are only engineered to lift straight up and straight down and that retracting a hook at any other angle may jam or break the cable or chain, which would result in a dropped load. OSHA concludes paragraph (j) addresses this concern for the reasons discussed below.

Written testimony submitted prior to the hearing expressed the concern that, under § 1926.1417(e), which allows a suspended load to be left unattended by the equipment operator under certain conditions, an employee's personal fall arrest system could be anchored to a load line at the same time a load is unattended. (ID–0333.2.) This party suggested that the rule make clear that fall protection should never be anchored to the load line when the load is unattended.

OSHA disagrees. In fact, the intent of § 1926.1423(j) is to allow an employee's personal fall arrest system to be anchored to the load line only when there is no load suspended from the line. This is implicit in the requirement of paragraph (j)(1) that the qualified person determine that the set-up and rated capacity (including the hook, load line, and rigging) meets or exceeds the requirements of § 1926.502(d)(15). If it

[103] OSHA modified the language from the proposed rule so that final paragraph (j) of this section refers to a "personal fall arrest system" rather than a "fall arrest system." This modification was made for the purpose of clarity to use the terms defined in § 1926.1401, *Definitions,* and to maintain consistency in the construction standards.

were permissible for there to be a suspended load, the parenthetical would include the word "load," for the weight of any load would certainly affect the ability of the hook or load line to serve as a fall protection anchorage. To make the rule's intent clear, OSHA is adding paragraph (j)(3), which states that no load may be suspended from the load line, as an additional condition that must be met when anchoring a personal fall arrest system to the hook or load line.

Paragraph (k) Training

In the preamble to the proposed rule, the Agency requested comments on its proposed training requirements. One commenter pointed out that a requirement for fall protection training had not been included in the proposed rule and is needed. (ID–0178.1.) While training is already required under § 1926.21(b)(2),[104] OSHA has determined that including a more specific training requirement regarding fall protection in subpart CC will highlight the requirement and facilitate compliance.

Therefore, in the final rule, paragraph (k) has been added to this section. It requires employers to ensure that each employee who may be exposed to a fall hazard while on, or hoisted by, equipment covered by this subpart is trained on the requirements in subpart CC that address fall protection and the applicable requirements of §§ 1926.500 and 1926.502 in subpart M. This provision supplements other applicable training provisions in § 1926.1430 (*see* discussion below of § 1926.1430, *Training*). As noted above, OSHA has made a conforming amendment to § 1926.500(a)(4) to make clear that the fall protection training requirements in § 1926.503 of subpart M do not apply to fall protection systems used to comply with subpart CC. As a result, the training requirements applicable to § 1926.1423 are found exclusively in § 1926.1423(k).

General Comment

OSHA received a comment from a safety association generally objecting to the adequacy of the fall protection required under this section. (ID–0178.1.) The commenter stated that OSHA should reference certain ANSI/ASSE standards addressing fall protection in construction work, including: ANSI/ASSE A10.32—2004, *Fall Protection Systems for Construction and Demolition Operations;* ANSI/ASSE A10.18—2007, *Safety Requirements for Temporary Roof and Floor Holes, Wall Openings, Stairways, and Other Unprotected Edges;* and ANSI/ASSE A10.28—1998 (R 2004), *Safety Requirements for Work Platforms Suspended from Cranes or Derricks.* However, the commenter has not pointed to which particular provisions of these consensus standards it believes are appropriately included in this rule or that it believes would better effectuate the purpose of this section than those developed by C–DAC.

As discussed above, C–DAC determined that fall protection from cranes and derricks presented unique problems and that this section should address those problems while only incorporating limited provisions of OSHA's general fall protection standard in subpart M. Upon reviewing the record, including the comments submitted by the commenter and others on the specific provisions contained in the proposal, OSHA continues to conclude this approach is appropriate. Absent additional information as to why OSHA should adopt or reference provisions in the standard the commenter has cited, OSHA is unable to assess whether any such provisions would better address fall protection issues than the provisions of this final rule.

Section 1926.1424 Work Area Control

Section 1926.1424(a) addresses the hazard of employees being struck, pinched or crushed within the swing radius of the equipment's rotating superstructure. Paragraph (a)(1) states that the precautions in paragraph (a)(2) must be taken when there are accessible areas in which the equipment's rotating superstructure (whether permanently or temporarily mounted) poses a reasonably foreseeable risk of either: (i) striking and injuring an employee; or (ii) pinching/crushing an employee against another part of the equipment or another object. Paragraph (a)(1) is adopted as proposed.

Included in § 1926.1401, *Definitions* of this rule is the definition for "upperworks", which C–DAC identified as a synonym for the term "superstructure", used in the regulatory text of paragraph (a)(1) of this section, as well as the term "upperstructure".

However, two commenters noted that the proposed definition for "upperworks" did not take into consideration the fact that many rough-terrain cranes have the engine mounted in the carrier, or lower carriage of the crane, instead of the superstructure. (ID–0292.1; –0131.1.) In response, OSHA modified the definition of "upperworks" to acknowledge that the presence of an engine is not always a defining characteristic of that portion of the crane.

Under paragraph (a)(2), the employer is required to institute two measures to prevent employees from entering these hazard areas. Specifically, under paragraph (a)(2)(i), the employer must train employees assigned to work on or near the equipment in how to recognize these areas.

Paragraph (a)(2)(ii) requires the employer to erect and maintain control lines, warning lines, railings, or similar barriers to mark the boundaries of the hazard areas, but contains an exception when such a precaution is infeasible. If it is neither feasible to erect such barriers on the ground nor on the equipment, the employer is required to mark the danger zone with a combination of warning signs and high visibility markings on the equipment that identify the hazard areas. In addition, the employer must train employees to understand what those markings signify.

OSHA received comments advocating an exemption for cranes used in the railroad industry, especially cranes moving along a track. (ID–0170.1; –0176.1; –0342.) One commenter suggested that the requirement for barriers was impractical for cranes moving along a track, as the barriers would have to be continually reset.

These objections to the requirement for barriers are not persuasive. First, the requirement for barriers is not a new requirement. Former § 1926.550(a)(9) required barricades to prevent employees from being struck or crushed by the crane, including the swing radius of the rear of the rotating superstructure. The railroad employers did not provide any evidence that they were unable to comply with the previous requirement.

Second, the rule already anticipates that for certain equipment a traditional type of barrier might not be practical and instead permits the use of a barrier that attaches directly to, and will move with, the equipment.

Finally, paragraph (a)(2)(ii) of this section permits the employer to identify these hazard areas with warning signs and high visibility markings on the equipment when it is not feasible to erect a barrier on the ground or the equipment.

Therefore, paragraph (a)(2) is being promulgated as proposed.

To prevent struck-by and crushed-by injuries and fatalities, paragraph (a)(3) is designed to help protect employees who must sometimes enter the hazard area to

[104] That provision states: "The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury."

perform work, by ensuring that there is adequate communication and coordination between the operator and the employee in the danger area.

Under paragraph (a)(3)(i), before an employee goes in that area the employee (or someone instructed by the employee) has to ensure that the operator is informed that the employee is going to that location. This is an essential first step in preventing the operator from moving the superstructure and causing injury to that employee. This provision is adopted without change from the proposal.

Paragraph (a)(3)(ii)(A) of this section of the proposed rule stated that the operator was prohibited from rotating the superstructure unless and until he/she gave a warning that the employee in the hazard area understood as a signal that the superstructure was about to be rotated. This was intended to give the employee time to get to a safe area. Alternatively, under proposed paragraph (a)(3)(ii)(B), the operator could rotate the superstructure if he/she was informed, in accordance with a prearranged system of communication, that the employee who was in the hazard area had moved to a safe position.

Several commenters suggested that the compliance option in proposed paragraph (a)(3)(ii)(A) was insufficient to guarantee the safety of the employee in the hazard area. (*See, e.g.,* ID–0122.0.) A similar issue was discussed in connection with § 1926.1404(e) of the final rule. Section 1926.1404(e) addresses employees in the swing radius area or crush/caught-in-between zone during the assembly/disassembly process. (*See* discussion of § 1926.1404(e) for additional information.)

For the reasons discussed with regard to the issue raised under § 1926.1404(e), OSHA has removed proposed paragraph (a)(3)(ii)(A) from this section, revised proposed paragraph (a)(3)(ii)(B), and renumbered it paragraph (a)(3)(ii).

Paragraph (a)(3)(ii) requires the operator to get information that the employee has cleared the hazard area before rotating the superstructure. The method of communication must be one that is pre-arranged. Examples of such a system are provided in the discussion of § 1926.1404(e) above.

For a full discussion of C–DAC's rationale for the provisions in paragraph (a), *see* the preamble to the proposed rule (73 FR 59803–59804, Oct. 9, 2008).

Proposed paragraph (b) of this section addressed situations where multiple pieces of equipment are located in such proximity that their working radii overlap. Such situations pose the danger of employees being pinched/crushed between the equipment and being injured as a result of unintended movement or collapse when pieces of equipment collide. To prevent such accidents, the proposal required the controlling entity to coordinate the operations of these pieces of equipment. In the event that there was no controlling entity, the proposal required the employers operating the equipment to institute a coordination system.

A commenter asked that § 1926.1424(b) be deleted, or alternatively, that an exemption be created for employers in the home building industry. (ID–0232.1.) However, this commenter did not provide evidence that equipment coordination is any less necessary on a residential job site than it is on other construction job sites. Another representative of the building industry also objected to imposing obligations on a "controlling entity," but did not dispute the necessity of equipment coordination on construction job sites. (ID–0214.1.) C–DAC concluded that the controlling entity, to the extent there is one, is in the best position to take responsibility for the coordination required by paragraph (b). OSHA has not been persuaded otherwise.

Both commenters nominated members which served on the negotiated rulemaking committee. Neither of their respective nominees dissented on these provisions during the negotiated rulemaking meetings and neither organization has explained why its position is different from that of its nominated member. In light of this inconsistency, OSHA has given diminished weight to these comments.

The C–DAC language for proposed paragraph (b) did not address a situation in which only one employer is responsible for the operation of multiple pieces of equipment. OSHA requested comment about revising the C–DAC language to make clear that such an employer would be required to institute a coordination system. No comments were received on this issue. OSHA has therefore revised paragraph (b) to address situations where one employer is operating multiple pieces of equipment, without a controlling entity at the jobsite.

Section 1926.1425 Keeping Clear of the Load

This section addresses the hazards posed to employees from being struck or crushed by the load. (*See* the preamble to the proposed rule for a full discussion of C–DAC's rationale for the provisions in this section (73 FR at 59805–59806, Oct. 9, 2008).)

Paragraph (a)

Paragraph (a) of this section requires the employer to use available hoisting routes that minimize employee exposure to hoisted loads to the extent consistent with public safety. No comments were received on this provision; it is promulgated as proposed.

Paragraph (b)

Paragraph (b) of this section specifies that employees cannot be in the fall zone when the equipment operator is not moving a suspended load, with limited exceptions as described in paragraphs (b)(1)–(3).

Fall zone is defined in § 1926.1401 as "the area (including but not limited to the area directly beneath the load) in which it is reasonably foreseeable that partially or completely suspended materials could fall in the event of an accident." The fall zone thus includes both the area directly under the load as well as other areas into which it is reasonably foreseeable that suspended materials could fall. For example, if wind is causing the load to swing, the employer would need to consider the extent to which the load is swinging or may swing in determining the extent of the fall zone. Another example is where a bundle of materials is suspended, and some loose materials at the top of the bundle may slide off sideways. In such a case those materials would foreseeably fall outside the area directly beneath the load.

Paragraph (b)(1) permits employees engaged in hooking, unhooking or guiding a load to be within the fall zone while engaged in these activities. No comments were received on this paragraph; it is promulgated as proposed.

Paragraph (b)(2) permits employees engaged in the initial attachment of the load to a component or structure to be within the fall zone. One example of this activity is: A subassembly of steel members is hoisted for attachment to a structure. When initially attaching the lower portion of that subassembly, an employee is within the fall zone of the load. In this example, the employee engaged in the initial attachment of the subassembly to the structure would be permitted to be within the fall zone; that work cannot be done otherwise. No comments were received on this paragraph; it is promulgated as proposed.

Paragraph (b)(3) allows workers to be present in the fall zone when operating a concrete hopper or concrete bucket. The employee operating the hopper or bucket is necessarily in the fall zone

since the hopper or bucket is suspended while the employee operates the releasing mechanism.

One commenter suggested adding a requirement that there be a competent supervisor for these operations and a requirement for employee training for activities covered by paragraph (b)(3). (ID–0120.1.) However, that commenter did not provide an explanation of how this would increase safety for the employee or any support for such additional requirements. Nor did the commenter identify any reason why the activities covered by paragraph (b)(3) would require different or additional supervision or training requirements than the activities covered by paragraphs (b)(1) or (b)(2). C–DAC did not recommend any additional supervision or training requirements for paragraph (b)(3), and OSHA is not persuaded that there is a safety justification for deviating from C–DAC's determination. Therefore, this paragraph is promulgated as proposed.

A representative of the building industry suggested in its comment that an exception should be added for dedicated spotters and fall monitors. (ID–0232.1.) This marks a change from the position of that organization's nominated representative during the negotiated rulemaking. (*See* discussion of this organization's comments under paragraph (c) of this section.) C–DAC did not conclude that an exception for spotters and fall monitors was warranted, and the NAHB did not present evidence to persuade OSHA otherwise. OSHA defers to the expertise of the Committee and this paragraph is promulgated as proposed.

Paragraph (c)

Paragraph (c) of this section deals with the work activities addressed in §§ 1926.1425(b)(1) and (b)(2). These requirements were necessary to ensure employee safety, given the additional risks posed while employees are performing those tasks in the fall zone.

Paragraph (c)(1) requires that the load be rigged to prevent unintentional displacement, so that workers in the fall zone are less likely to be struck by shifting materials. No comments were received on this paragraph; it is promulgated as proposed.

Paragraph (c)(2) requires the use of hooks with self-closing latches or their equivalent, to prevent accidental failure of the hooks. However, the use of "J" type hooks is permitted for setting wooden trusses. This exception is designed to enable the truss to be unhooked without the need for an employee to go out on the truss. This avoids the additional exposure to fall hazards that would otherwise occur from going out on the truss to release a latched hook.

OSHA received a comment from the building industry requesting that the exception permitting the use of J-hooks when lifting trusses be extended to lifting wall panels as well; it asserts that the same additional exposure to fall hazards would be present. (ID–0232.1.)

This commenter nominated a member who served on the negotiated rulemaking committee. The member did not dissent during the negotiated rulemaking to this provision. The commenter has not explained why it has changed its position on this issue or why its current position differs from that of its nominated member. In light of this inconsistency, OSHA has given diminished weight to its comment.[105]

In addition, OSHA notes that there are two important distinctions between setting roof trusses and setting wall panels. First, there is no need for a worker to be exposed to a fall hazard to detach a hook with a self-closing latch from a wall panel. Once the wall panel has been set, a worker can readily reach the hook from a ladder on the interior side of the panel. Second, wall panels typically often weigh more than wooden roof trusses; they pose both struck-by and crushed-by risks to workers if the hook becomes prematurely detached from the load. Such unintended detachment is more likely to occur with a J-hook because it lacks a hook gate.

One commenter suggested that the exception for J-hooks should include requirements for training and rigging. (ID–0218.1.) This commenter acknowledged that the use of J-hooks is prevalent in the industry, and indicated that the specialized training and rigging requirements it was proposing were intended to protect the component being lifted. The commenter did not suggest that its proposed requirements would enhance employee safety. Therefore, this paragraph is promulgated as proposed.

Paragraph (c)(3) requires the use of a qualified rigger[106] in the rigging of materials in the situations addressed by paragraph (c). Proper rigging reduces the risk for workers who must perform work in the fall zone. No comments were received on this provision; it is promulgated as proposed.

Paragraph (d) Receiving a Load

Paragraph (d) prohibits all employees except those needed to receive a load from being in the fall zone when it is being landed. No comments were received on this provision; it is promulgated as proposed.

Paragraph (e)

Paragraph (e) concerns tilt-up and tilt-down operations. In these operations, one end of a component, such as a precast panel, is either raised, tilting the component up, usually from a horizontal position (often on the ground) to a vertical position; or lowered, tilting the component down, usually from a vertical position to a horizontal position on the ground or other surface. Note that the requirements in this paragraph do not apply when receiving a load.

As with any other suspended load, it is dangerous to be directly beneath the load because of the possibility of a failure or error that would cause the load to fall or be accidentally lowered onto an employee. To minimize the risk of such accidents, paragraph (e)(1) of this section provides that no employee must be directly under the load during a tilt-up or tilt-down operation. Section 1926.1401 defines "directly under the load" to mean "a part or all of an employee is directly beneath the load." No comments concerning this provision were received; therefore, it is promulgated as proposed.

While paragraph (e)(1) prohibits employees directly under the load, paragraph (e)(2) of this section provides an allowance for employees to be in the fall zone (but not directly under the load), when those employees are "essential to the operation" during a tilt up or tilt down operation.

In the preamble to the proposed rule, the Agency provided a list of activities it determined to typically be infeasible to do outside the fall zone and therefore an employee would be in the fall zone for these activities. The Agency requested public comment on whether there were additional activities that

[105] A further basis for according diminished weight to this comment is that this commenter had a direct channel for presenting its interests to the committee—its nominee member—and a presumptive ability to direct its member's negotiating position. When such an organization submits negative comments to the proposed rule opposing both its own member's negotiating position and the committee's consensus, it undermines the negotiating process in a similar manner as when a member contravenes the ground rules. The integrity of the negotiating process is central to effectuating the purpose of the Negotiated Rulemaking Act of 1990.

The Agency also notes that, in future negotiated rulemakings, one of the factors that it plans to consider in assessing nominations submitted by organizations is whether the nominee can demonstrate that he/she has documented authority to bind the organization to agreements and the position the nominee takes in such negotiated rulemaking.

[106] Section 1926.1401 defines a "qualified rigger" as a rigger who meets the criteria for a qualified person.

would be infeasible to do from outside the fall zone, and whether it would be appropriate to add a definition of "essential to the operation" to the standard.

One commenter responded, asserting that the phrase "essential to the operation" does not need to be defined. (ID–0205.1.)

No commenters disagreed with the three scenarios listed in the preamble to the proposed rule describing instances where an employee is "essential to the operation" and must be within the fall zone. However, one commenter suggested adding to the list the activities of making initial connections and securing bracing. (ID–0205.1.)

OSHA believes that those two additional tasks—making initial connections and securing bracing—fall within part of the third scenario listed in the proposed rule preamble (*i.e.,* to "* * * initially attach [the load] to another component or structure").

For clarity, OSHA has decided to modify paragraph (e)(2) by adding the operations listed in the proposed rule and including the recommendation of the commenter.

One comment suggested that there might be some conflict between the NOTE in this section, § 1926.1426, and § 1926.1433(b)(4). The discussion of that comment may be found in the portion of the preamble addressing § 1926.1426 of the final rule.

Section 1926.1426 Free Fall and Controlled Load Lowering

This section addresses the hazards that can arise from free fall of the boom (live boom) during lifts. Live booms are those in which the rate of lowering can be controlled only by a brake; a failure of the brake will result in a free fall (*i.e.,* unrestricted lowering) of the boom. In contrast, for equipment that has a boom that is not "live," there is a mechanism or device other than the brake which slows the boom's lowering speed.

The uncontrolled lowering of a boom could result in an accident which could injure or kill workers in proximity to the load or hoisting equipment. This section prohibits use of live booms in most circumstances. An exception is provided in limited conditions that do not pose hazards for employees with respect to the use of older equipment manufactured before October 31, 1984. *See* discussion in § 1926.1426(a)(2)(i) below.

Additionally, this section specifies the circumstances under which free fall of the load line is prohibited at § 1926.1426(d).

Paragraph (a) Boom Free Fall Prohibitions

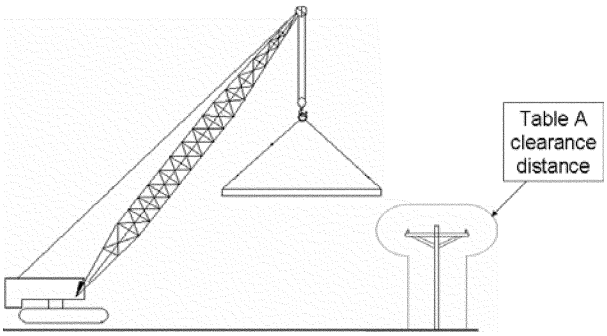
Under paragraph (a)(1) of this section, the use of equipment in which the boom is designed to free fall is prohibited under six specified conditions.

Paragraph (a)(1)(i) prohibits the use of a live boom when an employee is in the fall zone of the boom or load (*see* the explanation of "fall zone" in the discussion above of § 1926.1425(b)). Section 1926.1425, *Keeping clear of the load,* of this standard recognizes that there are some situations in which certain employees need to be positioned in the fall zone to perform their assigned duties. However, when equipment with a live boom is in use, the likelihood that an employee would sustain a serious injury or be killed by a free fall is very high when an employee is in the fall zone of the boom or load.

Paragraph (a)(1)(ii) prohibits use of a live boom when an employee is being hoisted by equipment. If a hoisted employee was dropped in an uncontrolled fall, the likelihood of a serious injury would be high.

No comments were received for paragraphs (a)(1)(i) or (ii); they are promulgated as proposed.

Paragraph (a)(1)(iii) as set forth in the proposed rule, would have prohibited the use of a live boom where the load or boom is directly over a power line, or over any part of the area extending the Table A of proposed § 1926.1408 clearance distance to each side of the power line. The diagram below illustrates a situation in which a load on a live boom is over the area extending the Table A clearance distance to each side of the power line:



As discussed above in relation to §§ 1926.1407 through 1926.1411, equipment making electrical contact with power lines is one of the primary causes of equipment-related deaths on construction sites and, to prevent such contact, those sections would require equipment to maintain minimum distances from power lines.

In the proposed rule, OSHA determines that there are circumstances where neither the boom nor the load are directly over the power line or Table A clearance distance, but where the power line or the Table A clearance distance is within the fall path of the boom or load. This circumstance is depicted in the following illustrations:

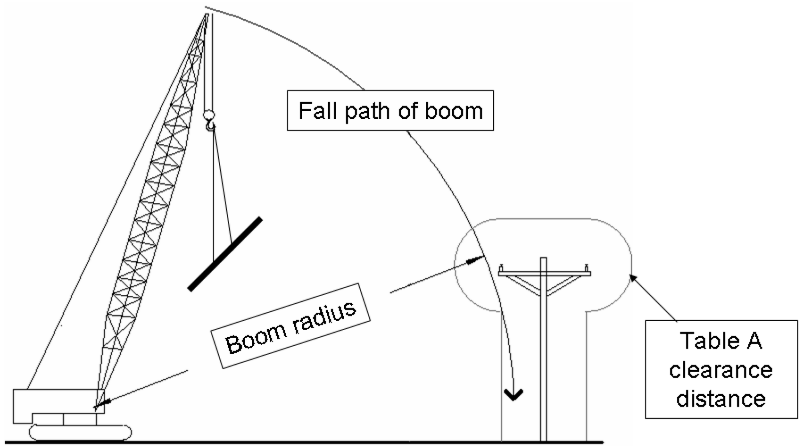


Illustration A

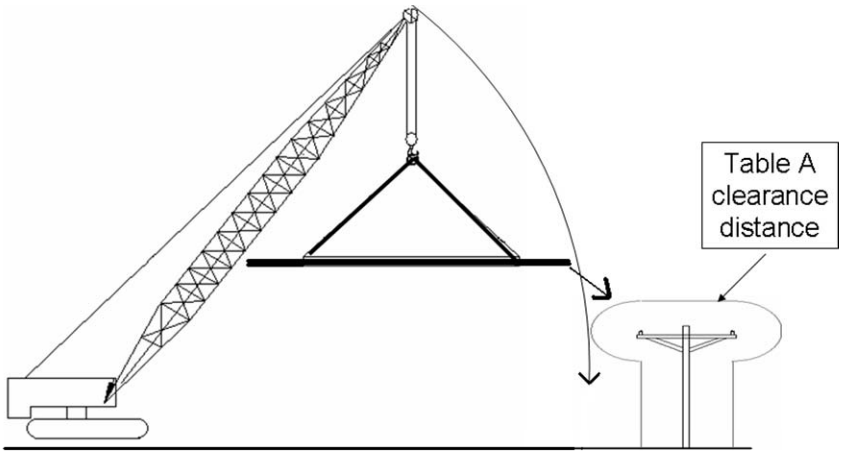


Illustration B

In Illustration A, neither the boom nor the load is above the power line or any part of the Table A zone. However, if the boom were to fall, the boom would cross into the Table A zone. In Illustration B, neither the boom nor load is above the power line or any part of the Table A zone. However, if the boom were to fall, the load would cross into the Table A zone.

OSHA requested comment in the proposed rule as to whether § 1926.1426(a)(1)(iii) should be modified to also prohibit the equipment from being positioned such that the fall path of the boom or load would breach the Table A of § 1926.1408 clearance distance. This requirement was proposed to prevent the boom, hoist line, or load from contacting an energized power line and carrying the electric current back through the equipment. One commenter, in two comments, agreed with the proposed change. (ID–0052.0; –0092.1.) No commenters disagreed.

Therefore, OSHA has modified § 1926.1426(a)(1)(iii) to prohibit free fall (live boom) where the power line or the Table A clearance distance is within the fall path of the boom or the load.

Paragraph (a)(1)(iv) prohibits use of a live boom where the load is over a shaft. Employees in a shaft receiving a load are at high risk of death or injury from a free falling boom as the shaft severely limits the ability to avoid the falling boom. Because this hazard only exists when there is an employee in the shaft, OSHA has specified in § 1926.1426(a)(1)(iv) of the final rule that the live boom prohibition only applies when at least one employee is in the shaft. This language is different from the language of § 1926.1426(a)(1)(v), regarding cofferdams, because a shaft is typically a smaller work space than a cofferdam, thus, a shaft under a load is necessarily in the fall zone of the boom or the load.

Paragraph (a)(1)(v) prohibits free fall of a boom when the load is over a cofferdam, except where there are no employees in the fall zone of the boom or load. Much like employees who must receive a suspended load in a shaft, employees have limited ability to escape a free falling boom or load in a cofferdam. However, cofferdams are typically much larger work spaces than shafts, the fall zone of a falling boom or load may only affect one part of the cofferdam. Therefore, this provision only applies when employees are in the fall zone of the boom or load.

OSHA noted an ambiguity in proposed § 1926.1426(a)(1)(v). The exception referred only to "the fall zone"; OSHA determines that—to make this provision consistent with § 1926.1426(a)(1)(i) (prohibiting the use of live booms when an employee is in the fall zone of the boom or the load)—the words "of the boom or load" should be added to the language proposed for § 1926.1426(a)(1)(v).

Paragraph (a)(1)(vi) prohibits use of a live boom for lifting operations in a refinery or tank farm. A free falling boom could strike pipes or a tank in a refinery or tank farm. Such accidental impact could cause a release of toxic materials or conflagration. No comments

were received for this provision; it is promulgated as proposed.

Paragraph (a)(2) of this section is the exclusive list of conditions under which the use of cranes with live booms is permitted. C–DAC found that cranes with live booms can be used safely under some circumstances and did not determine that the cost of replacing or retrofitting all such equipment is justified as long as the use of live boom equipment is limited to these conditions. However, none of the conditions outlined in § 1926.1426(a)(1) may be present.

Paragraph (a)(2)(i) allows the use of equipment with a live boom if that equipment was manufactured prior to October 31, 1984, and none of the circumstances listed in § 1926.1426(a)(1) are present. ANSI B30.5 first prohibited live booms in the 1972 version and reiterated the prohibition in the 1982 edition, which was published on October 31, 1983, and became effective on October 31, 1984.

OSHA concludes that manufacturers would have begun to phase out live-boom equipment when ANSI first prohibited its use in 1972 and that few, if any, live boom equipment would have been manufactured after October 31, 1984. Moreover, during this period, hydraulic hoisting equipment, the design of which typically precluded boom free fall even in its early designs, became more prevalent.

In light of these factors, the Agency concludes that most equipment manufactured after October 31, 1984, would not have live booms. Section 1926.1426(a)(2) thus allows the older live boom equipment to be phased out safely by restricting its use to situations in which none of the circumstances listed in § 1926.1426(a)(1) are present. However, OSHA added a new provision to this paragraph that considers live-boom equipment manufactured on or after October 31, 1984, and meeting the requirements of paragraph (b) of this section, not to be subject to the limitations of paragraph (a) of this section. OSHA considers such equipment, when so modified, to be as safe as any equipment modified under the requirements of paragraph (b).

Paragraph (a)(2)(ii) allows use of a live boom if the equipment is a floating crane/derrick or is a land crane/derrick on a vessel/flotation device and none of the circumstances listed in § 1926.1426(a)(1) are present. The Committee found, and OSHA agrees, that equipment used on the water commonly has a live boom because the dynamics of load transfer while on water (from side to side), as well as unexpected wave action can cause rapid changes in list and trim, which sometimes necessitates that the operator have a free fall boom system to compensate for these effects. Non-live systems are not fast enough for this purpose. At the public hearing, a witness from the maritime industry said that the "unique tasks [associated with operating cranes on the water] have often required and will continue to require a modification of existing cranes and derricks so that they can safely accomplish these specialized applications." (ID–0345.41.)

As a result, the Agency concludes that there is no need to modify this provision; it is promulgated as proposed.

One commenter suggested there is a conflict between the § 1926.1426(a) allowance for the limited use of free falling booms and § 1926.1433(b)(4) incorporation of the ASME standard prohibition on the use of free falling booms. (ID–0053.1.)

Section 5–1.3.1 of ASME B30.5–2004 has a paragraph (b), which contains its own text, as well as two subsidiary paragraphs, enumerated (1) and (2), each of which also contains text. The ASME prohibition against live booms is in the text of paragraph (b) of ASME B30.5–2004 sec. 5–1.3.1. Free fall is not mentioned in subsidiary paragraphs (b)(1) or (b)(2) of ASME B30.5–2004 sec. 5–1.3.1.

Section 1926.1433 incorporates the concepts in only subsidiary paragraphs (b)(1) or (b)(2) of ASME B30.5–2004 sec. 5–1.3.1; it does not incorporate the portions of paragraph (b) of ASME B30.5–2004 sec. 5–1.3.1 that would conflict with § 1926.1433. There is, therefore, no conflict between §§ 1926.1426(a) and 1926.1433(b)(4).

Paragraph § 1926.1426(a)(2) is promulgated as proposed.

Paragraph (b) Preventing Boom Free Fall

Paragraph (b) of this section establishes criteria for the boom hoist on equipment with a boom designed to free fall. Paragraphs (b)(1) through (b)(4) specify the mechanisms or devices that a boom hoist can utilize as a secondary means to prevent boom free fall when the primary system fails. C–DAC determined that each of these were effective means of preventing boom free fall, and OSHA agrees. The addition of a listed secondary mechanism or device to prevent the fall of the boom changes the characteristics of equipment designed with a live boom, decreasing the risk of injury to employees. Therefore, if equipment has a boom hoist with a secondary mechanism or device listed in paragraphs (b)(1) through (4), it is not considered a live boom for purposes of the limitations of (a) of this section. No comments were received on these provisions; they are promulgated as proposed.

Paragraph (c) Preventing Uncontrolled Retraction

Paragraph (c) of this section requires hydraulic telescoping booms (which are also referred to as hydraulic extensible booms) to have an integrally mounted holding device to prevent the boom from retracting in the event of hydraulic failure.

The C–DAC draft of this provision stated that the purpose of this device was "to prevent boom movement in the event of hydraulic failure." OSHA determines that this language was unintentionally broad in that it refers to any "boom movement." In the proposed rule, OSHA modified the language to state that the purpose of the integrally mounted holding device is "to prevent the boom from retracting" in the event of hydraulic failure and requested public comment on this change.

Two commenters agreed with the modification and no commenters disagreed. (ID–0205.1; –0213.1.) The text of § 1926.1426(c) is therefore promulgated as proposed.

Paragraph (d) Load Line Free Fall

Paragraph (d) of this section lists the circumstances under which free fall of the load line hoist is prohibited, and controlled load lowering must be used. "Free fall (of the load line)" is defined in § 1926.1401 to mean "where only the brake is used to regulate the descent of the load line (the drive mechanism is not used to drive the load down faster or retard its lowering)." "Free fall" is contrasted with "controlled load lowering," which § 1926.1401 defines as "lowering a load by means of a mechanical hoist drum device that allows a hoisted load to be lowered with maximum control using the gear train or hydraulic components of the hoist mechanism. Controlled load lowering requires the use of the hoist drive motor, rather than the load hoist brake, to lower the load."

As with free fall of the boom, free fall of the load line hoist presents a struck-by hazard to employees. One difference is that free fall of the load line endangers a smaller area than boom free fall. When a boom free falls, its tip (and any attached load) moves both downward and outward. Because the load will be moving in at least two directions simultaneously, the area that will be affected by the fall is larger than the affected area from a load line free fall.

In contrast, if a load line free falls, the load will tend to fall in a relatively straight path downward (as long as the boom is not being moved and the load is not significantly affected by winds). Thus the area affected will typically be smaller. As a result the prohibitions for load line free fall are less than those affiliated with boom free fall. No comments were received on paragraphs (d)(1) or (d)(2); they are promulgated as proposed.

Proposed paragraph (d)(3) stated that the use of load line hoist free fall is prohibited when the load is directly over a power line, or over any part of the area extending the Table A clearance distance to each side of the power line. OSHA requested comment on whether proposed § 1926.1426(d)(3) should be modified to also prohibit the equipment from being positioned where the fall path of the load would breach the Table A clearance distance. One commenter, in two comments agreed with the change and no commenters disagreed. (ID–0052.0; –0092.1.)

Since this modification is consistent with the purpose of the provision, OSHA has included this revised language in the final rule; § 1926.1426(d)(3) to prohibit load line free fall where the power line or the Table A clearance distance is within the fall path of the load.

Proposed paragraph (d)(4) stated that load line free fall is prohibited when the load is over a shaft or cofferdam. OSHA noted that, unlike the prohibition against live booms in § 1926.1426(a)(1)(v), proposed paragraph (d)(4) contained no exception regarding cofferdams in which there are no employees in the fall zone. OSHA requested comment on whether proposed § 1926.1426(d)(4) should include the same exception included in § 1926.1426(a)(1)(v). Two commenters agreed with the modification and no commenters disagreed. (ID–0205; –0213.) Because the fall zone of a free falling load line is typically a smaller area than the fall zone of a free falling boom, the Agency is unaware of any reason to include the exception in § 1926.1426(a)(1)(v) for live booms but omit it for load free fall. Therefore, in the final rule, OSHA has modified the language in proposed § 1926.1426(d) by separately addressing shafts and cofferdams, and adding an exception for the latter.

Section 1926.1427 Operator Qualification and Certification

Introduction

Section 1926.1427 addresses the safety problems that result if equipment operators lack the knowledge and skills necessary to perform their duties safely. In C–DAC's collective experience, operator error plays a role in a significant percentage of fatal and other serious crane accidents because operators are not familiar with the precautions needed to protect against hazards such as power line contact, crane overloading and collapse, and loss of control of the load. C–DAC concluded that a verified testing process is essential for ensuring that crane operators have the requisite knowledge and skills and that requiring crane operators to successfully complete such a process would be an effective and efficient way to reduce crane-related accidents.

In the proposed rule, OSHA noted that C–DAC's finding in this regard was supported by a study conducted over a 34-year period (1969–2002) by the Construction Safety Association of Ontario that showed a substantial decrease in crane and rigging fatalities in Ontario beginning in 1979, when mandatory training and certification requirements for Ontario crane operators went into effect. (ID–0009.) In the ten-year period from 1969 through 1978, before Ontario's requirements went into effect, 85 Ontario construction workers suffered crane and rigging fatalities, amounting to 8.5 per year, or 19.8% of all construction fatalities in Ontario. In the 24-year period from 1979 through 2002, there were 51 crane and rigging fatalities, or slightly more than two per year. For this period, crane and rigging fatalities equaled 9.6% of all Ontario construction fatalities. In the 12-year period from 1991 through 2002, the total number of crane and rigging fatalities was 9, or fewer than one per year. During this period, crane and rigging fatalities amounted to 4.1% of total construction fatalities. This study supports C–DAC's conclusion that third-party certification is an effective means of promoting safe crane operations.[107]

The rulemaking record contains additional support for C–DAC's conclusion. A study of crane accidents in California both before and after that State adopted a mandatory certification requirement shows a significant drop in crane-related fatalities and injuries after the certification requirement went into effect on May 31, 2005. (ID–0205.1.) For the three years prior to that date, California experienced ten fatal accidents, while in the next three years, only two fatal accidents occurred. The number of injury cases declined from 30 to 13 over the same two periods. The California data supports that from Ontario and demonstrates that significant safety benefits can be expected from a requirement for third-party certification.

The rulemaking record also contains substantial evidence regarding the need for continued application of State and local laws. As several commenters explained, State and local licensing requirements are backed by the police power of that government. For example, New York law states that the operation of a crane without a valid license in New York City is a misdemeanor punishable by fines and imprisonment. (NYC Administrative Code §§ 28–405.1; 28–203.1.) Moreover, states have the power to revoke previously issued licenses under appropriate circumstances. (ID–0171.1.) In contrast, OSHA's enforcement of certification or other qualification requirements would be limited in most cases to a citation to an employer. Based on the record as a whole, the Agency concludes that cooperative Federal-State enforcement will increase the effectiveness of the new standard. *See also* discussion of federalism in section V.D of this preamble.

The certification requirements in the final rule are therefore designed to work in conjunction with State and local laws, and to afford employers several options for ensuring operator abilities in areas where there are no State or local operator licensing requirements. For operation of equipment within jurisdictions where a State or locality licenses crane operators, and the government entity's licensing program meets certain criteria, OSHA is requiring operators (with the exception of operators that are employees of and operating equipment for the U.S. military) to be licensed by that government entity. For operation in other areas, employers will have three

[107] The Ontario system requires prospective or current crane operators (referred to in Ontario as "hoisting engineers") to either successfully complete an apprenticeship program or demonstrate sufficient previous experience before seeking certification as a hoisting engineer. The apprenticeship program includes in-school training in a number of topics determined by the Ministry of Education, a practical examination administered at Ministry-designated sites, and a written examination administered by the Ministry. Upon passing this examination and proving completion of the requisite work hours, an apprentice receives a certificate of qualification as one of three types of hoisting engineer from the Ministry. (ID–0010.)

Hoisting engineers already qualified elsewhere must also obtain a certification from the Ministry to operate cranes in the province. These candidates must sit for the written examination and complete the practical skills assessment required for qualification of apprentices, but may demonstrate sufficient previous experience instead of completing the number of work/training hours required by the apprenticeship program, to receive a certificate of qualification from the Ministry in one of the three hoisting engineer categories. (ID–0011.)

options for certification or qualification of their operators. Each of these options will be explained and discussed in detail below. They are:

1. Be certified by passing an examination administered by an accredited testing organization.

2. Be qualified through the employer's in-house, but independently audited, testing program.

3. Be qualified by the United States military.

While OSHA is requiring compliance with State and local licensing laws immediately upon the effective date of this standard in recognition of the existing force and effect of those laws, OSHA is not requiring certification or qualification under the three options listed above until four years from the effective date of this standard. Moreover, there are limited exceptions to all of the licensing and certification requirements, as specified in § 1926.1427(a). Even after the four-year phase-in period of the general certification requirements, OSHA will continue to allow non-certified operators to operate the equipment as operators-in-training in accordance with § 1926.1427(f), discussed below.

Of the three options available in the absence of State or local licensing laws, Option (3) of this section is available only to the United States military for qualification of its employees. Further, as discussed below, a number of commenters stated that Option (2) of this section was not viable for many employers. However, Option (1) of this section is available to all employers and will be the one that is most widely used. Therefore, most of the public comments and evidence presented at the hearing addressed Option (1).

At the hearing, a witness for an accredited testing organization testified that the certification process embodied in Option (1) originated in the 1990s when private industry groups began an effort to improve crane safety. The witness explained that the industry representatives involved with the organization are drawn from such groups as contractors, crane rental firms, labor unions, owners, steel erectors, manufacturers, construction firms, training consultants, and insurance companies. (ID–0343.) The witness also explained that exam management committees meet throughout the year to ensure the continuing fairness and integrity of the testing process. Finally, the witness explained that certification promotes safety by ensuring that the training an individual has received has succeeded in giving that individual the knowledge and skills to operate a crane safely. (ID–0343.)

Many commenters and witnesses at the public hearing expressed support for the proposed rule's approach of requiring third party verification of an operator's qualifications and for the range of options presented. A national safety organization expressed support for the provision to ensure qualification and certification of operators. (ID–0178.1.) A trade association stated that third party oversight was critical to create an effective and legitimate testing process and to ensure that the training portion did not have undue influence on the testing process. (ID–0205.1.)

Similarly, another commenter supported the proposed Q/C requirements, emphasizing the importance of independent certification of an operator's skill and knowledge by an accredited nationally recognized third-party entity or organization. (ID–0169.1.) Similar views were expressed by other commenters. (ID–0158.1; –0160.1; –0173.1; –0192.1; –0196.0; –0211.1; –0212.1; –0220.1; –0225.1; –0228.1; –0241.1.)

A number of witnesses at the public hearing also supported the proposed requirement for third-party verification. A representative from a crane rental company said that, although they incur additional cost to prove certification, they consider that cost an investment in the safety of their employees. (ID–0344.) A major crane user observed both certified and non-certified operators and found that the certified operators operated far more safely because of the more comprehensive training required to become certified. (ID–0344.)

An insurance company representative and former crane operator stated that his company believes that employers who certify their operators have fewer accidents and that, as a result, his firm offers companies it insures a ten percent discount if they have their operators certified. (ID–0343.) The representative believed that the cost of certification was modest when compared to the cost of accidents. (ID–0343.) A representative from a crane rental company testified that preparing for the certification process allowed his company to improve their operators' knowledge and ability to operate cranes safely. (ID–0343.) A representative from a steel erection company agreed that certification is important to both insurance companies and employers because certification gives employers peace of mind and reduces insurance costs. (ID–0344.)

Some commenters and witnesses opposed the proposed rule's requirement for qualification or certification of operators. A trade association commented that the requirements would not improve safety more than having trained, qualified operators because many of the operators in recent accidents were certified. (ID–0151.1.) The commenter also questioned whether sufficient analysis had been done to show that the proposed requirements would improve the safety of crane operations. This commenter believed that the current requirement (§ 1926.20(b)(4)) for equipment operators to be qualified by training or experience was sufficient. A witness from a similar trade association expressed a similar view, stating that training, not certification, is the answer to safe crane operations. (ID–0343.)

A representative of the building industry thought the requirements were too restrictive and stated that OSHA failed to show that the limited requirements would substantially reduces the risk of accidents while other alternatives would not. (ID–0232.1.) The commenter asked that its members have the option to self-evaluate their operators after they have gone through a specified training program in lieu of the third-party certification that would be required under proposed Option (1) of this section for cranes of less than 35 ton capacity with a boom length no greater than 120 feet. A witness who appeared on behalf of the commenter criticized the proposal for imposing the same requirements on employers engaged in residential construction as those in commercial construction and said training and certification requirements should be crane and industry specific. (ID–0341.)

Another trade association similarly recommended that its members be given the ability to self-certify their operators. (ID–0218.1.) A small business representative asked OSHA to assess whether it is feasible to allow small employers to "self-certify" that an operator is trained and competent to operate the equipment and perform the tasks being conducted.[108] (ID–0147.1.) A trade association suggested that OSHA consider the feasibility of allowing small employers to "self-certify" that their operators are trained and competent to operate the equipment and perform their assigned tasks. (ID–0187.1.) Another trade association believed that mandatory self-certification was a feasible option for operators of what it characterized as "light-duty" cranes used by its members. (ID–0189.1.)

An energy association argued that firms engaged in wind turbine

[108] The commenter, however, also acknowledged that there are small businesses that are in favor of third-party certification. (ID–0147.1.)

construction should be permitted to self-certify their crane operators.– (ID–0329.1.) The commenter stated that construction of wind turbines requires the use of the largest and most complex cranes available, and that some of its members had found that some operators certified by NCCCO were not truly qualified to operate those cranes. It therefore believed that firms in its industry should be able to self-qualify their crane operators, but objected to the need for employers in its industry who use Option (2) of this section to be required to use the services of an auditor. The commenter said it did not believe that there would be properly trained and qualified people available to audit the wind industry. Instead of requiring auditors, the commenter suggested that OSHA add to the find rule additional, detailed criteria that an employer-sponsored program must contain to be acceptable.

OSHA rejects the suggestions of the commenters who argued that employers should have the option of determining that their operators are qualified without any form of third-party verification. Based on the rulemaking record, OSHA is persuaded that the third-party requirements in the proposed rule are an essential element in improving crane safety. The members of C–DAC, who had vast collective experience in all aspects of crane operations, reached a consensus (with two members dissenting) [109] that third-party verification was needed to reduce the number of crane accidents and fatalities in the construction industry. Their consensus was supported by a number of commenters, including some employers who have already had their operators certified through a third-party process and have found certification to be a useful and cost-effective means of promoting safety.[110] The reliance of the insurance industry on third-party verification as such an indicator of reduced risk that it warrants reduced premiums, is further evidence of its value. Moreover, the fact that safety-conscious members of private industry voluntarily helped to develop a third-party certification process before there was a government mandate to do so is further evidence that certification promotes safety.

As discussed earlier, a number of commenters urged OSHA to require training rather than certification. But training alone is insufficient without a means of verifying that each operator understands the training well enough to operate safely and is sufficiently skilled to implement what he/she has been taught. As Graham Brent, Executive Director of NCCCO put it at the hearing, "[c]ertification * * * is an employer's, as well as the general public's, best assurance that the required training has not only been effective, but that learning has taken place during the training process." (ID–0343.) OSHA's current training standard has not prevented the high number of crane-related fatalities and serious injuries that have been occurring as a result of improper operation.

OSHA acknowledges that many employers have effective training programs and highly competent crane operators. However, the rulemaking record shows that a training requirement alone is insufficient to ensure that crane operators have the requisite level of competence. This was the opinion of the members of C–DAC and is shared by many of the members of the public who commented on the proposed rule and who testified at the public hearing.

A representative of the building industry objects to OSHA's reliance on the study by the Construction Safety Association of Ontario, saying that it does not meet statutory and regulatory information quality standards, including the Department of Labor's Information Quality Guidelines.[111] (ID–0232.1.) First, OSHA notes that the Ontario study is only part of the record evidence on which the Agency relies in promulgating this standard. In the preamble to the proposed rule, OSHA stated that the Ontario study "buttressed" C–DAC's experience and conclusions regarding the need for independent testing of operator ability (*see* 73 FR 59810, Oct. 9, 2008). Second, OSHA's reliance on that study does comply with the Department's guidelines. Appendix II of the guidelines addresses the information quality principles on which OSHA relies in setting health and safety standards. For safety standards, such as this rule, OSHA must use "the best available statistical data from surveys of fatalities, injuries, and illnesses, and the best available peer-reviewed science and supporting studies that describe the nature of the safety risks being addressed." OSHA determines that the Ontario study, though not peer-reviewed, is the "best available statistical data" showing the efficacy of third-party operator certification. The California study is similarly supportive of the C–DAC conclusions.

In other respects as well, OSHA has complied with the Department of Labor's Information Quality Guidelines. The guidelines state that "[t]he goal of a safety risk analysis is to describe the numbers, rates, and causal nature of injuries related to the safety risks being addressed." To meet this goal, OSHA historically has "relied on injury and illness statistics from BLS, combined with incident or accident reports from enforcement activities, incident or accident reports submitted to the record from the private or public sectors, testimony of experts who have experience dealing with the safety risks being addressed, and information and data supplied by organizations that develop consensus safety standards."

In developing the proposed rule, and in issuing this final rule, OSHA has relied on these types of evidence, including studies based on BLS statistics and OSHA enforcement reports, as well as incident reports from specific enforcement cases. (*See* 73 FR 59719–59723, Oct. 9, 2008.) On the specific question of the need for third-party verification of a crane operator's qualifications, OSHA has relied primarily on the opinions of experts with vast experience in crane operations and the hazards presented by crane use, including the members of C–DAC and construction industry employers who appeared at the public hearing. OSHA is persuaded that third-party verification will significantly reduce the number of crane-related injuries and is confident that the information on which it relies to set this standard is reliable, the best available, and meets the Department's guidelines.

A trade association also questioned OSHA's reliance on the Ontario study, suggesting that Ontario's ability to issue citations to employees is the likely cause of Ontario's decrease in fatal crane accidents. (ID–0151.1.) OSHA notes, however, that the Construction Safety Association of Ontario attributed the decrease to increased operator skill, not employee citations. (ID–0009.) OSHA determines that the Construction Safety Association of Ontario was well-positioned to evaluate why Ontario was able to achieve a dramatic reduction in crane-related fatalities and accepts its opinion on the question. Moreover, the employee citations permitted under Section 66 of Ontario's Occupational Health and Safety Act did not take effect until 1990. These employee citations

[109] As explained in the Introduction, under C–DAC ground rules, a "consensus" was reached on an issue if there were no more than two non-Federal dissenters.

[110] It is also supported by the data from Ontario and California showing that third-party certification can significantly reduce crane-related fatalities and injuries, discussed below.

[111] "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor," (Oct. 1, 2002), available on the Department of Labor's Web site.

appear to function primarily as a deterrent to non-compliance with Ontario's construction safety standards, as opposed to the operator certification requirements that are intended to verify knowledge and skills necessary for safe operation. In that regard, the civil fine provisions are similar to the licensing requirements (separate from certification) that Ontario had required prior to 1979. There is no indication in the record that the fines provided a greater level of deterrence than the government's pre-existing authority to sanction an individual operator through the revocation of an operator's license.

The representative of the building industry claimed that the rate of accidents resulting from crane use in the residential construction industry is too low to justify requiring homebuilders to comply with the qualification/certification requirement in the proposed rule. The commenter conducted a study, using fatality data from the Bureau of Labor Statistics, which, according to the commenter, showed that 13 out of 1385, or slightly less than 1%, of fatalities in the residential construction industry from 2003–2006 were crane-related. (ID–0232.1.) Because this percentage is substantially less than the more than 8% of all construction fatalities that were found to be crane-related in the Beavers study, the commenter suggests the risk of serious injury from the smaller truck mounted telescopic boom cranes used in residential construction is substantially less than the risk of injury from large lattice boom and tower cranes used in commercial/industrial construction. The commenter stated that a copy of its study was attached to its comment and is available on its Web site. (ID–0232.1.) In fact, a copy was not attached to its comment. OSHA has located a document on the commenter's Web site entitled "Residential Construction Fatalities, 2003–2006" that describes the causes of fatalities in residential construction, but has found nothing in that document to support the commenter's claim that only 13 of those fatalities were crane-related.

Nevertheless, even if the commenter could support its claim of 13 crane-related fatalities, its conclusion that cranes present little risk of serious injury in residential construction does not follow. First, OSHA determines that 13 crane-related fatalities in homebuilding in a four year period is significant and well worth trying to reduce. Moreover, the commenter's comparison of percentages is not persuasive. The fact that a smaller percentage of fatalities are crane-related in residential construction than in commercial/industrial construction may simply reflect lower crane usage in residential construction. A witness who appeared on behalf of the commenter at the public hearing, testified that cranes are typically used on a residential construction project between two and six hours to lift objects like roof and floor trusses. (ID–0341.) The witness noted that for commercial construction, a crane might be on the job from six months to two years. (ID–0341.) In light of the brief percentage of time cranes are used in residential construction compared to the percentage of time they are used in commercial construction, it would be expected that the percentage of accidents they cause will similarly be lower even if, while they are on the job, they present the same or even a higher degree of risk.[112]

OSHA also rejects the commenter's suggestion that homebuilders should be permitted to self-certify their crane operators. The commenter states that the vast majority of the building association's single-family home builders are very small, with 61% building ten homes or fewer. The witness stated at the hearing that the home building industry has many small operations and a few very large players. (ID–0341.) In OSHA's experience, most small construction firms would not have the expertise to develop or administer the types of tests necessary to reliably assess operator ability (*see* the discussion of the criteria applied by nationally recognized accrediting entities to accredit certification organizations).

OSHA also does not conclude that such companies typically possess the expertise to establish and implement the sophisticated type of training program that the commenter suggests should be required for employer self-certification. (ID–0232.1.) The same problem exists throughout the construction industry, which includes numerous small firms. Furthermore, as found by C–DAC, independent testing is essential to ensure that operators have in fact attained the knowledge and ability the training is supposed to impart.

A number of commenters suggested that the proposed requirements should be modified in various ways. Some suggested exempting certain equipment from the qualification/certification requirement or requiring a form of qualification/certification that the employer could implement without resort to third-party verification. Others suggested expanding the range of options available to the employer, in particular allowing accredited educational institutions to certify operators. These comments will be discussed below in the sections of the standard that address the issues raised by the commenters.

Paragraph (a)

In the final rule, paragraph (a) of this section specifies that the employer must ensure that the operator of any equipment covered under § 1926.1400, with certain listed exceptions, is either qualified or certified to operate the equipment in accordance with the provisions of this section or is operating the equipment during a training period. Paragraph (a)(1) requires compliance with State and local operator licensing laws. For areas where State or local licensing is not required, paragraph (a)(2) requires employers to use one of the three options listed above to certify or qualify their operators. Paragraph (a)(3) provides exceptions from all of § 1926.1427's certification and qualification requirements for operators of certain equipment, regardless of whether State or local governments have licensing requirements for operators of that equipment.[113]

Paragraph (a)(1) Compliance With State and Local Licensing Requirements

The proposed rule included a fourth option to satisfy the operator certification/qualification requirements of § 1926.1427: qualification through a government entity with a licensing program meeting certain criteria. Several states submitted comments on the proposed rule urging the Agency to preserve State and local operator licensing laws. Some of these concerns are addressed in the discussion of preemption under federalism in section V.D of this preamble. Two of those commenters, each with its own statewide crane operator licensing requirements, specifically requested that OSHA mandate compliance with State requirements for crane operations within the jurisdiction of those states (with the exception of operators who are employees of the U.S. military). (ID–0171.1; –0237.) Three State governments argued persuasively that if government licensing was presented merely as an option, rather than required, many employers would simply by-pass these

[112] Mr. Behlman testified that overhead power lines are "very seldom" found on residential sites. (ID–0341.) However, the document on NAHB's Web site showing the causes of residential construction fatalities from 2003 to 2006 attributes 76 fatalities to "contact with overhead power lines."

[113] These State and local licensing requirements would remain in effect. *See* discussion of preemption of State and local law under federalism in section V.D of this preamble. OSHA is simply choosing not to require compliance with any such licensing requirements for that equipment.

licensing requirements in favor of less stringent, portable private certification options. (ID–0171.1.) One State government also noted that some states have proven, reliable licensing procedures already in place. Where State and local licensing departments or offices are already well established and staffed, and are already preventing deaths or serious injuries through the use of effective licensing procedure, there is little support in the record for disturbing them.

In light of the commenter's compelling arguments and the policy considerations noted above, the Agency is convinced that the governmental licensing requirements should be mandatory, rather than optional. In response, the Agency is revising paragraphs (a) and (e) of § 1926.1427 to mandate compliance with State and local operator licensing laws that meet a "Federal floor" established in paragraphs (e)(2) and (j) of this section.[114]

This mandatory compliance is set forth in the introductory text of § 1926.1427(a)(1) and paragraph (a)(1)(i). OSHA has added § 1926.1427(a)(1)(ii) to clarify that employees of the U.S. military who have been certified or qualified to operate equipment pursuant to § 1926.1427(d) would not also be required to obtain an operator's license from a State or local government for construction work on behalf of the military employer. By requiring compliance with State and local laws, the Agency is also complying with Executive Order 13132, which urges agencies to preserve the full force and effect to State and local laws. (*See* 64 FR 43225, Aug. 10, 1999.)

This decision is a logical outgrowth of the proposal. The proposal identified a significant safety risk from improper operation of equipment and proposed certification requirements as a means of addressing that risk. Governmental licensing of crane operators has existed alongside OSHA's prior crane rules at former § 1926.550 for many years, and C–DAC made them a significant component of the proposal without any indication that the new standard would exempt employers from compliance with those laws. The government licensing provision was the subject of a number of comments, and was discussed during the hearing in the context of comments requesting OSHA to make the government licensing mandatory.

The preamble to the proposed rule noted C–DAC's opinion that some States have "effective, reliable, licensing procedures" (73 FR 59814, Oct. 9, 2008). The preamble to the proposed rule also specifically cited the Department of Transportation's requirement that commercial drivers also carry State drivers licenses issued in accordance with Federal standards (73 FR 59810). The DOT licensing was provided as an example of how State licensing, when required as part of a general Federal compliance scheme, has been "used in the past to prevent fatal and other serious accidents that result when operators lack the knowledge and skills needed to operate safely." *Id.* The only other example of successful third-party certification provided as a basis for the certification requirement was another government licensing requirement: Ontario's licensing requirements for crane operators. *Id.* The combination of OSHA's exclusive reliance on these examples and the government licensing provision in proposed § 1926.1427(e) provided clear notice that the government licensing provision might develop along the lines of the examples. While several commenters submitted comments supporting mandatory compliance with government licenses, thereby indicating that at least these parties viewed the mandatory compliance as a possible outcome of the rulemaking, none of the commenters objected to the government licensing provision or questioned the validity of their tests. The Agency's choice to make compliance with paragraph (e) mandatory, rather than optional, flows logically from the proposal, the comments, and the discussion at hearing. *See National Mining Ass'n* v. *Mine Safety and Health Admin.,* 512 F.3d 696, 699 (DC Cir. 2008) (noting that the logical outgrowth test takes into account the comments, statements and proposals made during the notice-and-comment period).

The Agency's decision to mandate compliance with State and local laws is not new. OSHA already relies on State licensing requirements in its respirator standard when it provided for "a licensed health care professional" to perform a medical evaluation of an employee's ability to use a respiratory (*see* § 1910.134(e)). This portion of the standard was challenged and upheld in *American Iron Steel and Steel Institute* v. *OSHA,* 182 F.3d 1261, 1278 (11th Cir. 1999). OSHA's choice to mandate compliance with State or local law is also consistent with the approach of other agencies. (*See, e.g.,* Department of Transportation regulations requiring State licensing of commercial drivers, discussed in the preamble to the proposed rule at 73 FR 59810, Oct. 9, 2008.)

Paragraph (a)(2) Options for Certification or Qualification Where License Not Required by a Government Entity

As noted above, where a State or local license is not required, employers have three choices for certification of operators. Those choices are set out in paragraphs (b) through (d) of this section and discussed in detail below. It is important to note that these options will not satisfy the requirements of § 1926.1427 for operation of equipment within a State or local government's jurisdiction when that government entity has it's own licensing requirements that satisfy the criteria in paragraphs (e) and (j) of this section.

Paragraph (a)(3) Exceptions

The exceptions in the proposed rule were for types of equipment that are specifically excluded from the qualification/certification requirement under sections of this standard that pertain to that equipment, including derricks (*see* § 1926.1436), sideboom cranes (*see* § 1926.1440), and equipment with a rated hoisting/lifting capacity of 2,000 pounds or less (*see* § 1926.1441).

A labor representative pointed out that the exception in § 1926.1441 applies to equipment with a "maximum manufacturer-rated" hoisting/lifting capacity of 2,000 pounds or less, and it asked that this same language be used in § 1926.1427(a) to avoid suggesting that the exception might apply to larger equipment when it is configured to have a rated capacity of 2,000 pounds or less. (ID–0341.) OSHA agrees that the suggested change better reflects the intent of the provision and has modified the language of § 1926.1427(a) in the final rule by replacing the word "rated" with "maximum rated." OSHA notes that this change does not change the substantive requirements of the rule in any manner.

A number of commenters asked that additional types of equipment or activities be exempted from § 1926.1427's qualification/certification requirement.

A utility company recommended that cranes of 10,000 pound capacity or less be excluded on the basis that most uses of these cranes are highly repetitive and predictable. (ID–0144.1.) A trade association suggested exempting cranes rated at less than 10 or 15 tons from the

[114] This "Federal floor" refers to the minimum requirements for license tests in § 1926.1427(e)(2), and the minimum knowledge and skills that must be tested as set forth in § 1926.1427(j)(1) and (j)(2). Employers would not be required by OSHA to comply with State or local government entity licensing requirements that do not meet this "Federal floor," but States and local governments could still seek to enforce their own laws.

requirement. (ID–0191.1.) It said that these types of cranes are often used to deliver products to a jobsite or to place small rooftop HVAC units on low rise buildings, and that they are used for simple lifts of relatively light loads. This commenter also requested that OSHA add a less restrictive certification level for cranes rated less than 30 tons, which it said are less complicated to assemble and set up and are used during "low risk" lifts.

Another trade association suggested that the threshold for requiring qualification/certification should exclude the 5,000 to 10,000 pound capacity cranes that its members typically use. (ID–0189.1.) It said that this equipment is relatively simple to operate, that the signs its members install rarely exceed 2,000 pounds, and that the equipment is used intermittently on the job and only for brief periods of time.

A third trade association believes that the size and scope of the lifts its members make do not justify the qualification/certification requirements in the proposed rule and suggested alternative requirements for its members when they operate cranes of less than 35 ton capacity with a boom length no greater than 120 feet. (ID–0218.1.) They ask that their members have the option to self-evaluate their operators after they have gone through a specified training program instead of the third-party certification that would be required under proposed Option (1). A representative of the building industry made a similar recommendation for cranes of less than 35 ton capacity with a boom length no greater than 120 feet. (ID–0232.1.) A small business representative suggested that OSHA consider exempting some small cranes (based on vehicle weight or boom length) or routine lifts. (ID–0147.1.)

A witness for a labor representative testified in opposition to excluding equipment rated over 2,000 pounds by the manufacturer. He stated that some low-capacity cranes have long booms and are used to lift loads to great heights, particularly when there is not sufficient space for a larger crane. (ID–0341.) According to the witness, safety concerns presented by low capacity cranes with a long boom are as serious as the concerns presented by high capacity cranes. (ID–0341.) He added that the danger of power line contact was present regardless of the capacity of the crane.

A representative from a crane rental company also testified against exempting low-capacity cranes from the qualification/certification requirement. His company had a fleet of cranes ranging from 4 to 600 ton capacity, and in his experience the majority of accidents that his customers experienced when they rented cranes but provided their own operators occurred with cranes rated 35 tons or less. (ID–0344.) He was aware of accidents on residential construction sites that resulted from operating on unsuitable ground, not setting the outriggers properly, and lifting too heavy a load for the crane's configuration, deficiencies that he attributed to operators who did not appreciate the hazards involved. (ID–0344.)

OSHA has carefully considered the comments asking for additional types of equipment to be exempted from the qualification/certification requirements of § 1926.1427. For the following reasons, OSHA declines to add such exemptions to the final rule.

The members of C–DAC, who had vast collective experience in all aspects of crane operations, reached a consensus that third-party verification was needed to reduce the number of crane accidents and fatalities in the construction industry. They further determined that such a requirement should apply to virtually all hoisting equipment, with only the limited exceptions listed in the proposed rule. In proposing to exempt equipment with a rated capacity of 2,000 pounds or less, the Committee considered whether to establish a higher threshold for the requirement but concluded that the operators of higher-capacity cranes, including those in the 5,000–35,000 pound range that the commenters ask to be exempted, needed to be well-qualified to reduce the number of accidents involving such cranes. Ultimately, C–DAC included the 2,000 pound cutoff to parallel ANSI B30.5 in this regard (*see* 73 FR 59841, Oct. 9, 2008).

The rulemaking record shows that many of the same hazards presented by larger cranes are present for cranes in this capacity range, including operating in proximity to power lines, the potential for collapse if the crane is overloaded, and the need for adequate ground conditions to ensure the crane's stability during operation. As a labor representative testified, these smaller cranes may be used in tight spaces where larger cranes cannot be used. An operator's loss of control of the load in a tight space would present a serious safety hazard, and the potential for operating in tight spaces highlights the need for operators of even relatively low-capacity cranes to be highly skilled.

OSHA also rejects the suggestions by some commenters that exemptions should be created for cranes that are typically used for repetitive, predictable, intermittent, or light use.

The principal difficulty with this suggestion is that the underlying causes of crane-related fatalities and injuries are not necessarily diminished in such situations. For example, the presence of power lines presents an electrocution hazard in all situations, irrespective of how the equipment is used. Proper ground conditions, which can change during crane use, are also as necessary for those types of uses as others, and all cranes can be overloaded if operated improperly. The knowledge and skill needed for attaining operator qualification/certification under this section is a prerequisite for being able to successfully address these and other hazards.

Furthermore, while an employer may initially plan to use a crane in a repetitive or otherwise predictable manner, or to handle light loads, unforeseen circumstances can arise that can alter those plans. Wind, which can arise unexpectedly during a lift, can dramatically decrease the capacity of a crane and increase the difficulty in properly handling the load; a previously "repetitive" lift can change unexpectedly when rain causes the ground supporting the crane to become muddy and less able to support the crane; a rigging problem may arise during one of the "repetitive" lifts, which could cause unexpected load control problems during the lift; and hoisting a "light" load at a low boom angle can pose similar overturning hazards to hoisting a heavy load at a high boom angle. Nor are there fewer crane-related hazards when a worker operates a crane only intermittently. For example, that operator on one of those occasions may have to run the crane near power lines, in the blind, with uneven winds, or at a low boom angle; in such cases (as in many others) he/she needs to be as fully capable as an operator who runs the crane regularly.

Paragraph (a)(4)

The Agency is adding this paragraph to the final rule to clarify that operator certification or qualification as required under this section must be provided at no cost to employees who are already employed by the employer on November 8, 2010. This clarification is consistent with the Agency's revision of the training requirements throughout subpart CC to expressly state that employers must provide all training at no cost to employees. The clarification is consistent with the Agency's treatment of costs for operator qualification and certification in the

preliminary economic analysis provided in the preamble of the proposed rule. (*See, e.g.,* 73 FR 59895, Oct. 9, 2008 (operator certification training treated as cost to employer).)

Based on the testimony of several witnesses at the hearing, OSHA concludes that imposing the operator qualification and certification costs on the employer will not be overly burdensome to the employer. At the hearing, a representative from a crane rental company said that, although his company incurs additional cost to provide certification, his company considers that cost an investment in the safety of their employees. (ID–0344.) An insurance company representative and former crane operator stated that the cost of certification was modest when compared to the cost of accidents. (ID–0343.) This witness also stated that his company believes that employers who certify their operators have fewer accidents and that, as a result, his firm offers companies it insures a ten percent discount if they have their operators certified. (ID–0343.) A representative from a steel erection company agreed that certification is important to both insurance companies and employers because certification gives employers peace of mind and reduces insurance costs. (ID–0344.)

In light of the need for clarification and witness support at the hearing, OSHA is adding new paragraph (a)(4) to this section of the final rule.

Paragraph (b) Option (1): Certification by an Accredited Crane Operator Testing Organization

As noted above, the proposed rule provided four options for a crane operator to be qualified or certified. Option (1) of this section, in which the employee becomes certified to operate equipment of a certain type and capacity by passing an examination administered by an accredited testing organization, is the most broadly available option, and OSHA expects it to be the one that most employers use outside of jurisdictions with State or local licensing requirements.

Under Option (1), a crane operator becomes certified by a testing organization that has itself been accredited by a "nationally recognized accrediting agency." Section 1926.1401 defines "nationally recognized accrediting agency" as "an organization that, due to its independence and expertise, is widely recognized as competent to accredit testing organizations." The use of a nationally recognized accrediting agency to provide an independent, authoritative assurance of a testing organization's competence is a well-established practice. For example, for a number of years, the National Commission for Certifying Agencies (NCCA), the accreditation body of the National Organization for Competency Assurance (NOCA), has accredited testing organizations in a wide variety of fields, including those that provide crane operator certification. (ID–0021.) Also, in 2003, the American National Standards Institute began accrediting personnel certification entities. (ID–0022.)

Under § 1926.1427(b)(1)(i), for a testing organization to become accredited, the accrediting agency must determine that the testing organization's written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel meet industry recognized criteria. The accrediting agency must determine that the written testing materials and practical examinations are well designed and sufficiently comprehensive that an individual who achieves a passing grade has demonstrated the skills and knowledge needed to operate the equipment safely. The accrediting agency must also determine that the testing organization's administration and grading ensure the integrity of the test so that the individual's grade truly represents the knowledge and skill level of that individual.

A safety association believed that the criteria for accrediting agencies in proposed § 1926.1427(b)(1)(i) were not sufficiently rigorous and suggested replacing that paragraph with a paragraph that required the nationally recognized accrediting agency to use certification criteria equal to or greater than that of the National Commission of Certifying Agencies (NCCA), the Council of Engineering and Scientific Specialty Boards (CESB), or ANSI/ISO/IEC 17024, *General Requirements for Bodies Operating Certification Systems of Persons.* (ID–0178.1.) This commenter expressed concern that, without this more specific level of rigor, entities with little experience in professional certification will be able to establish accrediting bodies for certifications that do not adequately demonstrate professional crane operator competence.

An operator certification organization stated that NCCA and ANSI are nationally recognized accrediting agencies and that others should only be designated as such by OSHA after a comprehensive review of its accrediting protocols. (ID–0382.1.) It suggested changing the definition of "nationally recognized accrediting agency" in § 1926.1401 to specify that the only accrediting agencies are ANSI, NCCA, and any other organization designated by OSHA as competent to accredit testing organizations.

These commenters are concerned that an organization that applies insufficiently stringent accrediting criteria might claim to be a "nationally recognized accrediting agency" and accredit testing organizations that are less competent than those accredited by NCCA and ANSI.

OSHA determines that the commenters are correct in suggesting that some additional specificity is needed in the definition to ensure that only entities using sufficiently stringent accrediting criteria are included. In the preamble to the proposed rule, OSHA identified two organizations that it determined were examples of a "nationally recognized accrediting agency"—the National Commission for Certifying Agencies (NCCA) and the American National Standards Institute (ANSI) (*see* 73 FR 59811, Oct. 9, 2008). No commenters have suggested that these are inappropriate examples of this term. Therefore, to provide greater specificity, OSHA has modified the language used in the proposed rule's definition to include references to NCCA and ANSI as examples of organizations that meet the final rule definition in § 1926.1401.

Section 1926.1427(b)(1)(ii)(A) specifies that the written and practical tests administered by the testing organization must, at a minimum, assess the knowledge and skills listed in §§ 1926.1427(j)(1) and (2). Those subjects are discussed below under § 1926.1427(j).

Paragraph (b)(1)(ii)(B) provides that the testing organization must provide different levels of certification based on equipment capacity and type. This requirement is designed to ensure that a certified operator has the knowledge and skill needed to safely operate equipment of the type and capacity the employee will actually be operating while avoiding the need for employees to know how to operate more complex equipment.

In the proposed rule, OSHA gave examples of what this provision means in practice. It stated, as one example, an employee who only operates a hydraulic truck crane would not need to also have the additional knowledge and skills necessary to operate a lattice boom crawler crane. As another, it said that an employee who operates only a 22 ton capacity hydraulic truck crane would not need to also have the additional knowledge and skills necessary to operate a 300 ton hydraulic truck crane. The Agency further stated that

certification on a more complex type of equipment would typically qualify an operator to operate lower-capacity equipment of the same type, *e.g.,* certification on a 300 ton hydraulic crane would qualify an operator to operate a 22 ton hydraulic crane.

None of the commenters opposed allowing operators certified to operate at a given capacity from also operating lower-capacity equipment of the same type. Two commenters recommended that "type," for purposes of paragraph (b)(1)(ii)(B), be defined for mobile cranes as they are defined in ASME B30.5. (ID–0205.1; –0213.1.) These commenters also stated that "qualifications (and certification) should be driven by the knowledge and skill required to operate a piece of equipment. When a body of knowledge or a particular skill set for a particular 'type' of crane changes, then so should the appropriate category of certification/qualification."

The Agency concludes that a descriptive definition of "type" that addresses the point raised by these commenters would better accomplish the purpose of the term than tying it to specific examples of existing technology. Therefore, OSHA has added a definition of the word "type" to § 1926.1401 of the final rule.

Examples of many of the various types of cranes currently in use are described in the ANSI B30 series (*see,* for example, ASME B30.5–2004 for mobile cranes and ASME B30.3–2004 for construction tower cranes). For example, in this context, truck-mounted telescoping boom cranes, truck-mounted non-telescoping boom cranes, and crawler cranes are three different "types," since the specific bodies of knowledge and skills needed for the safe operation of each category is different (although they are not completely distinct—the knowledge and skill sets overlap to some degree).

Commenters and witnesses from the railroad industry believed that certification based on "equipment capacity and type" did not address unique conditions in their industry because current certification examinations did not cover the types of cranes they use or the circumstances under which they use them. A railroad company stated that certification tests used by the two accredited testing organizations require knowledge of skills that do not apply in the railroad industry. (ID–0176.1.) A railroad association stated that railroads use cranes in fundamentally different ways than construction companies and that neither [currently] accredited testing organization has tests that address the use of cranes on railroads. (ID–0170.1.) A representative from another railroad company testified that some of the types of cranes his railroad uses are fundamentally different from the typical cranes used in the construction industry. Among the cranes that he said are unique to the railroad industry are locomotive cranes and rubber-tired cranes that can either run on the ground or travel on rails. (ID–0342.) The representative stated that certification tests on typical construction cranes were not suited to the types of cranes used in his industry and asked that the rule offer the latitude for the industry to train operators in a way that makes sense for railroads. (ID–0342.)

The comments and testimony by the railroad industry representatives suggest the need for some flexibility in the certification requirement to deal with specialized types of cranes or newly developed equipment for which certification examinations might not be available. Another aspect of this problem was raised by an energy association, which said that the cranes used in erecting wind turbines are the largest and most complex available, and that certification for such equipment is not currently available. (ID–0329.1.)

C–DAC addressed one example of a type of equipment—dedicated pile drivers—for which certification examinations were not available. Section 1926.1439(e) of the proposed rule accommodated this problem by providing that dedicated pile driver operators can be certified either for operation of dedicated pile drivers or for equipment that is most similar to dedicated pile drivers. OSHA concludes a similar approach is appropriate for any equipment for which a certification is not available. Accordingly, OSHA is adding § 1926.1427(b)(2) to the final rule, which allows an operator to be certified to operate a crane if he or she is certified to operate a higher-capacity version of that type of crane or, if no accredited certification entities offer certification for that particular crane, if he or she is certified to operate the type of crane most similar to the equipment in question.

In light of this change, OSHA is deleting § 1926.1439(e) from the final rule as it is no longer necessary. Paragraph (b)(2) will also facilitate employers' compliance with the requirements of § 1926.1427 by making it clear that the operator's certificate must indicate the particular type and capacity of crane for which the operator was certified.

As discussed in the proposed rule, during the SBREFA process, several small entity representatives suggested that basing certification on the type of crane might result in some capable operators being denied certification. They described situations in which an operator is knowledgeable and skillful with respect to one particular model of crane but might be unable to obtain certification based on equipment capacity and type. In response to this concern, OSHA sought public comment on whether there should be a mechanism for an operator to become certified on a particular model of crane.

Some commenters supported such a mechanism. (ID–0145.1; –0151.1; –0194.1; –0214.1.) Several commenters who opposed the suggestion stated that such certification would likely not be available from testing organizations, that employers who use Option (2) would find it costly and impractical to develop tests for each model of crane, and that testing based on crane model was not appropriate because the skill set and knowledge required for safe operation are not model-dependent. (ID–0175.2; –0205.1; –0213.1.) Witnesses at the hearing also opposed model-specific certification. (ID–0341; –0343.)

OSHA has concluded that expansion of the options to include certification on a specific model of crane is not necessary. The body of knowledge and skills required to be qualified/certified on a particular model of crane is not less than that needed to be qualified/certified for that model's type and capacity.

It may well be that an operator seeking certification is confident about operating the particular model of crane he/she has been operating but is concerned about being tested on another model of the same type of crane. To the extent this is a concern, OSHA notes that at least one accredited testing organization allows the practical test to be administered at the employer's worksite using the employer's own equipment. (ID–0343.) With this type of practical test available, operators who feel confident that they can become certified on a particular model can be tested on that model, and such certification will allow them to operate any model of the same type (as long as they also pass the written test). Therefore, certification on a specific model would be more restrictive than is necessary, and OSHA sees no benefit from providing for such a certification. OSHA has therefore retained the requirement that certification is based on the "type" of crane.

The SBREFA Panel also received comments from some SERs suggesting that the standard should accommodate crane operators who were fully capable of operating particular equipment in a

limited set of circumstances but who would be unable to pass certification tests that required knowledge and abilities beyond those circumstances. The Panel recommended that OSHA consider and solicit public comment on expanding the levels of operator qualification/certification to allow such operators to be certified for a specific, limited type of circumstance defined by a set of parameters that, taken together, would describe an operation characterized by simplicity and relatively low risk. In response to the Panel's recommendation, OSHA requested public comment on whether such parameters could be identified in a way that would result in a clear, easily understood provision that could be effectively enforced.

A number of commenters were in favor of a provision that would allow certification in a limited set of circumstances. A labor organization supported certification limited to the use of rail-bound equipment used to install continuously welded rail and stick rail. (ID–0145.1.) This commenter said that such operations involved dragging, manipulating, and positioning rather than hoisting. Other commenters also supported such a limited certification provision but did not provide specific information about how to define those operations or what aspects of the operations made them less risky than other crane operations. (ID–0151.1; –0176.1; –0191.1; –0214.1.) Other commenters opposed this type of "restricted" certification. (ID–0175.2; –0205.1; –0213.1.) They said that the degree of risk in a given situation was difficult to assess and could change due to unforeseen circumstances arising on the job.

OSHA agrees with the commenters who opposed allowing a limited form of certification based on perceived risk levels. As explained earlier in the discussion of this section, the Agency found the argument that certification should not be required to operate cranes that are typically used for repetitive, predictable, intermittent, or light use to be unpersuasive. OSHA did so because such uses are likely to involve many if not all of the same hazards present in other situations.

Similar concerns apply to the concept of "low risk" operations. First, even if such operations could be effectively identified, the possibility of unforeseen events occurring during such a lift requires that the operator have sufficient ability to handle such complications.

Second, as noted above, apart from the suggestion regarding certain railroad operations, no commenter offered a means of setting the parameters for defining this concept. OSHA has therefore rejected the concept of a limited, "low risk" qualification/certification.

A labor organization recommended that OSHA require that applicants for certification testing provide documentation that they have at least 1,000 hours of crane related on-the-job experience or training. (ID–0341.) Such experience was necessary, in this commenter's view, because neither the written nor practical exams tested an operator's ability to handle unusual worksite conditions, such as adverse weather or working on crowded jobsites, and did not test an operator's judgment.

As explained above, OSHA has included the qualification/certification requirement to serve as a mechanism to help ensure that operators have attained the level of knowledge and skill necessary to safely operate the equipment. The record amply demonstrates the sufficiency of the accreditation process that must be passed for a testing organization to become accredited. That process is designed to ensure that accredited testing organizations use a sufficiently reliable process for certifying operators. The record also shows that such a mechanism is an effective one for determining operator competence (the record includes the support of the commenter and its C–DAC nominee for that mechanism).[115]

There is insufficient information in the record to include an additional requirement for 1,000 hours of "crane related experience or training." The commenter does not specify what should be included in "crane related experience," or why 1,000 hours would be the appropriate amount of such experience for this purpose. The commenter also does not specify if meeting the 1,000 hour prerequisite by "training" should mean hands-on (criteria for such training is delineated in § 1926.1427(f)) or classroom type training. OSHA notes that the other commenters supporting this section have not recommended adding an experience or training prerequisite. The Agency has therefore declined to accept this suggested change.[116]

Section 1926.1427(b)(1)(iii) requires that the testing organization have procedures for operators to re-apply and be re-tested in the event an applicant fails a test. This would help ensure that if the employee initially failed to pass the test, the employee would be able to retake the test and still have the opportunity to obtain the certification. Section 1926.1427(b)(1)(iii) also requires that the testing organization have procedures for operators to re-apply and be re-tested in the event an operator is decertified.

Section 1926.1427(b)(1)(iv) specifies that the testing organization must have procedures for re-certifying operators designed to ensure that the operator continues to meet the requirements of § 1926.1427(j). Under § 1926.1427(b)(4), a certification is valid for five years, after which the operator must again pass a certification examination. Section 1926.1427(b)(1)(iv) is included so that recertification procedures appropriate for those who have already been certified will be available.

Under § 1926.1427(b)(1)(v), the testing organization's accreditation must be renewed by the accrediting organization at least every three years to ensure continuing quality of testing materials and administration.

No comments were received on §§ 1926.1427(b)(1)(iii)–(v); those provisions are promulgated as proposed.

Under § 1926.1427(b)(3) (previously designated § 1926.1427(b)(2) in the proposed rule), a certification is "portable," which means that a certificate issued under Option (1) would meet the requirements of § 1926.1427(a)(2) (when State or local jurisdiction does not require operator licensing) until the certificate expires. In the final rule, OSHA is specifying that meaning directly in § 1926.1427(b)(3) rather than in a separate definition in § 1926.1427(m), as proposed. C–DAC determined that certification under this option should be portable because the testing organization is fully independent of all employers who may employ a crane operator and there is no reason to limit the certification to a particular employer. OSHA agrees.

Section 1926.1427(b)(4) (previously designated § 1926.1427(b)(3) in the proposed rule) provides that a certification under this paragraph is valid for exactly five years. The exact five year period is intended to strike the

[115] OSHA also notes that the this commenter is, in this regard, taking a position that is inconsistent with the one taken by its C–DAC nominee, who had agreed to the C–DAC version of § 1926.1427, which had no experience/training prerequisite. Nor has this commenter explained why it has changed its position from that of its C–DAC nominee. Due to this inconsistency in position, OSHA accords reduced weight to this commenter's suggested change.

[116] OSHA also notes that the commenter is, in this regard, taking a position that is inconsistent with the one taken by its C–DAC nominee, who had agreed to the C–DAC version of § 1926.1427, which had no experience/training prerequisite. Nor has the commenter explained why it has changed its position from that of its C–DAC nominee. Due to this inconsistency in position, OSHA accords reduced weight to the commenter's suggested change.

appropriate balance between ensuring that certified operators are re-evaluated regularly, while reducing the burden of recertification on operators.

No comments were received on the text that is now in paragraphs (b)(3) and (b)(4). As noted, the definition of "portable" has been moved from proposed (m)(1) to final (b)(3).

Paragraph (c) Option (2): Qualification by an Audited Employer Program

Paragraph (c) of this section sets out Option (2), in which the employer determines, through its own audited testing program, that its employee is qualified to operate the equipment. This option is designed to enable employers to meet the § 1926.1427 requirements through their own in-house testing programs. As discussed above, however, C–DAC determined that independent, third-party involvement was needed to ensure the reliability and integrity of any testing program. Therefore, to ensure that testing under Option (2) of this section is accurate and reliable, § 1926.1427(c)(1) requires that the tests must be developed by either an accredited crane operator testing organization (as described under Option (1)), or approved by an auditor who is certified by an accredited crane operator testing organization. In addition, the administration of the tests must be audited.

If the employer chooses to use tests approved by an auditor, the auditor must, under § 1926.1427(c)(1)(ii)(A), be certified as a test evaluator by an accredited testing organization. To ensure that the auditor's evaluation is independent and impartial, § 1926.1427(c)(1)(ii)(B) prohibits the auditor from being employed by the employer seeking evaluation of its qualification program. Also, § 1926.1427(c)(1)(ii)(C) requires the auditor to determine that the program meets nationally recognized test development criteria and adequately assesses the criteria in § 1926.1427(j).

The requirements for test administration that apply under Option (2) of this section are set forth in § 1926.1427(c)(2). These requirements apply to both tests that have been developed by an accredited crane operator testing organization or to those that have been approved by an auditor. Section 1926.1427(c)(2)(i) requires that the auditor find that the procedures for administering the test meet nationally recognized test administration standards. This provision is designed to ensure that the test results accurately reflect the operator's performance on the test.

Under § 1926.1427(c)(2)(ii), the auditor must be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization. Section 1926.1427(c)(2)(iii) prohibits the auditor from being employed by the employer seeking the auditor's approval of its test administration procedures.

Proposed § 1926.1427(c)(2)(iv) required that the audit be conducted in accordance with nationally recognized auditing standards. OSHA noted that the proposed rule, as drafted by C–DAC, required only that the administration of the tests, and not the audit of the tests themselves under paragraph (c)(1)(ii), would have to be conducted in accordance with nationally recognized auditing standards. OSHA determines that this was a drafting error and that the Committee intended that the entire audit be conducted in accordance with nationally recognized auditing standards. Therefore, the Agency solicited public comment on whether a new § 1926.1427(c)(1)(ii)(D), reading as follows, should be added to § 1926.1427(c)(1)(ii):

> (D) The audit shall be conducted in accordance with nationally recognized auditing standards.

Several commenters stated that the regulatory text should remain unchanged because, the commenters believed, the nationally recognized accrediting agencies that accredit testing organizations do not review the examinations for content but only for examination design, administration, and maintenance. (ID–0175.1; –0205.1; –0211.1; –0213.1.)

The Agency concludes that the commenters have misunderstood OSHA's intent in this regard. Under Option (1) of this section, § 1926.1427(b)(1), the accrediting agency must evaluate the "written testing materials" as well as the "practical examinations, test administration, grading, facilities/equipment and personnel" to make sure they all meet "industry recognized criteria." The accrediting agency therefore must evaluate the tests as well as their administration to confirm that they meet industry recognized criteria.

Just as the accrediting agency under Option (1) of this section assesses written testing materials and the practical test for compliance with industry recognized criteria, under Option (2) of this section, as drafted by C–DAC and as written in the proposed rule, the auditor must determine "that the written and practical tests meet nationally recognized test development criteria and are valid and reliable in assessing the operator applicants * * *." (*see* § 1926.1427(c)(1)(ii)(C)). No comments were received objecting to those requirements.

OSHA determines that C–DAC's intent in designing Option (2) was, in essence, to have the auditor serve a role similar to that of the accreditor in Option (1). The accreditor in Option (1) assesses the tests as well as their administration to determine if they meet "industry recognized criteria." As drafted by C–DAC, the auditor does the same thing, both with respect to assessing the tests and their administration.

The problem identified by OSHA in the proposed rule relates to auditing procedure, not testing criteria. For example, the records that the auditor would generate and maintain, the procedures he/she would use for obtaining documents that need to be examined to conduct the audit, the thoroughness of the audit, and similar procedural matters regarding the conduct of the audit need to accord with nationally recognized auditing standards. Section 1926.1427(c)(1)(ii)(C) shows that C–DAC concluded that it was important that the audit meet nationally recognized auditing standards to help ensure the integrity of the audit of the administration of the tests. OSHA determines that it is equally important that the audit of the tests themselves meet those same procedural criteria. Therefore, the Agency has added new § 1926.1427(c)(1)(ii)(D).

Paragraph (c)(3) requires that the program be audited within three months of its inception and every three years thereafter. The Agency has added "at least" to the final rule to clarify that the auditor has the flexibility to perform audits more regularly if it so chooses.

Paragraph (c)(4) of this section requires the employer's program to have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirement in § 1926.1427(j). The re-qualification procedures must be audited in accordance with §§ 1926.1427(c)(1) and (c)(2).

In the event an auditor discovers a deficiency in an employer's operator qualification program, the employer must meet the requirements set forth in paragraph (c)(5) of this section. Under paragraph (c)(5)(i), no additional operators may be qualified until the auditor determines that the deficiency has been corrected. Under paragraph (c)(5)(ii), the program must be re-audited within 180 days of the confirmation that the deficiency was corrected. Paragraph (c)(5)(iii) requires

the auditor to file a report of any such deficiency with the appropriate OSHA Regional Office within 15 days of discovery. In addition, paragraph (c)(5)(iv) requires that records of the audits must be maintained by the auditor for three years and must be made available by the auditor at the request of the Secretary of Labor or a designated representative. The auditor's maintenance of the records, and the reporting requirement, are intended to preserve the independent verification function of the auditor.

Paragraph (c)(6)(i) specifies that a qualification under Option (2) is not portable. As defined in § 1926.1427(m)(2), "not portable" means that only the employer issuing the qualification may rely upon it. OSHA has added that statement of meaning directly in paragraph (c)(6)(i) in the final rule and has removed paragraph (m). C–DAC determined that portability should be limited to certification under Option (1) because the degree of consistency in adhering to the requirements of this section is likely to be highest among accredited crane operator testing organizations because they are fully independent and their business interest depends on their continued accreditation. Under paragraph (c)(6)(ii), a qualification under Option (2) is valid for exactly five years.

A trade association stated that qualification under Option (2) of this section (as well as Options (3) and (4)) should, like certification under Option (1), also be portable. (ID–0214.1.) The commenter stated that there was no rational reason to adopt a rule where portability is restricted to Option (1) certifications. However, OSHA concludes that C–DAC's decision to accord full portability only to a certification under Option (1) is sound. A certification issued under Option (1) is based on tests that are completely independent of any particular employer. Moreover, the commenter's nominee to C–DAC did not dissent on this issue and the commenter has not explained the reason for changing its position. OSHA gives reduced weight to comments by a nominating organization that are inconsistent with the position its nominee took on C–DAC.

A utility company suggested that electric utilities be able to use Option (2) without an independent auditor by allowing for an internal audit of the employee training program based on annual employee inspections, as allowed in § 1910.269(a)(2). (ID–0342.) Granting this request would permit electric utilities to self-certify their operators. OSHA has rejected this option above and does so here for the same reasons given earlier.

Some commenters stated that Option (2) was impractical because there are currently no individuals who are accredited to carry out the duties of the auditor under the option (ID–0151.1; –0329.1.) OSHA notes, however, that employers have four years from the effective date of this standard to comply with § 1926.1427, and the agency anticipates that, if the demand exists for the services of accredited auditors, they will become available during that time frame.

An operator certification company recommended eliminating Option (2) because, in the commenter's view, it lacks sufficient safeguards to ensure the integrity of the qualification process. (ID–0330.1.) The commenter views this Option as a form of self-certification that is generally inconsistent with the rule's principle of third-party verification. It suggests that this Option presents an inherent conflict of interest based on the incentive that employers have to pass their employee-operators and that the conflict is not cured by an auditor's oversight of the program. OSHA disagrees. Under this option, the auditor must be independent of the employer and certified by an accredited testing organization. In OSHA's view, these requirements provide adequate assurance that a testing program approved by the auditor is of high quality and reliability.

Paragraph (d) Option (3): Qualification by the U.S. Military

Proposed § 1926.1427(d) provided that an operator who is an employee of the United States military would be deemed qualified if he/she had a current qualification issued by the U. S. military. The criteria for qualification under Option (3) would be left to the military to determine, including the length of time such a qualification would be valid. Qualification under this option would not be portable unless it meets the requirements of Option (1) of this section.

Unlike Options (1) and (2), Option (3) is available, in accordance with the requirements of paragraph (d), whether or not the equipment is operated within the jurisdiction of a State or local government that has its own operating licensing requirement. The Agency notes that in its comments requesting mandatory compliance with State licensing requirements, New York State noted that it did not intend to supplant Option (3). (ID–0171.1.) There is nothing in the record to indicate that employees of the U.S. military who are authorized by the U.S. military to operate equipment covered by this subpart are currently required to comply with State or local licensing requirements.

In the proposed rule, OSHA noted that OSHA standards did not apply to uniformed military personnel and to civilian employees of the military who are engaged in uniquely military equipment, systems, and operations. Accordingly, Option (3) would apply only to civilian employees of the Defense Department and Armed Forces who are engaged in work that is not uniquely military. It does not apply to employees of private contractors who are working under contract to the military. In the proposed rule, OSHA noted that the C–DAC document did not clearly exclude such employees even though that was C–DAC's intent.

To make this point clear, OSHA is adding the following clarification to § 1926.1427(d)(1): An "employee of the U.S. military" is a Federal employee of the Department of Defense or Armed Forces and does not include employees of private contractors. This clarification was originally proposed in § 1926.1427(m), which is removed from the final rule. Two commenters supported the clarification proposed by OSHA. (ID–0205.1; –0211.1.) Another said the provision should be clarified but did not express an opinion on whether OSHA's proposed clarification should be adopted. (ID–0122.) In the absence of any reasons presented in opposition to the proposed clarification, OSHA is retaining the clarification.

Paragraph (d)(2) specifies that qualification under Option (3) is not portable. Because this option is designed specifically to accommodate civilian employees of the U.S. military, and therefore is not based on the same criteria and independent third-party verification. However, if a U.S. military entity meets the requirements of Option (1), OSHA would consider the operator certification provided by that entity to be portable.

Paragraph (e) Option (4): Licensing by a Government Entity

Paragraph (e) of this section of the final rule addresses government licensing departments/offices that issue operating licenses for equipment covered by this standard. Paragraph (e)(1) makes it clear that OSHA is only requiring compliance with State or local operating licensing requirements when those licensing programs meet the requirements specified in paragraphs (e)(2). These requirements are commonly referred to as a "Federal floor," meaning that they are the minimum criteria necessary to trigger

employer compliance with those licensing requirement under this standard. OSHA is including this "Federal floor" because it determines, as did C–DAC, that some, but potentially not all, State/local governments will have effective, reliable licensing procedures. If OSHA determines that a State or local licensing department/office, or its testing, does not satisfy the minimum requirements set out in paragraphs (e) and (j), then employers would not be required by OSHA to comply with the licensing requirements of that government entity. In such cases, the employer would satisfy the requirements of this section by ensuring that their operators are certified or qualified in accordance with the options provided in paragraphs (b) through (d).

The requirement for the government licensing department/office to meet the criteria in § 1926.1427(e)(2) ensures that operators who qualify under Option (4) have the requisite knowledge and skills to operate safely. Paragraph (e)(2)(i) requires that the criteria used by the licensing department/office address the knowledge and skill requirements listed in § 1926.1427(j). Section 1926.1427(e)(2)(ii) requires that the government entity follow the same test content, test administration and related criteria as required under Option (1). Section 1926.427(e)(2)(iii) requires that the office with authority over the licensing department/office assess the tests and procedures used by the licensing office/department and determine that the requirements of §§ 1926.1427(e)(2)(ii) and 1926.1427(e)(2)(iii) have been met. Also, the government licensing office must have re-certification procedures in place as discussed in §§ 1926.1427(b)(1)(iv) and 1926.427(c)(4).

Under § 1926.1427(e)(3)(i), a qualification under Option (4) is valid only within the geographic jurisdiction of the licensing entity. However, if the qualifications of Option (1) in § 1926.1427(b) are met, OSHA would consider the operator certification provided by that entity to be portable. Under paragraph (e)(3)(ii), the qualification is valid for the time period specified by the licensing entity, but for no longer than five years.

Several commenters expressed the concern that OSHA's new standard would preempt existing State or local laws, particularly those relating to licensing of crane operators. Others encouraged the Agency to expressly preempt those laws. The preemption issue is discussed in full at the end of this preamble within section V.D addressing federalism.

Other Recommended Options

Commenters recommended that OSHA offer employers two additional options for qualifying or certifying operators. One is to allow employers to self-certify operators based on their own evaluation of the operator's ability. For the reasons discussed in the introduction to this section, OSHA rejects that suggestion.

A number of commenters recommended that OSHA expand the range of options by allowing an accredited educational institution to certify operators. (ID–0105.1; –0147.1; –0151.1; –0187.1; –0193.1.) At the public hearing, a witness for a trade association further recommended an option whereby operators could be trained and qualified through an employer program developed by an accredited educational institution. (ID–0343.)

Some commenters believed that additional options were needed because they believed that Option (1) was the only viable option for many employers and that an insufficient number of accredited testing organizations existed to meet the demand that an OSHA rule would create. (ID–0165.1; –0187.1; –0193.1.)

OSHA notes that an educational institution, like any other testing organization, may become an accredited testing organization under Option (1) by becoming accredited by a nationally recognized accrediting agency based on the criteria listed under that option and complying with the "firewall" requirements of § 1926.1427(g). However, OSHA determines the comments favoring this concept were addressing OSHA's request for comment on whether to allow an educational institution to certify operators based solely on its accreditation by an organization recognized by the Department of Education (DoE) without the need to be accredited under Option (1) (*see* 73 FR 59812, Oct. 9, 2008).

OSHA concludes that accreditation of an educational institution under DoE criteria is insufficient to ensure that a certification issued by the institution would reliably demonstrate that the crane operator has the knowledge and skills needed for safe operation. The fundamental reason is that the accreditation process for educational institutions does not include an assessment of an institution's ability to assess personnel competency.

A representative from a consensus standard organization addressed this issue at the public hearing. The representative had experience both in accrediting educational institutions and personnel certification organizations. (ID–0344.) He testified that the accreditation of an educational institution under the DoE system is designed to assess the quality of the education an institution offers but does not determine whether the individuals who have attended that institution possess the specific skills or competencies required for particular jobs. Unlike an educational institution, which focuses on the number of graduates, attrition rates, and the percentage pass rate on any national certification or State licensure examinations, a personnel certification program is designed to address competency for job performance. Among the concerns cited by the representative were that the accreditation for an educational program does not assess competency, and that the tests administered by an educational program are not held to the same psychometric standards as those administered by an accredited personnel certification program. The commenter said higher education accreditation is concerned with the quality of education. Personnel certification accreditation, on the other hand, evaluates the quality of assessments to measure the acquisition and ongoing maintenance of valid job competencies. (ID–0344.) In addition, personnel certification is time-limited and certifying entities retain the ability to withdraw certification if the individual subsequently demonstrates a lack of competency. (ID–0344.) Institutions of higher education cannot revoke or repossess diplomas.

The representative explained that a key difference between educational accreditation and personnel accreditation is surveillance of the test administration process by the accrediting body to ensure that an individual's score is not tainted by prior knowledge of the examination or by lack of security during the test itself. Using the ANSI accreditation process as an example, he explained that a certification entity seeking accreditation will undergo annual surveillance—onsite during the first and third years, which can encompass multiple sites if the certification entity's structure merits such review. ANSI examines the controls over test items and the development of test items, to ensure that these items are not released to the public. ANSI also looks to ensure that the organizational structure of the certifying entity is reflective of the population it is intended to serve, and that the administration is fair and equitable among all the applicants.

These criteria are not required elements of accreditation for higher education institutions, according to both the representative and Department of Education materials (*see* 34 CFR part 602).

There is another reason why certification by an educational institution would, in most cases, not be suitable for crane operators: The need for personnel testing to be independent of the training that precedes the testing. As discussed below, § 1926.1427(g) of this rule is designed to ensure that training is separate from testing to prevent an organization that offers both services from defeating the validity of the test by "teaching to the test." OSHA acknowledges that it might be possible for an educational institution to provide the necessary "firewalls" between its training and testing, and obtain the separate accreditation required under this section, such that it could comply with § 1926.1427(g). However, educational institutions typically both teach and test, and may do so within their educational accreditation without any requirement that the testing process be insulated from the teaching process.

The purpose of a personnel certification test is different from a test offered by an educational institution, which is to determine whether the individual has mastered the material that was taught. As a labor representative stated at the hearing, personnel certification tests examine a random sampling of information that individuals must know to perform the function being tested. (ID–0341.) The labor representative pointed out that if the individual is tested only on the material he or she has been taught, the individual learns only the information needed to pass the test and the test is not a reliable measure of the person's depth of knowledge on the subject. Therefore, allowing educational institutions to certify crane operators based solely on their DoE accreditation would be inconsistent with the principle that testing for certification purposes should be independent of any training that the individual has received and would severely compromise the reliability of the certification process.

In sum, the DoE accreditation system for educational institutions is not designed to assess the capabilities that are needed for developing or administering personnel competency tests.[117]

Moreover, concerns about inadequate availability of certifying entities are unfounded. At the time of the proposed rule, two testing organizations, NCCCO and the Southern California Crane & Hoisting Association, had been accredited (*see* 73 FR 59812, Oct. 9, 2008). By the time of the hearing, four additional testing organizations had been accredited: The Operating Engineers Certification Program, Union Pacific Railroad, National Center for Construction Education and Research, and Crane Institute Certification. (ID–0343.) Although some of these are not available to all employers or crane operators, it does not appear that there will be a lack of availability of testing services under Option (1), particularly with the four-year phase-in period for § 1926.1427.

In addition, the record shows that testing organizations arrange for testing to be available at convenient locations. For example, NCCCO offers the written test anywhere in the country where it receives adequate notice and an appropriate testing room is available. (ID–0343.) NCCCO also sends examiners to an employer's worksite to administer the practical tests. (ID–0343.) OSHA therefore concludes that the current four options afford crane operators and their employers sufficient opportunity to obtain qualification/certification and that additional options are not needed to make such services readily available.

Two building trade associations recommended that OSHA add an option that combines aspects of Option (2) of this section with tests developed by an accredited educational institution. (ID–0218.1; –0232.1.) Under their recommendation, the educational institution would develop written and practical tests, and the tests would be approved by an auditor who is certified by an accredited educational institution as qualified to evaluate such tests. The actual operator certification would be issued by the accredited educational institution.

OSHA determines that this recommended program is, in practical effect, not significantly different than the general recommendation for OSHA to allow certification by an accredited educational institution. First, it is likely that educational institutions would be administering tests to individuals who have taken their training courses without "firewall" separation between those functions, thereby giving rise to the problem addressed above that testing would not be independent of training and would therefore be of reduced reliability. Second, although the commenters would not permit the auditor to be employed by the employer, there is no prohibition against the auditor being employed by the accredited educational institution who certifies him/her. In OSHA's view, this creates the potential for a conflict of interest because the auditor would not be independent of the institution whose tests he or she is reviewing. OSHA finds that the recommendation by the commenters does not contain sufficient safeguards to ensure that the tests provide an indicator of operator competence that is comparable to the other options permitted under this rule.

One commenter asked OSHA to prohibit different organizations from administering the written and practical testing. (ID–0199.1.) The commenter stated that it is necessary for one organization to maintain oversight of the entire test process. The commenter did not provide any support for this assertion, nor has OSHA identified any other evidence in the record to support it. OSHA does not find the request persuasive and is instead relying on the accreditation requirements to ensure that the certifying entity administers all testing appropriately.

Paragraph (f) Pre-Qualification/Certification Training Period

Section 1926.1427(f) establishes a process by which operators who are not certified or qualified can get experience operating the equipment to help prepare for obtaining a certification/qualification. Section 1926.1427(f) allows employees who are not yet qualified or certified to operate cranes provided that they qualify as "operators-in-training" in accordance with §§ 1926.1427(f)(1) through (5), which require appropriate monitoring of such operators-in-training to ensure worksite safety and places limitations on the tasks they can perform. OSHA revised proposed § 1926.1427(f) to clarify that employees who do meet the requirements of an "operator-in-training," and who are not otherwise certified or qualified under this section, are prohibited from operating equipment (except for maintenance, as provided in § 1926.1429 of this subpart). OSHA has removed the text that was in proposed paragraph (f)(2) as redundant,[118] and has renumbered paragraph (f) of this section.

[117] At least one other Federal agency has also taken this view of certification. The Department of Defense requires the certification of certain personnel performing Information Assurance functions within that organization. Appendix 2 to DoD 8570.01–M, the directive addressing such certifications, requires that the certifications must be accredited, and maintain accreditation, under ISO 17024. (ID–0346.1.)

[118] Proposed paragraph (f)(1) of this section had provided that "[a]n employee who is not qualified or certified under this section is permitted to operate equipment" by satisfying the requirements of proposed paragraph (f)." Proposed paragraph

Continued

The proposed rule used the phrase "trainee/apprentice" to describe an operator-in-training, the word "supervisor" to describe the individual responsible for monitoring the operator-in-training, and the word "supervise" to describe that individual's oversight of the operator-in-training. Several commenters suggested that the terms "trainee," "apprentice," and "supervisor" could be construed to have labor/management consequences under the National Labor Relations Act (NLRA). (ID–0182.1; –0199.1; –0341.0.) OSHA did not intend for these terms to be construed as they are used under the NLRA, and, to avoid any possible confusion on the subject, has changed "supervisor" to "trainer," "trainee/apprentice" to "operator-in-training," and "supervise" to "monitor" in the final rule.

Paragraph (f)(1) requires that the operator-in-training be provided with sufficient training prior to operating the equipment to enable him/her to operate it safely under the limitations listed in this section and any additional limitations established by the employer. This ensures that, before beginning to operate the equipment at the site, the operator-in-training would have attained sufficient knowledge and skills to operate the equipment safely within the limitations and with the monitoring required by the remainder of § 1926.1427.

Paragraph (f)(2) restricts the operator-in-training operation of the equipment to those tasks currently within his/her ability. As the operator-in-training gains experience and demonstrates increased skill, this provision allows him/her to perform progressively more complex tasks.

Paragraph (f)(3) sets forth the requirements that an employee would have to meet to be permitted to monitor the operator-in-training's operation of the crane. During the training period, the operator-in-training must be closely monitored to ensure that he/she is operating in accordance with the training he/she has received and is adhering to the limitation in paragraph (f)(2) that he/she only performs tasks currently within his/her ability.

Under paragraph (f)(3)(i) the operator-in-training's trainer has to be an employee or agent of the operator-in-training's employer. This ensures that the trainer has the authority to direct the actions of the operator-in-training.

Paragraph (f)(3)(ii) requires that the operator-in-training's trainer must be either a qualified/certified operator (in accordance with § 1926.1427), or to have passed the written portion of a qualification/certification test under one of the Options in § 1926.1427. In addition, the trainer must be familiar with the proper use of the equipment's controls. This provision is designed to ensure that the trainer has sufficient knowledge about the equipment to enable him/her to effectively oversee the safe operation of the crane.

Paragraph (f)(3)(iii) requires that the trainer perform no tasks that would detract from his/her ability to monitor the operator-in-training. This provision ensures that the trainer is able to devote sufficient attention what the operator-in-training is doing so that he/she can intervene to prevent the operator-in-training from doing anything unsafe.

Under paragraph (f)(3)(iv), for equipment other than tower cranes, the trainer and the operator-in-training must be in direct line of sight of each other and are required to communicate either verbally or by hand signals. This provision ensures that the trainer monitor can rapidly and effectively give instructions to the operator-in-training, especially for purposes of correcting anything that the operator-in-training may be doing incorrectly.

With respect to tower cranes, the height of the operator's station will often make it infeasible to maintain direct line of sight between the trainer and the operator-in-training. For the same reason, use of hand signals is also often not feasible. Therefore, the provision instead requires that they be in direct communication with each other. For example, direct communication could be achieved by radio or other instant electronic voice communication system.

Section 1926.1427(f)(4) permits the operator-in-training to continue operating the crane in the absence of the trainer for short breaks under criteria designed to result in safe operation. This provision recognizes that monitoring 100 percent of the time is neither practical nor is it necessary for safe operation if appropriate limitations are imposed. Those limitations are listed in paragraphs (f)(4)(i)–(iii):

Under paragraph (f)(4)(i), the break would be restricted to no more than 15 minutes, with no more than one break per hour.

Under paragraph (f)(4)(ii), immediately prior to the break, the trainer must inform the operator-in-training of the specific tasks that the operator-in-training is authorized to perform and the limitations that he/she must adhere to during the break.

Under paragraph (f)(4)(iii), the specific tasks that the operator-in-training would perform during the break must be within the operator-in-training's ability.

Proposed paragraph (f)(2)(v) [119] stated that a "* * * trainee/apprentice shall not operate the equipment in any of the following circumstances." This paragraph was followed by paragraphs (f)(2)(v)(A)–(E). Of these, paragraphs (f)(2)(v)(A)–(D) contained absolute prohibitions while paragraph (f)(2)(v)(E) contained a conditional prohibition. To avoid inconsistency between paragraph (f)(2)(v) and the paragraphs that followed, the paragraph, which is now at § 1926.1427(f)(5) has been modified to make clear that there is an exception at (f)(5)(v).

Paragraph (f)(5) recognizes that certain tasks are too complex or present such heightened risks that it would be unreasonably dangerous if a less than fully qualified operator were to operate the equipment. For the circumstances listed in §§ 1926.1427(f)(5)(i)–(v), the operator-in-training is prohibited from operating the equipment in all cases. With respect to operations involving multiple-lift rigging, the Committee determined that the difficulty and/or risk involved is not at the same level as the operations listed in §§ 1926.1427(f)(5)(i)–(iv). Consequently, while § 1926.1427(f)(5) contains a general prohibition against an operator-in-training operating the equipment during multiple-lift rigging operations, an exception would apply where the trainer determined that the operator-in-training's skills are sufficient for this high-skill work.

A utility company objected to the requirement in proposed § 1926.1427(f)(2)(v)(A) that operators-in-training who are performing subpart V work (construction and improvement of power lines) maintain at least a 20-foot distance from energized power lines, asking that operators-in-training only be required to maintain the same clearance from power lines (those listed in Table V–1 of subpart V) as certified operators. (ID–0144.1.) This commenter claimed that the prohibition would limit the ability of electric utility owners and operators to provide operators-in-training with hands on training.

(f)(2), and an alternative also included in the proposed rule, had granted the same permission to any employee who had not passed the written exam or practical tests required under § 1926.1427. While OSHA still intends that employees who have passed either the written exam or practical test be eligible to serve as an "operator-in-training," it is not including this text in the regulation because these employees are already addressed by the language that was in proposed paragraph (f)(1) ("an employee who is not qualified or certified under this section") and is included in the final rule as the introductory text for paragraph (f).

[119] This requirement is now located at § 1926.1427(f)(5).

Based on the record as a whole, OSHA is convinced that the risk of injury from contact with an energized power line is so great that it warrants extra precautions, particularly with respect to operators who are still learning how to operate their equipment. OSHA notes that the other electric utilities and representatives who submitted comments and appeared at the hearing did not voice a similar concern, nor did the industry's representatives on C–DAC. OSHA also notes that the exclusion of digger derricks from the scope of this subpart for pole work should largely alleviate this commenter's concern. Accordingly, OSHA is retaining paragraph (f)(5)(i) in the final rule.

Paragraph (g)

Paragraph (g) of this section provides that "a testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable accrediting agency (in the option selected) for an organization providing both services are met." This paragraph serves two purposes. First, it makes clear that an entity providing qualification/certification testing may also provide training to the individuals it tests, as well as others. Second, it establishes a condition such entities must satisfy: the testing agency must meet the criteria of its accrediting agency for an organization providing both services.

For example, an industry consensus standard, the International Organization for Standardization ("ISO") 17024, requires that a certifying entity only offer training if it can demonstrate that the training is independent of both evaluation and certification. This is intended to prevent the entity's training arm from "teaching to the test," which would detract from the test's ability to determine the individual's true knowledge of the subject matter needed for safe operation. It is also necessary to protect the integrity of the testing. Therefore, with respect to those accrediting agencies that apply the ISO standard, a testing entity may also conduct training as long as an adequate "firewall" exists between the two functions.

Paragraph (h)

Paragraph (h) of this section addresses C–DAC's concern that some competent crane operators may be hindered in obtaining qualification or certification under this section because they have difficulty with taking written tests even though they possess sufficient literacy for reading and understanding safety-related material such as the crane's operating manual and load chart. To avoid disqualifying individuals solely because they have this type of difficulty, paragraph (h) permits written tests under this section to be administered verbally, with answers given verbally, where the operator candidate (1) passes a written demonstration of literacy relevant to the work; and (2) demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification. These would typically include, for example, the load chart and operator's manual for the crane the candidate would be operating. Thus, paragraph (h) only permits tests to be administered verbally where the individual demonstrates the literacy needed to read and understand written material needed for safe operation.

As explained in the proposed rule, neither of the demonstrations in paragraphs (h)(1) or (h)(2) would have to be made in English (*see* 73 FR 59816, Oct. 9, 2008). As an example, under these provisions, an employer could obtain a Spanish-language version of the load charts and operator's manual, and arrange to have the literacy test administered in Spanish. An operator able to meet the requirements of § 1926.1427(h) using these Spanish language materials would have demonstrated adequate literacy under the rule.

A trade association supported the provision allowing examinations to be administered verbally. (ID–0151.1.) A testing organization opposed the provision, believing it adds an unnecessary and potentially harmful step in the qualification process. (ID–0343.) The testing organization was concerned that the rule does not identify standards or protocols by which the written demonstration of literacy relevant to the work and the ability to use written manufacturer procedures are to be made.

OSHA recognizes the testing organization's concern but concludes that the rule must allow sufficient flexibility in the testing process to enable individuals who have sufficient literacy skills and are demonstrably competent to operate a crane, but are deficient in written test-taking ability, to obtain qualification/certification under this rule. Accordingly, OSHA is retaining the provision allowing tests to be administered verbally if the specified demonstrations of literacy are made.

OSHA requested comment on several issues arising under paragraph (h), including (1) Whether, if an operator complies with paragraph (h) by demonstrating proficiency in a language other than English, the qualification/certification should be limited to the use of equipment that is equipped with materials in the operator's language; (2) whether the rule needs to incorporate safeguards to ensure that a translation of manufacturer-supplied materials conveys the same information as the original; (3) whether employers should be permitted to use manuals that have been re-written in simplified language to accommodate individuals whose literacy level does not permit them to understand the manufacturer-supplied materials.

One trade association commented that, in many regions of the United States, employers rely on non-English speakers to operate cranes and stated that OSHA should require testing organizations to offer crane operator certification in languages other than English. (ID–0231.1.) OSHA's longstanding position is that workers must be trained and provided with information in a language that they can understand. That is particularly important for crane operators, who will be in control of large pieces of equipment, with the potential to inflict major damage and injury.

It was C–DAC's intent in the proposed rule, and it is OSHA's intent in this final rule, that non-English speaking operators will have the ability to become certified using languages other than English. Paragraph (h)(2) of the rule, therefore, authorizes testing organizations to administer tests in any language that the operator candidate understands. Paragraph (h)(2) is intended to ensure that crane operators are certified in a language that they comprehend, and that the cranes they operate are equipped with the requisite materials in that language. OSHA intends to work with certifying organizations to ensure that examinations in appropriate languages are available within the four-year phase-in period under this section.

OSHA expects employers who perform their own testing under paragraph (c) to test candidates in the languages understood by their workers. OSHA concludes that accredited testing organizations providing certifications under paragraph (b) should likewise provide testing in major languages understood by the relevant worker population of the regions in which they do business. Doing so will maximize an organization's share of the testing market. Moreover, OSHA expects that employers who rely on testing organizations will demand testing in the languages understood by their workforces.

Paragraph (i) [*Reserved.*]

Paragraph (j) Certification Criteria

Paragraph (j) of this section sets out the qualification and certification criteria applicable to Options (1), (2), and (4) of this section. These criteria address the knowledge and skills that are fundamental to safe crane operation. As stated in the introductory language in § 1926.1427(j), these would constitute "minimum" criteria; the accredited testing organizations, employers, or local or State licensing offices would not be precluded from adding additional requirements to their certification or qualification programs.

Paragraph (j)(1) describes the criteria that must be covered by the written examination portion of a qualification/certification program. As stated above in the discussion of examination administration, the written portion of the examination may be administered orally, so long as the candidate has demonstrated sufficient literacy relevant to the work (*e.g.,* load charts and equipment manual).

Paragraph (j)(1)(i) states that the individual seeking qualification or certification must know "the information necessary for safe operation of the specific type of equipment the individual will operate * * *" Paragraph (j)(1)(i) goes on to list specific types of information the individual must know.

Paragraph (j)(1)(i)(A) requires that the written examination address the candidate's knowledge of the equipment controls and operational/performance characteristics of the specific type of equipment. Operational/performance characteristics would include, for example, the deflection characteristics of the boom, including how deflection affects the positioning of the load and the extent to which deflection varies with boom angle and length as well as load weight. Also, equipment with lattice/cable supported booms has different deflection characteristics than equipment with non-lattice booms (that is, hydraulic ram extensible booms).

Paragraph (j)(1)(i)(B) requires the candidate to know the use of, and be able to calculate (manually or with the use of a calculator), load/capacity information on a variety of configurations of the equipment. Such information is typically contained in load charts and manuals. This provision ensures that the operator is able to accurately determine, independently, the capacity of the equipment in each situation that he/she might encounter and thereby avoid overloading the equipment.

Paragraph (j)(1)(i)(C) requires the candidate to know procedures for preventing and responding to power line contact. As discussed above in relation to §§ 1926.1407–1926.1411, electrical contact with power lines is one of the principal causes of crane-related fatalities and injuries, and those sections contain detailed requirements for preventing such contact and for reducing the likelihood of death or injury should such contact occur.[120] Knowing how to prevent and respond to power line contact is therefore critical knowledge for any crane operator.

Paragraph (j)(1)(i)(D) addresses the need for crane operators to have technical knowledge similar to the subject matter listed in Appendix C applicable to the specific type of equipment the individual will operate. These criteria were selected by C–DAC because, in the experience of the committee's members, they are critical knowledge and skill areas for equipment operators. OSHA defers to C–DAC's experience on this issue and notes that the Agency did not receive any comments suggesting that a particular item be removed from this list. While testing based on the specific list provided in Appendix C is not the means of satisfying the requirements of § 1926.1427(j)(1)(i)(D), alternative criteria must be "similar to" that of Appendix C. The appendix also serves as a "safe harbor," meaning that testing on all of the criteria provided in Appendix C would satisfy the requirements of § 1926.1427(j)(1)(i)(D).

In addition to the technical knowledge that is required under § 1926.1427(j)(1)(i)(D), technical knowledge applicable to three specific subjects is required under § 1926.1427(j)(1)(i)(E). Paragraph (j)(1)(i)(E)(1) requires that an operator have technical knowledge about the suitability of the supporting ground and surface to handle expected loads. Paragraph (j)(1)(i)(E)(2) requires operators to possess technical knowledge applicable to site hazards, such as hazards posed by excavations or vehicular traffic. Paragraph (j)(1)(i)(E)(3) requires operators to have technical knowledge about site access so that the operator can evaluate whether conditions at the point of access to the site enable the equipment to travel safely onto or off of the site. For example, where equipment must descend or ascend a dirt ramp, the operator needs to be able to assess the effect of the ramp's steepness and to detect signs of instability.

Paragraph (j)(1)(i)(F) requires operators to demonstrate a thorough knowledge of this subpart, including incorporated materials. Operators play a key role in the application of these requirements, and it is therefore essential that they understand them. Paragraph (j)(1)(ii) provides that the individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in paragraph (j)(1)(i) of this section. As discussed above in relation to paragraph (h), the written materials to which this paragraph refers must be in a language that the individual can read and in which the individual is tested.

Paragraph (j)(2) requires that the qualification/certification examination include a determination through a practical test that the individual has the skills necessary for the safe operation of the equipment. It also states criteria for such a test. Paragraph (j)(2)(i) requires that an individual demonstrate the ability to recognize, from visual and auditory observation, the items listed in proposed § 1926.1412(d), which sets criteria for shift inspections. Paragraph (j)(2)(ii) requires the operator to demonstrate operational and maneuvering skills. Paragraph (j)(2)(iii) requires that the operator demonstrate the ability to apply load chart information. Paragraph (j)(2)(iv) requires that an operator be able to apply safe shut-down and securing procedures.

One commenter suggested incorporating standard verbal operation signals into the certification criteria. (ID–0110.1.) A different commenter asked OSHA to require knowledge of the "dynamics of boom flex" in its criteria for certification. (ID–0125.) To the extent that knowledge of such signals and the dynamics of boom flex are required for the safe operation of the type of equipment the individual will operate, they would be covered under § 1926.1427(j)(1)(i). The examples of the types of information that would be required for certification are not all inclusive. OSHA defers to C–DAC's experience with respect to the determination of which examples should be highlighted in paragraph (j).

No other comments were received on § 1926.1427(j); it is promulgated as proposed, except that OSHA has corrected "audible observations" to read

[120] As provided in § 1926.1408(g)(1)(i)(A) on power line safety, operators must be aware of the danger of electrocution if they simultaneously touch energized equipment and the ground. They must also, pursuant to § 1926.1408(g)(1)(i)(B), be trained to understand that when the equipment makes electrical contact with a power line, the operator's safety requires him or her to remain inside the cab except where there is an imminent danger of fire, explosion, or other emergency that necessitates their leaving the cab.

"auditory observations (observations through the use of the ear).

Paragraph (k) Phase-In

As discussed above, a number of commenters believe that Option (1) of this section (certification by an accredited testing organization) is the only viable option for many employers and expressed concern about the availability of sufficient accredited testing organizations to meet the demand that this rule would create. Therefore, in the final rule, OSHA has provided a four-year phase-in period for compliance with paragraph (a)(2), which requires employers to have their operators certified or qualified under Option (1) (independent certifying organization), Option (2) (audited employer certification), or Option (3) (U.S. military employees). Paragraph (k)(1) of this section of the final rule sets out different effective dates for the different provisions of § 1926.1427: all provisions except paragraphs (a)(2) and (f) of this section are enforceable as of the effective date of new subpart CC, whereas the certification required under paragraph (a)(2) will not be required until the end of the phase-in period, which is four years after the effective date of subpart CC.

The phase-in period does not apply to compliance with licensing requirements of government entities. Those government entities already require compliance with their own licensing requirements, and OSHA sees no rationale for delaying compliance with existing law. Employers would be required to comply with State or local government entity licensing requirements only to the extent that State or local government entity licenses comply with the "Federal floor" established in paragraphs (e)(2) and (j) of this section. The options available under § 1926.1427(a)(2) would remain available, and the four-year phase-in period would apply.

As already discussed, C–DAC determined that the market would respond to a qualification/certification requirement, and the increase in the number of accredited testing organizations since C–DAC completed its consensus document validates that view (OSHA notes that several more testing organizations have become accredited since the proposed rule was issued). There is no evidence in the record that the available testing organizations will be unable to meet the demand even if almost all employers choose that option. The four year period will provide time for additional testing organizations to become accredited for purposes of Option (1).

A labor organization suggested that the four-year phase-in period be reduced to two years. (ID–0409.1.) The commenter stated that C–DAC agreed to the four-year period when it issued its report in 2004 to allow sufficient time for additional certification services to become available. It noted that several additional testing organizations had become accredited since 2004 to meet the demand for certification under various State laws and suggested that the number of accredited testing organizations was now sufficient to meet the demand under this rule within two years. Another commenter also suggested that the phase-in period could be reduced to two or three years if sufficient certifying organizations are available when the final rule is issued. (ID–0104.1.)

OSHA concludes that the rulemaking record supports the proposed four-year phase-in period. While the availability of certification services has increased since C–DAC issued its report, four years is a reasonable amount of time to ensure that the supply of certification services will be sufficient to meet demand. It will also provide time for those operators who need additional training to pass qualification/certification tests to complete that training, and for accredited testing organizations to develop tests in languages other than English to accommodate crane operators for whom English is not their first language.

The four year period will also provide time for the market to also respond to demand for certification programs for certified auditors as described under Option (2) of this section (and for employers who so choose to develop audited programs for use under Option (2)). Some State and local government entities now offer licenses and, if those licensing organizations do not already meet the criteria under Option (4) of this section, the four-year phase-in period gives them time to do so if they so choose. C–DAC's determination that four years is a reasonable phase-in period was not based solely on the availability of testing services under Option (1) of this section, and OSHA continues to agree that period is appropriate.

Under paragraph (k)(1), during this four year period, §§ 1926.1427(k)(1)(i) and (ii) address the qualifications and training an operator must have before becoming qualified or certified under one of the four options. Section 1926.1427(k)(1)(i) requires that operators be competent for the purposes of operating the equipment safely. This means that the operator must have the requisite knowledge and skill to identify, anticipate, and avoid actions which could result in hazardous conditions related to the equipment and job site.

Paragraph (k)(1)(ii) requires that employers ensure that operators who do not already have sufficient knowledge or skill to operate the equipment safely undergo training prior to engaging in operations. In addition, the employer is required to ensure that the operator is evaluated to confirm that he/she understands the information provided in the training.

The interim measures in paragraph (k)(1) are not significantly different from requirements that were effective under subpart N of this part at former § 1926.550, § 1926.20(b)(4) ("the employer shall permit only those employees qualified by training or experience to operate equipment and machinery"), and § 1926.21(b)(2)("the employer shall instruct each employee in the recognition and avoidance of unsafe conditions . . ."). However, they are included in this final rule to ensure that there will not be a gap with respect to operator qualifications between the termination of the requirements under subpart N of this part at former § 1926.550 and the effective date of §§ 1926.1427(a) through (j) and (m).

Paragraph (l) [*Reserved.*]

Definitions

The proposed rule contained definitions of "portable" and "not portable" in proposed § 1926.1427(m). In addition, OSHA stated that it was considering adding a definition of "employee of the U.S. military" to paragraph (m). As noted above, OSHA has moved the definitions of "portable" and "not portable" to the provisions where those terms are used, and has added a definition of "employee of the U.S. military" to paragraph (d). As a result, proposed paragraph (m) is not needed and is removed.

Physical Qualifications and Substance Abuse Testing

Physical Qualifications

C–DAC considered whether to include in this standard provisions that would require equipment operators to meet particular physical qualifications. After considering various possible approaches, including those in industry consensus standards, the Committee decided that it would be very difficult, and likely unnecessary, to identify minimum physical requirements that would be appropriate.

First, the physical demands of equipment covered by this rule vary significantly depending on the type and,

in some cases, age of the equipment. For example, some equipment is operated largely by electronic controls. In contrast, older "friction cranes" have pedal controls that can require significant strength and stamina to operate. Some equipment is air conditioned whereas other equipment is not. Tower cranes can require very long climbs to the operator station; small mobile hydraulic cranes typically have an operator's station that is much more easily accessible. A requirement regarding physical qualifications would have to account for these types of differences.

Second, establishing physical qualifications that would appropriately account for the effect of medical conditions would be a complex undertaking. The Committee ultimately determined that, in light of its members' experience that accidents caused by problems associated with the operator's physical/medical condition are rare, the issue of physical qualifications did not need to be addressed by this standard.

Several commenters suggested that OSHA should require operators to undergo and pass medical examinations. (ID–0104.1; –0143.1; –0151.1; –0152.1; –0187.1.) A trade association suggested that medical testing of vision, hearing, and potential for seizures, epilepsy, emotional instability, high blood pressure, and other physical impairments should be part of requirements for safe crane operation. (ID–0187.1.) A safety consultant stated that establishing physical qualifications that would appropriately account for the effects of medical conditions would not be a complex undertaking. (ID–0152.1.) This commenter suggested that a doctor who performs an operator's physical and medical examination could determine if an operator was medically qualified to operate a crane.

OSHA is not persuaded by these comments. First, OSHA concludes that it would not be reasonable to rely on the unguided discretion of examining physicians to determine whether an operator is medically qualified to operate a crane. Doing so would likely lead to a wide variation in the medical conditions that different physicians believe are either necessary or unnecessary for crane operation. Moreover, individual physicians are unlikely to be aware of the variety of conditions that may influence an individual's ability to operate a crane safely, such as the variation in strength needed to operate the controls on different types of cranes. Although physicians are able to determine if an individual has a particular medical condition, they are not well situated to determine if that condition should preclude the individual from operating a crane.

OSHA also finds the comment by the trade association to be unpersuasive. First, this commenter nominated a C–DAC member, who did not dissent on this issue. The commenter did not explain why it is deviating from the position its nominee took on C–DAC, and for that reason OSHA gives reduced weight to its comment. Moreover, OSHA notes that some of the criteria suggested by the commenter, particularly the phrase "other physical impairments," are of questionable value in determining the physical qualifications of crane operators. Indeed, OSHA determines that the commenter's inclusion of such a catchall phrase highlights the difficulty of trying to list the medical conditions that should preclude a person from operating a crane.

In short, OSHA has not been given any persuasive reason to deviate from the considered judgment of C–DAC that this standard should not address the issue of physical qualifications of equipment operators.

Substance Abuse Testing

As explained in the proposed rule, C–DAC considered whether to include mandatory substance abuse testing for equipment operators and others, such as signal persons, whose jobs affect safety. It decided against doing so because of the procedural limitations such a requirement would impose on employers who have voluntarily instituted substance abuse programs; a government mandate for substance abuse testing would have to meet constitutional safeguards.[121] For example, under a government-mandated testing program, an employer likely would not be permitted to "stand down" an operator based on an unconfirmed test result but would need to wait until a positive result is verified by a medical review officer. The Committee did not want to restrict an employer's ability to suspend an operator who tested positive pending confirmation of the result.

In short, the Committee balanced the potential benefits from a requirement for substance abuse testing that would have more restrictive procedures against the fact that many employers already have their own programs in place that, in C–DAC's view, may be more protective than what could be enacted as an OSHA requirement. C–DAC concluded that it would be better not to include a substance abuse requirement.

Several commenters recommended that OSHA include substance abuse testing in the final rule. (ID–0104.1; –0105.1; –0151.1; –0152.1; –0187.1.) These commenters did not, however, address C–DAC's conclusion that an OSHA mandate for such testing could have the adverse consequence of limiting employers' ability to enforce their own substance abuse testing programs and could thereby detract from worksite safety. OSHA therefore defers to C–DAC's judgment and declines to include a substance abuse testing requirement in the final rule.

Section 1926.1428 Signal Person Qualifications

As discussed under § 1926.1419, *Signals—general requirements,* the safety of equipment operations depends in many situations on signals given to the operator. It is critical that the operator understand the signals given, and the signal person must therefore be able to give clear, accurate and appropriate signals that unambiguously convey the needed information. The Committee, which included a number of members with significant experience with signal persons, was concerned that some signal persons are not able to recognize the hazards involved with certain crane operations, do not, in some cases, understand what it is that the crane needs to do to accomplish the task, and do not know how to give the appropriate signals. This poses hazards, such as struck-by and crushed-by hazards, due to either miscommunication or the communication of instructions that are inappropriate.

An example of the type of accident that can be caused by miscommunication from not knowing the appropriate signals is as follows: The signal person intends to indicate to the operator to hoist up, since the load needs to be raised straight up. However, the signal person uses the standard signal for booming up in the mistaken belief that this signal is for hoisting up. A struck-by or crushed-by incident could result because, when booming up, the load will move laterally as well as vertically.

A failure to understand what it is that the crane needs to do to accomplish a task can also lead to struck-by or crushed-by incidents. For example, as a crane booms down, boom deflection tends to increase, which has the effect of lowering the load more than if there were no boom deflection. If the signal person is unfamiliar with this boom characteristic, he or she may fail to

[121] *See Skinner* v. *Railway Labor Executives' Ass'n,* 489 U.S. 602 (1989); *International Brotherhood of Teamsters* v. *Department of Transportation,* 932 F.2d 1292 (9th Cir. 1991).

signal in time for the load to stop at the correct point or may cause the load to descend too quickly.

The Committee concluded that to prevent such accidents it is necessary to establish qualification criteria that would have to be met for an individual to serve as a signal person (that criteria is set out in proposed § 1926.1428(c), discussed below). The employer would have the option of using one of two methods for ensuring that these criteria were met. Under Option (1) of this section (§ 1926.1428(a)(1)), the signal person would have documentation from an independent "qualified evaluator (third party)," as defined in § 1926.1401, showing that the evaluator had determined that the signal person meets the requirements of § 1926.1428(c).

This qualification would be portable, that is, any employer could rely on such documentation to show that a signal person meets the criteria. C–DAC determined that such portability would be appropriate because of the independence and expertise of the third-party evaluator.

Under Option (2) of this section (§ 1926.1428(a)(2)), an employer's own qualified evaluator (not a third party) would determine that a signal person meets the qualification requirements. Since such a determination would not be done by an independent entity, other employers would not have a basis to assume that the assessment had been done correctly. Therefore, a qualification under this option would not be portable; other employers would not be permitted to rely upon it to show that the signal person meets these requirements.

One commenter argued for the deletion of Option (2) of this section (the employer option) altogether to ensure that an independent evaluator trains signalpersons according to the established best practices of the industry. (ID–0156.1.) The commenter did not explain why employer evaluations were less effective. To the contrary, the Agency notes that C–DAC experience indicated that employer evaluations of signal persons were effective. The employer evaluation may in some cases be even more effective and efficient than independent evaluations, such as for the evaluation of employer specific signals. Sections 1926.1428(a)(1) and (2) (Options (1) and (2)) are promulgated as proposed.

The term "qualified evaluator" used in proposed § 1926.1428(a)(2) was defined in proposed § 1926.1401 as "a person employed by the signal person's employer who has demonstrated that he/she is competent in accurately assessing whether individuals meet the Qualification Requirements in this subpart for a signal person." In reviewing the C–DAC document, the Agency realized that the Committee had not provided a definition for the term "third party qualified evaluator," which was used in proposed § 1926.1428(a)(1). OSHA therefore added to the proposed rule a definition for this term.

The Agency requested public comment about whether this definition is appropriate, and two commenters indicated support for the definition. (ID–0187.1; –0205.1.) One commenter requested that, in the phrase, "due to its independence and expertise," the Agency add "history in providing training" as an additional criterion and include labor-management joint apprenticeship training programs as an example of an entity that meets this definition. (ID–0191.1; –0194.1.)

The role of the third-party qualified evaluator in § 1926.1428(a)(2) is to assess the individual's competence. The expertise needed for training is not the same as the expertise needed for evaluating competence (*see* the explanation of the distinction between training expertise and competence evaluation in the discussion of § 1926.1427). Therefore, it would be inappropriate to require training expertise as a prerequisite for being considered a third-party qualified evaluator.[122] Similarly, while labor-management joint apprenticeship training programs that train and assess signal persons would typically meet the definition for a third-party qualified evaluator, OSHA concludes that including them as an example in the definition could incorrectly imply that training expertise (as opposed to assessment expertise) is a prerequisite.

Several other commenters expressed general support for the definition of a third-party qualified evaluator but requested clarifications. Two of these commenters proposed changing the definition to specify that an "individual" could also qualify as a third-party qualified evaluator. (ID–0205.1; –0222.1.) This is unnecessary because the word "entity" already encompasses an individual. The other commenters recommended that OSHA further clarify the definition by requiring an evaluating entity to "demonstrate" its competence through an independent body's audit, certification, or accreditation. (ID–0169.1; –0211.1.) OSHA agrees with C–DAC that competence can be demonstrated in a variety of ways and is not establishing an accreditation requirement as for evaluators of crane operators. The assessment of a signal person's qualifications is inherently less complex than the assessment of a crane operator's qualifications because the range of signals and their applications are more finite than the wide assortment of scenarios and skills for which a crane operator must be tested. As such, the need for independent assessment of the evaluator is diminished. Therefore, the Agency has not made the suggested changes; the definition is promulgated as proposed except that the defined term is "qualified evaluator (not a third party)" in the final rule.

Another commenter at the hearing, citing the availability of experienced, trained signal persons in his organization, requested a "grandfather" clause for signal persons so that previous training and proof of hands-on practical experience would qualify signal persons under this rule, citing the availability of experienced, trained signal persons in that organization. (ID–0345.17.) OSHA does not agree that a "grandfather" clause is necessary or appropriate. The experienced, trained workers to which the commenter refers should be able to pass the required assessment with little additional training.[123]

OSHA concurs with the C–DAC Committee's determination that it is important for employers to make the documentation of signal person qualifications readily available to employees and others who need to rely on those qualifications, such as crane operators who rely on signal persons provided by a different employer, or OSHA for compliance purposes. In proposed § 1926.1428(a)(3), OSHA included C–DAC's language requiring that the documentation be "available," rather than "available at the site," but noted that C–DAC intended that the documentation be available at the site by, for example, the documentation being physically present at the site or through use of an on-site computer. OSHA asked for public comment on changing the term "available" to "available at the site."

Two commenters objected to the proposed change, indicating that it is not necessary to have the documentation on site so long as it can be readily produced. (ID–0205.1; –0222.1.) The commenters did not,

[122] A third party evaluator that did not have signal person training expertise would nonetheless have to have substantive expertise in signaling and the other subjects referred to in § 1926.1428, as well as expertise in assessment, to meet the "expertise" criterion in the definition.

[123] In many cases the only additional training that likely will be needed for those experienced and trained workers will be to become familiar with the relevant requirements of §§ 1926.1419–1926.1422, and § 1926.1428 (knowledge of that information is required under § 1926.1428(c)(4)).

however, provide further explanation or cite any examples of how the documentation would be "readily produced" quickly through means other than via computer. Moreover, the commenter's suggestion that documents be "readily produced" is vague and could encompass documents that might be "produced" offsite quickly but not transmitted in a timely manner to the work site. OSHA has decided to modify the language used in the proposed rule and require in the final rule that the documentation be available at the site, and is also adding language to make it clear that the employer is responsible for making that documentation available at the worksite.

In the proposed rule preamble, the Agency noted that the C–DAC draft of Option (2) of this section did not explicitly state that documentation of the signal person's qualification by this method is required. However, proposed § 1926.1428(a)(3) stated that "the documentation for whichever Option is used shall be available. * * *" It was not clear to the Agency if C–DAC intended to require documentation under Option (2) of this section as it did for Option (1), or if it only intended that any documentation the employer chose to create under Option (2) would have to be made available.

One reason to require documentation under Option (2) of this section is the Committee's concern that, at present, the operator's employer has no ready means of determining if the signal person (who is typically a different employer's employee) has the necessary knowledge and skill for signaling until after hoisting operations have begun. In other words, a problem with the signal person's ability may not become evident to an operator until a hazardous situation has already arisen. Requiring documentation enables this determination to be made before hoisting operations begin.

Requiring documentation under Option (2) of this section addresses C–DAC's concern. Therefore, in the proposed rule, OSHA expanded the first sentence of the C–DAC version of § 1926.1428(a)(2) to clarify that documentation is required under Option (2). The only comment received on OSHA's inclusion of an explicit requirement for documentation under Option (2) was from SC&RA, which supported its inclusion. (ID–0205.1.) Therefore, in the final rule, documentation is required under Option (2).

The Agency concludes that the rationale for including an explicit requirement for documentation under Option (2) of this section—the need for other affected employers at the site, such as the operator's employer, to have a ready means of determining if the signal person has the necessary knowledge and skill before beginning hoisting operations—also necessitates that the documentation be available at the site. OSHA is concerned that if it is not available at the site (either in paper form or electronically), it is less likely that the documentation will serve its intended purpose. Therefore, in the final rule, the documentation required under both Option (1) and Option (2) of this section must be available at the site.

OSHA is also adding a requirement in paragraph (a)(3) of this section of the final rule that the documentation must specify each type of signaling for which the signalperson has been tested and meets the requirements of § 1926.1428(c). This requirement parallels the requirement in § 1926.1427(b)(2) in which operator certification documents must specify the type and capacity of the equipment for which an operator is certified. This new provision fills a potential communication gap that would have existed in the implementation of the rule as proposed. As explained above, one of the main reasons that OSHA is requiring the documentation to be available at the site is so that the operator, or any person on the job site, who is unfamiliar with a signal person may review that documentation to ensure that the signal person is sufficiently qualified to provide the signals required for that job. Because many of the qualifications that must be tested under paragraph (c) of this section are conditional (*e.g.,* if hand signals are to be used, the signal person must understand the Standard Method hand signals), and the proposed rule did not specify any content for the documentation, the documentation provided by a third-party qualified evaluator under Option (1) of this section might simply have generally noted the satisfactory completion of testing in accordance with § 1926.1428(c). In that case, under the proposed rule, an operator preparing for a job requiring the use of hand signals would not have been able to use that documentation as intended to determine whether the signalperson knew and understood the Standard Method for hand signals. Under the final rule, the operator will be able to make that determination quickly because the documentation must specify whether the signalperson was examined on hand signals. This requirement is not intended to require significant detail, such as specifying that the signalperson knows the hand signals for "hoist" or "stop." Rather, it is intended to identify satisfactory completion of testing on different categories of signals, such as hand signals, radio signals, or flag signals.

Paragraph (b) of this section addresses circumstances in which a signal person who had been qualified under § 1926.1428(a) subsequently acts in a manner that indicates that he or she may not meet the qualification requirements. Such an indication would result, for example, where the use of Standard Method signals have been agreed to but the signal person does not give a Standard Method signal. Another example would be where the signal person gives inappropriate signals (such as indicating to the operator to boom up when the action that is needed is to hoist up).

In such circumstances the employer is prohibited from allowing the individual to continue working as a signal person until he or she is re-trained and has been requalified in accordance with § 1926.1428(a). No comments were received on this provision; it is promulgated as proposed.

Paragraph (c) of this section sets forth the qualification requirements for signal persons. Paragraph (c)(1) requires that the signal person know and understand whatever signal method will be used for that particular job site.

In addition, if hand signals are used, the signal person must know and understand the Standard Method for hand signals. Hand signals are widely used in this industry. As discussed above with respect to § 1926.1419(c), C–DAC determined that accidents due to miscommunication could be reduced if there were more widespread use of standardized hand signals. C–DAC concluded that this provision will promote greater use of standardized hand signals through the use of the Standard Method.[124] No comments were received on this provision; it is promulgated as proposed.

Paragraph (c)(2) of this section will help prevent miscommunication between the signal person and the crane operator by requiring the signal person to be competent in the application of whatever signals are used. No comments were received on this provision; it is promulgated as proposed.

Paragraph (c)(3) of this section requires the signal person to have a basic understanding of crane operation

[124] As discussed above with respect to § 1926.1419(c), there are circumstances when it would be permissible to use hand signals other than the Standard Method signals. Also, under § 1926.1419, signals other than hand signals can be used.

and limitations, including crane dynamics involved in swinging and stopping loads and boom deflection from hoisting loads. As explained in the proposed rule preamble, it is critical that the signal person understand how the crane and load will move in response to the various signals he or she gives so that the signal person will give the most appropriate signals and reduce the occurrence of struck-by, crushed-by and other hazards (*see* 73 FR 59823, Oct. 9, 2008). No comments were received on this provision; it is promulgated as proposed.

Paragraph (c)(4) of this section specifies that signal persons must know and understand the relevant requirements in §§ 1926.1419–1926.1422, which address the types of signals that may be used and the circumstances surrounding their use, and the requirements of § 1926.1428. C–DAC included the phrase "relevant requirements" to make clear that a signal person's qualification could be limited with regards to the use of a particular type of signal and associated information.

For example: A crane operation is going to use Standard Method hand signals. The signal person knows and understands all aspects of § 1926.1419 that are relevant when using hand signals, as well as § 1926.1422, *Signals—hand signal chart.* In addition, the signal person meets the requirements in § 1926.1428(c)(1) and (2) with respect to the use of Standard Method hand signals. The signal person also has the knowledge necessary to meet the provision in § 1926.1428(c)(3), and demonstrates through a verbal or written test, and through a practical test, that he/she has this knowledge and capabilities. However, the signal person is unfamiliar with the contents of § 1926.1420, *Signals—radio, telephone or other electronic transmission of signals,* or of § 1926.1421, *Signals—voice signals—additional requirements.*

In this example, it would be appropriate for the signal person to be qualified under either Option (1) or Option (2) of this section (*see* 1926.1428(a)) so long as that qualification was limited to signaling with Standard Method hand signals. Since the signal person would be qualified only for Standard Method signaling, there would be no need for that person to have the knowledge or capabilities associated with other types of signaling. In such a situation employers, though, would be precluded from using such a person if other types of signals were to be used. No comments were received on this provision; it is promulgated as proposed.

Paragraph (c)(5) of this section would require that the signal person pass knowledge and practical tests to demonstrate that he or she meets the qualification requirements. The knowledge test may be either oral or written. C–DAC noted that signal persons normally need not read or write to perform their jobs effectively. No comments were received on this provision. Therefore, OSHA agrees with C–DAC that administering the knowledge test orally, without a separate demonstration of literacy, should be permitted. The provision is promulgated as proposed, with one minor grammatical correction.

Section 1926.1429 Qualifications of Maintenance and Repair Workers

This section addresses the qualifications that the workers who maintain and repair cranes/derricks must possess. Subpart N of this part at former § 1926.550 contained no provisions concerning the qualifications of maintenance and repair workers.

The Committee had two basic concerns regarding maintenance and repair work. First, it was aware of accidents that had occurred when the equipment that was being maintained or repaired was operated improperly. For example, a maintenance worker who booms down a mobile hydraulic crane to one side without following the manufacturer's instructions for deploying outriggers may overturn the equipment. C–DAC concluded that placing restrictions on equipment operations during such work would help prevent such accidents.

Second, the Committee sought to avoid hazards that can result from maintenance and repair work that is done improperly by ensuring that maintenance and repair workers are sufficiently qualified to perform their work. For example, if a load-bearing component is removed for maintenance or repair and re-installed incorrectly, unintended movement of the load or even a collapse could occur during operations.

Paragraph (a)

The Committee was aware that maintenance and repair workers sometimes need to operate equipment to perform maintenance, inspect the equipment, or verify the performance of the equipment. This work typically involves operating the equipment to get access to components, diagnose problems and check repairs.

C–DAC did not determine it necessary for maintenance, inspection and repair personnel to meet the requirements in proposed § 1926.1427, *Operator qualification and certification,* when operating equipment for such purposes. The operations involved for these purposes are almost always done without a load on the hook. The only instance when there is a load on the hook is if the equipment is load tested. However, even when load testing, the operation is very limited, since the load is not moved about as it would be during normal crane operations.

While such limited operation does not, in C–DAC's view, necessitate the maintenance, inspection or repair personnel to meet the proposed § 1926.1427 requirements, a failure to operate the equipment properly even in these limited circumstances can result in accidents from, for example, unintended movement or tip-over. OSHA agrees, and is therefore permitting maintenance and repair workers to operate equipment during their work only under specific restrictions designed to ensure safety.

Specifically, under paragraph (a)(1) of this section, maintenance and repair workers are permitted to operate the equipment only to the extent necessary to perform maintenance, inspect the equipment, or verify its performance. Under this provision, maintenance and repair workers are not permitted to operate the equipment during regular operations.

Paragraph (a)(2) of this section requires the maintenance and repair worker who operates equipment to either (i) do so under the direct supervision of an operator who meets the requirements of § 1926.1427, *Operator qualification and certification,* or (ii) be familiar with the operation, limitations, characteristics and hazards associated with the type of equipment involved.

Paragraph (b)

In light of the safety hazards that could result from maintenance and repairs that are performed improperly, C–DAC determined that it was necessary for maintenance and repair workers to meet the "qualified person" criteria. OSHA agrees. Paragraph (b) of this section therefore provides that maintenance and repair personnel must meet the definition of a qualified person with respect to the equipment and maintenance/repair tasks they perform. As defined in § 1926.1401, a "qualified person" is "a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project."

Two commenters requested that maintenance and repair workers be certified by a third party. (ID–0061; –0156.1.) As noted in the preamble to the proposed rule and again here, C–DAC considered the requirements for maintenance and repair workers and found that the term "qualified person" would adequately address these concerns. OSHA agrees, and is promulgating paragraph (b) without substantive change. OSHA is substituting the word "must" for "shall" in the last sentence of that paragraph to avoid any implication that a maintenance and repair worker is, by definition, a qualified person.

Section 1926.1430 Training

With a few exceptions, the requirements in this final rule for this section are the same as those in the proposed rule (*see* 73 FR 59939, Oct. 9, 2008). This section both references training criteria required by other sections of subpart CC and sets forth additional training criteria and requirements. Additionally, § 1926.1430(h) requires employers to evaluate employees' understanding of the training.

The Agency determined that both training and testing of certain employees are critical to the safety of crane/derrick use in construction.[125] The requirements of this section and subpart with respect to training do not replace those established by § 1926.21, *Safety training and education,* which requires the employer to (1) "establish and supervise programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe conditions in employments covered by the [OSH] Act," and (2) "instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." Instead, they supplement and clarify the general training requirements for particular conditions and activities. These specific provisions ensure that employees have the necessary knowledge and skill to work safely with and around cranes. Greater specificity highlights the particular tasks (and the hazards associated with them) for which certain types of training are necessary.

The Agency is also clarifying in § 1926.1430 that employers have a duty to train each employee covered by subpart CC, and to provide that training at no cost to the employee. In the introductory text to proposed § 1926.1430, the Agency specified that the employer "shall provide" all applicable training, which was included to indicate that the employer would bear the cost of training. This is consistent with the Agency's treatment of training costs in the preliminary economic analysis provided in the preamble for the proposed rule. (*See, e.g.,* 73 FR 59895, Oct. 9, 2008 (operator certification training treated as cost to employer).) In the final rule, OSHA is rewording each of the training requirements to further clarify the employer's responsibilities with respect to all training requirements under subpart CC, and is adding new § 1926.1430(g)(3) to expressly state that employers must provide all training at no cost to the employee.

Several commenters recommended that additional training be required. (ID–0126.1; –0156.1;–0182.1; –0209.1.) One suggested that maintenance and repair personnel be certified by either the manufacturer or an independent third party that they are trained in the maintenance and repair of the crane. (ID–0156.1.) However, under § 1926.1429(b), maintenance and repair employees are required to be qualified persons. Those employees must be trained on the requirements of subpart CC as required by § 1926.1430(d) and must have the education or experience to be considered a qualified person as defined in § 1926.1401. This commenter has not presented evidence showing that manufacturer or third party certification would significantly improve the qualifications of maintenance and repair personnel who meet the test of "qualified person."

Another commenter felt additional hazard awareness training should be required for employees. (ID–0182.1.) OSHA determines that the training requirements of this and other sections of subpart CC, along with § 1926.21, provide for adequate training of all employees and allow employers flexibility to provide training as needed for each employee at various worksites.

Proposed § 1926.1430(a), *Overhead powerlines,* stated that employees listed in § 1926.1408(g) must be trained accordance with the requirements of that paragraph. As discussed in § 1926.1410, OSHA has added § 1926.1410(m), which requires that operators and crew assigned to work with equipment that comes closer to power lines than the minimum clearance distance permitted under §§ 1926.1408 and 1926.1409, must also be trained in accordance with § 1926.1408(g). To accommodate this change, § 1926.1430(a) also includes a reference to § 1926.1410(m).

Under paragraph (b) of this section, *Signal persons,* employees assigned to work as signal persons and need training to meet the requirements of § 1926.1428(c) must be trained in the areas addressed in that paragraph. As discussed in § 1926.1428(c), each employee who serves as a signal person must pass a verbal or written test, and a practical test demonstrating the required knowledge and skills. One commenter believes the training requirement outlined in this paragraph could be interpreted to mean that only training is required and the qualification requirements of § 1926.1428 are not applicable. (ID–0292.1.) This is incorrect. This paragraph requires an employer to ensure the employee assigned as a signal person receives training, or re-training if needed, to be a signal person according to § 1926.1428. This is not a replacement for the qualification requirements of § 1926.1428. This provision is promulgated as proposed except for the clarification of the employer's duty to train each employee.

Proposed paragraph (c) of this section was entitled *Operators,* and set forth training requirements for operators of equipment covered by this subpart. Proposed § 1926.1430(c)(1) stated that "operators who are not qualified or certified under § 1926.1427 shall be trained in the areas addressed in § 1926.1427(j). * * *"

Several commenters believed that the language of proposed § 1926.1430(c)(1) indicated that operators who have not been qualified or certified under § 1926.1427 may nonetheless operate cranes. (ID–0156.1; –0182.1; –0208.1; –0292.1.) One commenter noted it could be interpreted to mean that certification was not required, only training. (ID–0182.1.)

Such interpretations are contrary to the Agency's intent. OSHA used the word "operator" in the proposed § 1926.1427(c) to refer to any employee, with the exception of maintenance and repair workers, who operates equipment, whether or not that employee has completed all necessary training. It has the same meaning when used in final § 1926.1427(c).

Proposed paragraph (c)(1) was intended to apply to operator trainees who must be qualified or certified under § 1926.1427 to operate equipment, but

[125] With respect to operator testing, as discussed in connection with § 1926.1427, *Operator qualification and certification,* this standard places special emphasis on ensuring that equipment operators have acquired the knowledge and skills necessary to operate their equipment safely. This standard also includes specific assessment requirements for signal persons (*see* § 1926.1428(a)).

are not yet qualified or certified. Also in this category are employees who need training to become re-qualified or re-certified, or who failed to pass a qualification or certification test and need additional training. Such employees are only permitted to operate cranes under the conditions specified in § 1926.1427(f), and the proposed rule required them to be trained in the operator certification/qualification criteria provided in § 1926.1427(j).

Because the certification and qualification requirements of § 1926.1427 will not be phased in until four years after the effective date of the standard, *see* § 1926.1427(k), OSHA specified in the preamble to proposed paragraph (c)(1) that operator training during this phase-in period would likewise be required to address the criteria in § 1926.1427(j) (*see* 73 FR 59826, Oct. 9, 2008).

To clarify its intent in the final rule OSHA has split proposed paragraph (c)(1) of this section into three separate paragraphs, (c)(1) through (3), and renumbered proposed (c)(2) as (c)(4). Revised paragraph (c)(1) is intended to apply after the four-year phase in period to employees who must be certified, or qualified, under § 1926.1427 and are training to do so for the first time, and to employees who are training for re-certification/re-qualification. These employees, who will only be permitted to operate the equipment as "operators in training" and subject to several conditions, must be trained in the areas addressed in § 1926.1427(j) (criteria for operator certification testing).

Paragraph (c)(1) also requires employers to provide the necessary additional training if the operator-in-training does not pass a qualification or certification test. C–DAC determined, and OSHA agrees, that it is important for an employer to provide the training necessary for its operators to be qualified or certified as required by this subpart.

C–DAC selected the criteria in § 1926.1427(j) as the minimum knowledge and skill requirements necessary for safe operation of equipment. OSHA is therefore requiring training in the same areas to ensure consistency with the certification/qualification process and to develop the trainee's knowledge and skills in the areas that the record reflects are critical to the safe operation of equipment.

New paragraph (c)(2) addresses training during the 4-year phase-in period in the same way for the same people as in paragraph (c)(1): Each must be trained in the areas addressed in § 1926.1427(j). Although the certification/qualification requirements do not apply until four years after the effective date of this standard, OSHA concludes that it makes sense for two reasons to train employees in the same areas that they will need to master to pass the certification/qualification examinations: (1) It will facilitate their preparation for the examination, and (2) these areas have been identified in the record as the minimum knowledge and skill sets that all operators should possess.

Paragraph (c)(3) applies to operators of equipment covered by this subpart but are expressly excepted from the certification and qualification requirements of § 1926.1427. This includes those operators for whom the qualification or certification requirements of § 1926.1427 do not apply based on the type of equipment being operated. Section 1926.1427(a) provides: "Exceptions: Operator qualification or certification under this section is not required for operators of derricks (*see* § 1926.1436), sideboom cranes (*see* § 1926.1440), and equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less (*see* § 1926.1441)." For the same reasons that the Agency has concluded that the operator certification/qualification criteria in § 1926.1427 are not appropriate for these operators, the Agency concludes that training on the same § 1926.1427(j) criteria would also not be necessary. Instead, these operators, must be trained in the safe operation of the type of equipment they will be operating.

Proposed paragraph (c)(2) has been renumbered in the final rule as paragraph (c)(4). Final rule paragraph (c)(4) applies to all persons operating equipment under subpart CC, regardless of whether that person must be certified or qualified under § 1926.1427, and regardless of whether it is during or after the four-year phase-in period, and requires operators to be trained in two practices that C–DAC deemed worthy of specific emphasis for the safe operation of any equipment. Paragraph (c)(4)(i) requires training in the testing of the boom hoist brake on friction equipment prior to moving a boom off a support to determine whether the brake requires adjustment or repair. The purpose of this procedure is to ensure that the brake is sufficient before the boom is at too great an angle or height. Using this procedure, if the brake is deficient, the boom will fall only a short distance. This provides an additional safety measure related to the hazards resulting from an uncontrolled boom. Moving the boom when the brake is not working properly can result in uncontrolled lowering of the boom, which can endanger workers in the proximity of the hoisting equipment. Paragraph (c)(4)(i) also requires similar training for testing the brake on all other equipment with a boom. Again, this procedure provides an additional safety measure related to the hazards resulting from an uncontrolled boom. For clarity, the Agency has added a reference to §§ 1926.1417(f) and (j) for additional requirements related to tag-out procedures and communication for any necessary repairs. *See* discussion of these requirements above at §§ 1926.1417(f) and (j).

Paragraph (c)(4)(ii) requires the operator to be trained in the manufacturer's emergency procedures, when available, for stopping unintended equipment movement. This provides another level of protection to minimize employee injury resulting from unintended equipment movement. OSHA recognizes that manufacturer's emergency procedures for halting unintended equipment movement may not always be available and therefore this training is required only when the procedures are available.

One commenter requested that more specialized training, such as model-specific training, should be required for newly hired operators or operators assigned to new or different models of equipment. (ID–0199.1.) OSHA determines that the rule addresses this commenter's concern. An operator qualified or certified under § 1926.1427 has shown that he/she is qualified to operate any type of equipment covered by the qualification/certification. Others must be trained in the type of equipment they are operating under paragraph (c) of this section.

Paragraph (d) of this section, *Competent persons and qualified persons,* requires competent persons and qualified persons to be trained regarding the requirements of this subpart applicable to their respective roles.

A person assigned by an employer to be a "competent person" or "qualified person" under this rule must already have had a certain level of training (or, in the case of a competent person, either training or experience) to meet the criteria applicable to such a designation. This paragraph does not address such training—it does not require the employer to provide the training needed for an employee to meet the criteria to become a competent or qualified person. The sole purpose of this paragraph is to require the employer to ensure that both competent persons and qualified persons are trained on the requirements of this subpart applicable to the person's role and responsibility. For example,

under § 1926.1430(d), a "competent person" assigned to conduct shift inspections required in § 1926.1412(d) must be trained in the required elements of a shift inspection. This training is necessary to ensure that the competent person or qualified person is aware of his/her role under this subpart regarding finding/correcting hazardous conditions.

Another example is maintenance and repair personnel, who may operate equipment under limited conditions necessary to perform the maintenance or repair (*see* § 1926.1429(a)). Such an employee must be a "qualified person," § 1926.1429(b), and must be trained in accordance with § 1926.1430(d) to operate the equipment as necessary to perform the maintenance or repair. The Agency notes, however, that maintenance and repair workers are not considered "operators" for the purposes of paragraph (c) of this section and are therefore not required to be trained in all of the areas addressed in § 1926.1427(j), or as required under § 1926.1427(c)(3).

No comments were received on this paragraph; it is promulgated without change from the proposed rule except for the clarification of the employer's duty to train each employee.

Paragraph (e) of this section, *Crush/pinch points,* provides that employees who work with equipment covered by this subpart must be instructed to stay clear of holes, crush/pinch points and the hazards that are addressed in § 1926.1424, *Work area control. See* the discussion above of hazards and requirements addressed by § 1926.1424. No comments were received on this provision, and it is promulgated as proposed except for the clarification of the employer's duty to train each employee.

Paragraph (f) of this section, *Tag-out,* states that operators and other employees authorized to start or energize equipment or operate equipment controls (such as maintenance and repair workers) must be trained according to the tag-out and start-up procedures in § 1926.1417(f) and (g). *See* the discussion above of these procedures in § 1926.1417.

On review of this paragraph, OSHA determines that a reference to the start-up procedures was inadvertently omitted in the text of the proposed rule since these employees are "authorized to start/energize equipment." OSHA has corrected this omission in the final rule by adding a reference to start-up procedures in § 1926.1417(g) in the regulatory text.

Paragraph (g) of this section requires employers to ensure that employees understand the required training and provide refresher training when necessary. Specifically, § 1926.1430(g)(1) requires the employee to be evaluated to verify that he/she understands the information provided in training required by this subpart. The Agency determined that, to ensure that the training is effective, some means of assessment for understanding is needed.

One commenter believed this requirement was unclear and did not understand how an employer would determine if training was effective. (ID–0232.1.) This commenter also indicated that it could be interpreted that a test would always be required to determine whether training had been effective.

The Agency purposely does not use the term "test" in this paragraph. "Test" may be interpreted to mean a standardized written or a structured oral exam, which may not be appropriate for all situations. OSHA determines the method of evaluating an employee's training for effectiveness will vary by the subject matter of the training and the employee, and the Agency has therefore drafted this paragraph to provide sufficient flexibility for the employer to determine the most appropriate method of evaluation. Any number of methods could be used to determine if an employee has understood the training provided. For example, during assembly/disassembly a certain method of blocking may be needed. The supervisor trains and instructs the employee on the proper method. The supervisor can then evaluate the employee's comprehension of training in a number of ways. One way could be simply to ask the employee to orally describe how he/she would do this task, or to have the employee physically emulate the blocking method. Another would be to provide blocking to the employee and ask the employee to arrange the blocking in the proper manner. Either method can give the supervisor the necessary information to determine if the employee understood the proper method or if additional training is required.

Another commenter recommended the incorporation by reference of ANSI/ASSE Z490.1–2001 for how to test trainees. (ID–0178.1.) Much of sec. 6.2 of that standard reflects the same concepts referred to above and may be useful to employers. However, a "Note" to sec. E6.2.2 suggests that self-evaluations may be adequate. OSHA does not conclude that a self-evaluation is appropriate to meet the requirements of § 1926.1430(g)(1). While other aspects of the ANSI/ASSE standard may be useful as a guide to employers, it is not drafted in a way that is suitable for enforcement of this provision. For these reasons, OSHA declines to incorporate it by reference as a requirement.

Paragraph (g)(2) of this section requires the employer to provide refresher training for an employee when, based on evaluation or employee conduct, it is indicated that retraining is needed.

One commenter recommended a requirement for a minimum number of continuing education courses each year for employees. (ID–0209.1.) Another commenter recommended that refresher training be done every 3 years or earlier when based on evaluation of employee conduct. (ID–0182.1.)

The Agency finds these comments to be unpersuasive. As proposed, the employer is required to retrain an employee based on the individual's conduct. OSHA determines this promotes a more effective retraining requirement than one based on time or type of coursework.

Therefore, paragraphs (g)(1) and (2) of this section are promulgated as set forth in the proposed rule. As noted above, the Agency is adding new paragraph (g)(3) to clarify that employers are responsible to provide the training required under subpart CC at no cost to employees.

The following chart summarizes the location of the training requirements in the final rule:

Section	Training requirement
§§ 1926.1408(g) and 1926.1410(m)	Power line safety.
§ 1926.1424(a)(2)	Swing radius hazards.
§ 1926.1437(c)(2)(ii)	Swing radius hazards (floating cranes & land cranes on barges).
§ 1926.1430(e)	Crush/pinch points (Work Area Control).
§ 1926.1430(f)	Tag-out.
§ 1926.1430(f)	Start-up.
§ 1926.1430(d)	Competent and Qualified Persons.
§ 1926.1430(g)(2)	Refresher training (general).

Section	Training requirement
§ 1926.1430(b)	Signal person training (equipment with greater than 2,000 pound maximum rated capacity).
§ 1926.1428(b)	Signal person re-training.
§ 1926.1427(f)	Operator-in-training.
§§ 1926.1427(k), 1926.1430(c)(2) and 1926.1430(c)(4).	Operator training during transitional period.
§ 1926.1430(c)(3)	Operator training for equipment where qualification or certification is not required by this subpart.
§ 1926.1430(c)(1)	Operator training for qualification or certification.
§ 1926.1430(c)(4)(i)	Operator training—boom hoist brake test.
§ 1926.1430(c)(4)(ii)	Operator training—emergency procedures (halting unintended movement).
§ 1926.1441(e)	Operator training (2,000 pound maximum rated capacity).
§ 1926.1441(f)	Signal person training (2,000 pound maximum rated capacity).
§ 1926.1423(k)	Fall protection training.

Section 1926.1431 Hoisting Personnel

This section of the final rule sets forth additional requirements when equipment is used to hoist employees. Because equipment covered by this subpart is designed to move materials, not personnel, additional requirements are necessary for employee safety. This section replaces the requirements of subpart N, former § 1926.550(g). Those requirements have been effective in reducing accidents and as a result most of the requirements have been continued in this rule. However, while continuing most of the hoisting personnel requirements that were in subpart N, subpart CC clarifies requirements where needed and has added requirements for certain activities, such as hoisting personnel in a drill shaft, as discussed below. With a few exceptions, the requirements in this final rule are the same as those found in the proposed rule (*see* 73 FR 59714, 59939–59943, Oct. 9, 2008). The following discussion will primarily focus on the differences between the proposed rule and this final rule.

OSHA stresses the provisions in this section are additional requirements that must be met when equipment is used to hoist personnel. During such use, all other applicable requirements of this subpart must be met.

Paragraph (a)

This paragraph states that equipment may be used to hoist personnel only when all other means of reaching the work area present a greater hazard or is not possible because of the project's structural design or worksite conditions. It reflects OSHA's longstanding recognition that using cranes and derricks to lift personnel is inherently hazardous and should only be done when it is either the least hazardous means or when, in light of the configuration of the worksite, it is the only means of performing required work.

This paragraph does not apply to work covered by 29 CFR part 1926 subpart R, Steel Erection. Subpart R, at § 1926.753(c)(4), allows the use of equipment to hoist personnel in a platform that complies with subpart CC without the need for a showing that other means of reaching the work area would create a greater hazard or is impossible. OSHA's reasons for including this exception in subpart R are discussed in detail in the preamble to the steel erection standard (66 FR 5196, 5209, Jan. 18, 2001).

One commenter asserted that employers engaged in work covered by 29 CFR part 1926 subpart V, Power Transmission and Distribution, should be allowed to use equipment (with a boom attached platform) to hoist personnel without showing that other means of reaching the work area creates a greater hazard or is not possible. (ID–0144.1.) This commenter bases this assertion on the premise that many manufacturers offer a platform specifically designed to attach to the tip of the boom which may include platform mounted controls. The commenter believes that when using this type of platform, the equipment "essentially transforms the crane into a large aerial lift."

The Agency finds this comparison unpersuasive. As stated above, equipment covered by this section is primarily designed for hoisting materials, not people. C–DAC concluded that it was important to differentiate between equipment primarily designed for moving personnel, such as an aerial lift, as compared to equipment that is primarily designed to lift materials. In the judgment of the Committee, a personnel platform attached to equipment covered by this section presented a greater hazard than a machine that is designed for moving personnel. Therefore, the proposed rule would have required an employer to show that another means of reaching the work area presents a greater hazard or is not possible. OSHA agrees, and is retaining the same substantive requirement in the final rule.

Upon review of this provision, the Agency realized the use of the word "worksite" in the phrase, "conventional means of reaching the worksite" could be misleading. The Agency has changed the phrase to "conventional means of reaching the work area." The term worksite could be interpreted to mean the entire construction worksite. This requirement is about an employee working in a particular area or place on a larger worksite. OSHA finds the use of the phrase "work area" to provide greater clarity. Therefore, the provision is promulgated as proposed incorporating this terminology change.

Paragraph (b) Use of Personnel Platform

Paragraph (b)(1) of this section generally requires the use of a personnel platform when hoisting employees and requires that criteria specified in § 1926.1431(e) be met for such platforms. Paragraph (b)(2), Exceptions, sets forth the construction activities in which hoisting personnel without using a personnel platform is allowed. These activities are: hoisting employees into and out of drill shafts 8 feet and smaller in diameter, pile-driving operations, marine worksites, storage tanks (steel or concrete), shaft operations and chimney operations. OSHA considers the use of a personnel platform in these situations to be generally infeasible or more hazardous than other means. This section contains specific requirements for hoisting personnel during these operations at §§ 1926.1431(o), (p), (r), and (s), including alternatives to the use of a personnel platform. Each of the exceptions is discussed below under the particular paragraph related to that operation.

No comments were received on § 1926.1431(b); it is promulgated as

proposed except that "must" replaces "shall" to ensure that the sentence is imperative, not merely descriptive.

Paragraph (c) Equipment Set-Up

This paragraph sets forth the basic criteria for equipment set-up for personnel hoisting.

Paragraph (c)(1) of this section requires the equipment to be on level, firm and stable footing. A qualified person must determine if the footing is "sufficiently firm and stable." Stable footing is essential to minimize the hazard of the equipment tipping while hoisting personnel. C–DAC determined that the danger of the equipment potentially tipping when hoisting personnel justifies the need for a qualified person to examine and approve the equipment's stability. OSHA agrees.

Paragraph (c)(2) specifies that each outrigger must be both extended and locked. The amount of extension must be the same for all outriggers and also be in accordance with the manufacturer's specifications. Proper placement and deployment of outriggers, C–DAC concluded, is essential to prevent the hazard of equipment tipping while hoisting personnel.

Equal extension of outriggers eliminates the hazard of the operator forgetting that one or more outriggers has a shorter extension and swinging into that area with a load that exceeds the crane's capacity. The essential factor is to have each outrigger extended equally within the manufacturer's specifications and procedures, whether it is a full or partial extension. No comments were received on § 1926.1431(c); it is promulgated as proposed.

Paragraph (d) Equipment Criteria

This paragraph sets forth requirements for the equipment used to hoist personnel.

Paragraph (d)(1) of this section, *Capacity: Use of suspended personnel platform,* limits the total load to 50 percent of the equipment's rated capacity and specifies that the total load includes the hook, load line, and rigging. The 50 percent capacity limit does not apply during equipment proof testing.

The 50 percent limit reflects C–DAC's conclusion that using this equipment to hoist personnel requires a greater number of safety precautions than when lifting materials. The limit provides for an extra margin of safety to prevent overloading the equipment, which could cause tip-over or structural collapse.

One commenter asserted that a specific boom limit of not less than 65 degrees should be added to the requirements of this paragraph. (ID–0178.1.) The commenter did not provide any rationale for this recommendation. Therefore, OSHA defers to C–DAC's expertise in this area and is promulgating this provision as proposed.

Paragraph (d)(2), *Capacity: Use of boom-attached personnel platforms,* establishes the load limit at 50 percent of rated capacity for platforms that are attached to the boom. It also provides an exception to the 50 percent capacity limit during equipment proof testing. The same reasons for the 50 percent limit in § 1926.1431(d)(1) apply here.

In the proposed rule, OSHA requested public comment on whether additional requirements (*i.e.,* requirements other than those specified in the proposed rule for a suspended personnel platform) should apply when using boom-attached personnel platforms. No comments were received stating that this type of platform could present an additional hazard to employees. One commenter stated that this type of platform is safer than a suspended personnel platform. (ID–0144.1.) Since no comments or information were received demonstrating that precautions beyond those already proposed are needed for boom attached personnel platforms, OSHA has not added any further requirements for this type of platform in the final rule. Therefore, this paragraph is promulgated as proposed.

Paragraph (d)(3), *Capacity: Hoisting personnel without a personnel platform,* establishes the load limit at 50 percent of rated capacity. In calculating the load, the weight of the personnel, including the hook, load line, rigging and any other equipment that imposes a load must be included. No comments were received on this provision; it is promulgated as proposed.

Paragraph (d)(4) requires engaging all the equipment's locking or braking devices when the platform has reached its stationary work position. The purpose is to minimize sudden and unintended movement or tipping of the platform when employees have reached the work area. No comments were received on this provision; it is promulgated as proposed.

The provisions of paragraph (d)(5), *Devices,* require certain safety devices for equipment addressed by this section (*see* 73 FR 59829–59830, Oct. 9, 2008). OSHA received one comment on § 1926.1431(d)(5)(i), which stated that a boom angle indicator would not provide useful information on an articulating crane because such cranes have up to three boom sections at various angles and numerous combinations of boom angles will achieve the same lifting capacities. (ID–0206.1.) OSHA agrees that essential design of the articulating crane precludes the use of a boom angle indicator. However, to provide some protection against falling and tipover hazards, OSHA has determined that an alternative device must be used on articulating cranes when they are used to hoist personnel. As discussed under § 1926.1400, *Scope,* the record indicates that many articulating cranes are equipped with automatic overload-prevention devices. Such a device provides protection comparable to that provided by a boom angle indicator, which helps the operator prevent the crane from becoming overloaded by providing the boom angle information needed to apply the crane's load chart. Because overload protection is particularly vital when equipment is used to hoist personnel, OSHA is addressing the comment about articulating cranes by adding § 1926.1431(d)(5)(ii), which specifies that articulating cranes must be equipped with a properly functioning automatic overload protection device.

No comments were received on the remaining provisions of paragraph (d)(5); they are promulgated as proposed, except that §§ 1926.1431(d)(5)(ii)–(vi) have been renumbered as §§ 1926.1431(d)(5)(iii)–(vii) because of the addition of new § 1926.1431(d)(5)(ii). Additionally, with respect to paragraph (d)(5)(vii), the following has been added: "(*See* § 1926.1417 for tag-out and related requirements.)" This sentence has been added to ensure the reader is aware of the applicable tag-out and related requirements of § 1926.1417, *Operation.*

Paragraph (d)(6) prohibits the use of a personnel platform directly attached to a luffing jib. In the experience of C–DAC members, a complete prohibition of use of a boom-attached personnel platform to a luffing jib was necessary in light of the range of motion of a luffing jib and the fact that boom-attached personnel platforms are not designed for attachment to a luffing jib. Thus, only a suspended type personnel platform may be used on a luffing jib. OSHA defers to the expertise of the Committee. No comments were received on these provisions; they are promulgated as proposed.

Paragraph (e) Personnel Platform Criteria

This paragraph establishes the minimum criteria for a personnel platform. Paragraph (e)(1) of this section requires that both the platform and its

attachment/suspension system be designed by a qualified person who understands structural design and be designed for the particular function of personnel hoisting. The purpose of this paragraph is to clearly stipulate that the platform must be designed for employee safety. This addresses the hazards of structural failure of the platform, failure of the attachment/suspension system, and precludes the use of designs that would be inappropriate for hoisting people.

Paragraph (e)(2) requires the system used to connect the personnel platform to the equipment to be within 10 degrees of level. This addresses the hazard of platform tipping by maintaining the platform close to level.

Paragraph (e)(3) requires the platform designer to consider the movement of employees on the platform and design the suspension system to minimize platform tipping from such movement. The purpose is to design the platform in such a way as to limit the likelihood of platform tipping while employees are working from the platform.

Paragraph (e)(4) requires the platform to support its own weight plus a minimum of five times the maximum intended load without failure. C–DAC selected this minimum limit because it would provide an adequate margin of safety for employee protection from structural failure of the platform. The guardrail system and personal fall arrest system anchorages are not subject to this requirement but instead are subject to § 1926.1431(e)(6).

Paragraph (e)(5) requires that welding of any part of the platform or its component parts be performed by a welder who is certified and familiar with the weld grades, types and material specified in the particular platform's design. This requirement is designed to prevent structural failure of the platform due to improper welding.

Paragraph (e)(6) details the requirements of the platform for guardrails, fall arrest anchorage points and enclosure of the platform between the toeboard and mid-rail. Proper guardrails and fall arrest anchorage points are critical fall protection devices, and the required platform enclosure is needed to protect employees below from falling objects. In addition, points to which personal fall arrest systems are attached must meet the anchorage requirements in 29 CFR part 1926 subpart M.

Paragraph (e)(7) requires the placement of a grab rail within the entire perimeter of the personnel platform except for access gates/doors where a grab rail can be impractical. The grab rail provides a place for the employee to hold onto while in the platform instead of using a guardrail as a hand hold. Using a guardrail as a hand hold exposes the employee's hand to being smashed by external objects.

No comments were received on paragraphs (e)(1) through (e)(7); they are promulgated as proposed.

Paragraphs (e)(8)(i) and (ii), *Access gates/doors,* specifies that access gates/doors must be designed to not swing outward and must also have a mechanism that will keep the gate/door from being opened unintentionally.

One commenter, a platform manufacturer, stated that generally their platforms have doors that do not swing outward. (ID–0238.1.) However, for certain custom platforms, such as a one-person platform, the size and design of the platform makes it unsafe for a person to enter the platform and close the gate behind the occupant when it is an inward swinging gate. The commenter indicated that for this type of platform, the gates are designed to swing outward to provide safe access for the individual. To protect against accidental opening of the gate, a positive latching system is included with an outward swinging gate.

The Agency agrees that certain types of personnel platforms could be of a size or configuration that would necessitate an outward swinging access gate or door to allow for safe entry and egress of an occupant. Therefore, OSHA has revised this paragraph to include an exception for this type of platform. When it is infeasible to have an inward swinging gate due to the size or design of the platform, the gate can swing outward. However, the additional feature of a positive latching or similar system that prevents accidental opening must be included. This conforms with the intent of this requirement to prevent an occupant from falling from the platform due to an access gate or door opening unexpectedly.

Paragraph (e)(9) requires adequate headroom to allow employees to stand upright in the personnel platform. This provides adequate space for the employee to work from the platform while keeping his/her entire body within the platform, and contributes to greater stability during platform movement. No comments were received on this provision; it is promulgated as proposed.

Paragraph (e)(10) requires an overhead protective cover attached to the platform when an employee is exposed to falling objects. It mandates the overhead cover of the platform to be of such material and design to provide visibility for both the operator and the employees on the platform, while maintaining adequate protection from falling objects. The reference to a wire mesh with ½ inch openings is an example of a type of material and design that could be used for the platform cover. The nature of the worksite conditions and likely type of falling objects determines the type of material and design needed to protect the platform occupants. Full overhead protection (*i.e.,* no visibility through the protective cover) is allowed when conditions are such that a full protective cover is necessary to protect employees from falling objects.

Paragraph (e)(10) explicitly states that the protection provided by the cover is supplemental to the protection provided by hard hats—the use of hard hats does not obviate the requirement for the platform cover.

One commenter noted that having overhead protection for employees in the power line industry interferes with the ability to work overhead, which is a routine occurrence. (ID–0144.) Additionally, at the public hearing, a representative from a labor union noted that typically an overhead cover would not be used on a personnel platform when they are working near power lines, as it is desirable to minimize the amount of conductive material. (ID–0344.) The Agency acknowledges that it is common for those in the power line industry to work overhead. However, the use of a personnel platform attached to a crane is not the only means of reaching this work location. As noted in § 1926.1431(a), the use of a personnel platform attached to a crane is only permitted where the employer demonstrates that conventional means of reaching the worksite, such as an aerial lift, would be either more hazardous or impossible. OSHA notes that aerial lifts are commonly used in utility work, and it therefore determined that crane-suspended personnel platforms will be used rarely in such work. OSHA also notes that paragraph (e)(10) mandates overhead protection only when an employee is exposed to falling objects, and that should not be a common occurrence in utility work. Therefore, the Agency does not determine that this provision needs to make special accommodation for work near power lines. Paragraph (e)(10) is promulgated as proposed.

Paragraph (e)(11) requires that all edges of the platform be smooth enough to prevent injury. The purpose is to protect the employee from injuries such as lacerations and puncture wounds.

Paragraph (e)(12) requires conspicuous posting of a plate or other permanent written notice on the personnel platform listing the weight of

the platform itself and the platform's rated capacity. The purpose of the provision is to make employees aware of the platform's limits to prevent overloading, which could result in structural failure of the platform or equipment, and to facilitate compliance with § 1926.1431(f)(1), which prohibits loading the platform in excess of its rated capacity.

No comments were received on paragraphs (e)(11) or (e)(12); they are promulgated as proposed.

Paragraph (f) Personnel Platform Loading

Paragraph (f)(1) of this section prohibits loading the platform in excess of its rated capacity.

Paragraph (f)(2)(i) requires the platform to be used exclusively for personnel hoisting and not for hoisting materials. However, it does allow the necessary materials and tools for the work activity to be hoisted along with the employees. Using a personnel platform to hoist materials can lead to damage of the platform due to materials shifting or excessive loading. This can subject the platform to structural stresses that may not be visible and contribute to platform structural failure.

Paragraph (f)(2)(ii) provides an exception to paragraph (f)(2)(i) to allow materials and tools on the personnel platform during the trial lift as long as the materials/tools are properly secured and distributed as specified in § 1926.1431(f)(3).

Paragraphs (f)(3)(i) and (ii) require that any materials and tools that are on the platform during the hoist be secured, and evenly distributed within the platform itself while the platform is suspended. These precautions are designed to prevent platform tipping and injury to employees due to movement of materials or tools during the hoist. OSHA concludes that the combination of paragraphs (f)(2)(ii) and (f)(3) strikes the appropriate balance by accommodating the practical requirements of the job while reducing the potential for overloading.

No comments were received on paragraphs (f)(1) through (f)(3); they are promulgated as proposed.

Paragraph (f)(4) limits the number of employees on a personnel platform to the lesser of either the number needed to perform the work or the maximum number for which the platform was designed. The purpose is to expose the fewest possible number of employees to the hazards presented when hoisting personnel and to minimize the load on the platform to the extent possible.

One commenter stated that boom attached personnel platforms should be limited to a maximum of 4 employees. (ID–0178.1.) Because no reason was provided to support this requirement, OSHA has not changed the requirement that the maximum number of employees on a platform is limited to the lesser of the number the platform was designed to hold or the number required to perform the work. Therefore, paragraph (f)(4) is promulgated as proposed.

Paragraph (g) Attachment and Rigging

Paragraph (g)(1) of this section establishes the requirements for the device used to connect the personnel platform to the hoist line.

The nature and type of connector used is critical to the overall safety of the suspended personnel platform. Under this paragraph, a hook used to connect the hoist line and personnel platform must be the type that can be closed/locked and must be closed/locked when attached to the platform. When a shackle is used in lieu of a hook, it must be of the alloy anchor type with either: A bolt, nut and retaining pin in place; or: The screw type with the screw pin secured against accidental removal. Any detachable device other than a shackle or hook that is used must be closable and lockable to the same extent a hook or shackle would be when in compliance with this section. When used to connect the personnel platform, such a device must be closed and locked to ensure that the platform is secured to the hoist line.

Paragraph (g)(2) requires that each bridle leg in a rope bridle be connected to the master link/shackle in a manner that allows the platform's load to be equally distributed among each bridle leg. The purpose of this type of attachment is to avoid platform tipping.

Paragraph (g)(3) requires that all hardware used for rigging must be able to support five times the maximum intended load applied to or transmitted to that component. Additionally, slings using rotation resistant rope must have a safety factor of ten. These measurements continue the requirements that were in former § 1926.550(g)(4)(iv)(C).

Paragraph (g)(4) requires the eyes in wire rope slings to be fabricated with thimbles. The purpose of this requirement is to prevent excessive wear to the eyes and possible failure of the platform's rigging.

No comments were received on paragraphs (g)(1) through (g)(4); they are promulgated as proposed with minor grammatical clarifications.

Paragraph (g)(5) requires that bridles and rigging used to suspend the personnel platform be used exclusively for hoisting personnel operations. Rigging components must be dedicated for the sole use of personnel hoisting to help ensure that they are not damaged. Materials hoisting can lead to damage of the rigging components due to material shifting or excessive loading. This can make the rigging components susceptible to structural stress that may not be visible, yet contribute to failure. To clarify that the bridles and rigging used for hoisting personnel may only be used if they have not ever been used for other operations prior to being designated for the purpose of hoisting personnel, OSHA has modified the regulatory text from the proposed rule to state that the bridles and rigging "must not have been used for any purpose other than hoisting personnel."

Paragraph (h) Trial Lift and Inspection

Paragraph (h)(1) of this section requires a trial lift without occupants and with the platform loaded to at least the anticipated liftweight. The purpose of the trial lift is to confirm that: The lift set-up works properly; the lift route is free of obstacles; the work location is accessible; no work location will place the crane or derrick in such a configuration where the intended load would exceed 50 percent of the equipment's rated capacity; the soil or other supporting surface is stable; and that the lift route is suitable for the intended lift. The path of the trial lift must begin at the point the employees enter the platform and end at the ultimate location the platform is being hoisted to and positioned (end point). When there are multiple destination locations from a single set-up point, the trial lift must be conducted in one of two ways.

First, individual lifts may be conducted in which the platform is moved to one of the end points from the starting point, returned to the starting point, moved to a second end point, again returned to the starting point, and the process repeated until each end point has been reached. Alternatively, a single lift may be conducted from the starting point to all of the end points in sequence, without returning to the starting point until after the last end point has been reached.

OSHA determined that the phrase "a single trial lift for all locations" in the text of the proposed rule for § 1926.1431(h)(1), based on C–DAC consensus language, was not sufficiently clear to describe the intended meaning of this requirement (*see* 73 FR 59714, 59940–59941, Oct. 9, 2008). In addition, OSHA was concerned that allowing the trial lift to be conducted in either of these two ways, irrespective of how the personnel will actually be hoisted, may

result in the trial lift failing to reveal problems that would be encountered in the actual personnel lift.

To address these concerns, OSHA suggested language in the preamble to the proposed rule to clarify that the employer must use a lift path and sequence of stops in the trial lift that will match the lift path and sequence of stops when actually hoisting personnel. As noted above, the purpose is to detect any problems that could arise before personnel are hoisted. OSHA asked for public comment on these issues and the suggested language (73 FR 59714, 59833, Oct. 9, 2008).

Two commenters stated that the language in the proposed rule was sufficient and should not be changed (ID–0205.1; –0213.1); another commenter stated that the text suggested by OSHA in the preamble to the proposed rule should be used in the final rule (ID–0104.1). The Agency concludes this suggested text provides a better description of what needs to be done to ensure safety—*i.e.,* that the trial lift method needs to match the actual hoist method. Therefore, the provision in the final rule includes this suggested language.

Paragraph (h)(2) requires the trial lift to take place immediately prior to each shift when hoisting personnel, and each time the equipment is moved and set up in a new location or a previously used location. This is to ensure that the conditions for the trial lift will be nearly identical to those of the actual personnel lift. Additionally, a trial lift must be done each time the lift route is changed, unless a competent person determines the new lift route does not present new factors affecting safety.

Paragraph (h)(3) requires a competent person to ensure that all required safety devices and operational aids required by this section are activated and properly functioning, that nothing interferes with the equipment or personnel platform during the trial lift, that the lift load does not exceed 50 percent of the equipment's rated capacity, and that the load radius used is accurately determined. These requirements ensure that necessary safety measures are in place and validated by a competent person for the trial lift. It is important for this to be the responsibility of a competent person because such a person not only has the knowledge necessary to make the determinations, but also has the authority to take any necessary corrective action.

Paragraph (h)(4) establishes the duties of the competent person immediately after the trial lift. It requires the competent person to conduct a visual inspection of the personnel platform and equipment to determine if there is any problem or defect resulting from the trial lift or if it produced any adverse effect. In addition, the competent person must ensure that the test weight used during the trial lift has been removed prior to personnel loading.

The purpose of these requirements is to ensure that any defects in the equipment, base support, or ground and personnel platform, revealed by the trial lift are seen by a competent person prior to hoisting personnel. (Note that, under § 1926.1431(h)(6), any condition found during the trial lift that fails to meet a requirement of this standard or otherwise constitutes a safety hazard must be corrected before hoisting personnel.) Paragraph (h)(4) continues the requirements from former § 1926.550(g)(5)(iv) while adding the requirement that the competent person ensure that the test weight is removed. This is needed because overloading the personnel platform can occur if the test weights are not removed and left on the platform when hoisting personnel.

No comments were received on §§ 1926.1431(h)(2) through (h)(4); they are promulgated as proposed.

Under paragraph (h)(5)(i), immediately prior to each personnel lift, the competent person must inspect the platform while it is lifted a few inches to ensure that the platform is secure and properly balanced.

The purpose of this procedure is to ensure that, with the occupants and materials/tools to be hoisted on the platform immediately before the hoist is to take place, the platform is secure and properly balanced. The purpose of having the occupants and materials/tools on board during this check is twofold. First, it ensures that the check takes place just before the personnel lift, which minimizes the chance that damage or other problems affecting the platform's security will occur after the check. In addition, it would be difficult to ensure that the platform will be properly balanced when in actual use without having the employees and materials/tools on board.

In the proposed rule, the text did not state that personnel and materials were to be on board during the trial lift (*see* 73 FR 59941, Oct. 9, 2008). In the preamble to the proposed rule, the Agency asked for comment on adding the phrase "with the personnel and materials/tools on board" to clarify the intent of this requirement (*see* 73 FR 59833, Oct. 9, 2008).

Three comments were received in response to the Agency's request for comment on this issue. (ID–0104.1; –0205.1; –0213.1.) All three commenters agreed with the Agency's suggested revision. Therefore, the final rule reflects this change in § 1926.1431(h)(5)(i).

Paragraph (h)(5)(ii) requires a competent person to determine that hoist ropes are free of defects, that multiple part lines are not twisted around each other, and that the primary attachment is centered over the platform. If the load rope is slack, the competent person must inspect the hoisting system to ensure the rope lines are properly seated on drums and in sheaves. Paragraphs (i) and (ii) continue the requirements from former § 1926.550(g)(5)(iii), with the additional clarification that hoist ropes must be free of deficiencies (that is, not just free of "kinks," as was required in former § 1926.550(g)(5)(iii)(A)). The purpose of these requirements is to mandate an additional final review by a competent person to evaluate the personnel platform, the balance of the load, and the lifting devices to ensure that necessary safety requirements are met.

No comments were received on § 1926.1431(h)(5) (ii); it is promulgated as proposed.

Paragraph (h)(6) establishes that any condition that fails to meet the requirements of this standard or otherwise creates a safety hazard must be corrected before personnel are hoisted. This includes conditions found during the trial lift or in any inspection or subsequent review of the equipment, platform or rigging. No comments were received for this provision. However, the following reference has been added to this provision for clarification: "(*See* § 1926.1417 for tag-out and related requirements.)." This sentence has been added to ensure the employer is aware of the applicable tag-out and related requirements of § 1926.1417, *Operation.*

Paragraph (i) [*Reserved.*]

Paragraph (j) Proof Testing

This paragraph delineates the requirements of and method for proof testing the personnel platform and rigging. It requires the proof test to be done at each jobsite prior to hoisting personnel and after any repair or modification of the platform. The proof test must be at 125 percent of the platform's rated capacity with an evenly distributed test load. The platform must be lowered by controlled load lowering, braked, and held in a suspended position for at least five minutes. After this proof test, the competent person must inspect the platform and rigging to determine if it has passed the proof test. If not, all deficiencies that pose a safety hazard must be corrected and another proof test performed. The competent

person must determine that the platform and rigging have successfully passed the proof test before any personnel hoisting begins.

The purpose of this paragraph is to determine if the structural integrity of the personnel platform is intact or if it has been affected by any condition, damage, repair or modification which could result in structural failure or other safety hazards from the platform or rigging. This ensures the load lowering and braking mechanisms are functioning properly before personnel are lifted. In addition, § 1926.1431(j)(3) clarifies that only deficiencies that present a safety hazard need be corrected; minor deficiencies bearing no relation to safety do not need to be corrected.

In addition, the Agency is adding a reference to the requirements of § 1926.1417, *Operation,* to ensure the reader is aware of the applicable tagout and startup requirements of § 1926.1417, *Operation.* Paragraph (j)(3) of this section is otherwise promulgated as proposed.

One commenter stated that proof testing should not be required for boom attached personnel platforms, since there is no rigging and a simple visual inspection of the mounting hardware would be sufficient. (ID–0144.1.)

OSHA disagrees with this comment. The purpose of this proof test is to ensure the sufficiency and integrity of the system that will be hoisted by the crane/derrick. In the case of a suspended platform, that system consists of the platform and the rigging that attaches it to the crane/derrick. In the case of a boom-attached platform, that system consists of the platform with its boom-mounting hardware (in such cases OSHA considers the boom-mounting hardware part of the platform itself). Therefore, even when rigging is not used, the proof test still needs to be performed to help ensure the adequacy of the platform, including its attachment system.

Therefore, §§ 1926.1431(j)(1), (2) and (4) are promulgated as proposed.

Paragraph (k) Work practices

Paragraph (k)(1) of this section requires hoisting the personnel platform in a slow, controlled, cautious manner, with no sudden movements of the equipment or platform. This precaution minimizes the likelihood of platform tipping, loss of footing, and loss of control of the platform by the operator during hoisting.

Paragraph (k)(2)(i) requires that all occupants of the personnel platform keep all parts of the body inside the platform while it is being raised, lowered or moved horizontally. This does not apply when a platform occupant must position the platform. Additionally, this does not apply when a platform occupant is performing the duties of a signal person. The purpose of this requirement is to prevent an employee from having a body part struck by or caught in between the personnel platform and another object.

Paragraph (k)(2)(ii) prohibits platform occupants from standing on, sitting on, or working from any surface other than the floor of the personnel platform during hoisting or when working from the platform. It prohibits working from a railing or toeboard or the use of any means or device to raise the employee's working height. The purpose is to ensure that the occupants benefit from the protections of the guardrail system and do not destabilize the platform.

Paragraph (k)(2)(iii) prohibits platform occupants from pulling the platform out of plumb in relation to the hoisting equipment. The purpose is to prevent tipping of the platform with employees on board, which could exacerbate the fall hazard.

Paragraph (k)(3) requires a personnel platform that is not landed to be secured to the structure, before employees enter or exit the platform, to prevent dangerous movement of the platform at these times, which could exacerbate the fall hazard or cause an employee's body part to be struck by or caught in between the personnel platform and the structure. Paragraph (k)(3) allows an exception when a greater hazard is created by securing the platform to the structure.

Paragraph (k)(4) requires the operator to receive confirmation that the platform is no longer tied to the structure and is freely suspended before the operator moves the platform. This requirement prevents structural damage to the platform and/or rigging and prevents the fall hazard that could result from pulling the platform out of plumb if there were an attempt to move it while it is still attached.

Paragraph (k)(5) requires the use of tag lines when necessary to control the personnel platform. The purpose is to provide an additional way to control platform stability to decrease the risk of injury from loss of footing or from the platform striking an object.

Under paragraph (k)(6), where the platform is not equipped with any controls, the equipment operator is required to remain at the equipment controls at all times while the personnel platform is occupied. Because there are no controls in the personnel platform, the equipment operator must be available to make any necessary adjustments to protect the employees from injury from any condition arising after the platform is placed at the working location. Paragraph (k)(6) requires the operator to stay at the equipment controls, and on site and in view of the equipment, at all times the platform is occupied, whether or not the crane engine is running. Equipment controls, as discussed here and in § 1926.1431(k)(7), include remote controls that are used to control the boom and swing functions of the equipment. This subpart does not prohibit the use of remote controls for equipment by an operator. *See* discussion of the use of remote controls at the preamble for § 1926.1417(e)(1). The Agency has added the "on site and in view of the equipment" requirement in the final rule to address the situation where the operator uses a remote control to operate the equipment. The same requirement was included in proposed § 1926.1431(k)(7) to address the same issue, and is included in final § 1926.1431(k)(7), as discussed below.

No comments were received on paragraphs (k)(1) through (k)(6); they are promulgated as proposed with the exception of the addition noted for (k)(6).

Paragraph (k)(7), *Platforms with controls,* applies when a personnel platform has controls. Controls on certain personnel platforms enable a platform occupant to move both the platform and the boom. Other platform designs enable an occupant to control only the platform/basket itself, for example, to level the basket as it is boomed up or down.

Paragraph (k)(7)(i) requires the platform occupant using the platform's controls to be a qualified person with respect to their use, including the safe limitations of the equipment and hazards associated with its operation. Such knowledge and skill is essential for the safety of the platform occupants and employees in the surrounding area.

Proposed paragraph (k)(7)(ii) required the equipment operator to be at the equipment controls, in the personnel platform, or on site and in view of the equipment. In the proposed rule, the Agency requested public comment on whether this paragraph should be reworded to clarify the circumstances for selecting a location for the equipment operator (73 FR 59835, Oct. 9, 2008). Two commenters stated that, regardless of which option is chosen, the operator must be in a position that allows him to control the boom and swing functions of the equipment. (ID–0205.1; –0213.1.) However, these commenters also stated that the proposed regulatory text did not need to

be revised.
(ID–0205.1; –0213.1.)

Upon reviewing the paragraph as proposed and considering these comments, OSHA finds that the language used in proposed 1926.1431(k)(7)(ii) needs to be changed to clearly specify that an operator has to be able to control the boom and swing functions, wherever the operator is located. If the platform does not have controls for the boom and swing functions of the equipment, then it is essential that the operator be at the set of equipment controls which include these functions, because they are crucial for the safety of personnel being hoisted. These equipment controls may be on the platform, in the cab, or on a remote control. The operator must be able to take immediate action when necessary (such as, for example, when there is unexpected platform or equipment movement, a sudden change in wind conditions, or an injury to a platform occupant). In the final rule, OSHA has modified § 1926.1431(k)(7)(ii) accordingly.

Paragraph (k)(7)(iii) requires the platform's operating manual to be on the platform or on the equipment while the platform is occupied. The purpose is to have ready access to manufacturer's operating information when employees are on the platform. No comments were received on this provision; it is promulgated as proposed.

Paragraph (k)(8)(i), *Environmental conditions—Wind,* requires a qualified person to determine if it is unsafe to hoist personnel when the wind speed (gust or sustained) exceeds 20 mph. C–DAC selected this triggering wind speed based in part on ASME B30.23–2005, which prohibits personnel hoisting operations when wind speed exceeds 20 mph. High winds increase the likelihood of platform tipping, sudden unexpected movement of the platform, or structural failure of the equipment. While OSHA is declining to set a specific wind speed threshold at which all hoisting operations must cease, it agrees that 20 mph is an appropriate point at which a safety determination be required. If the qualified person determines that hoisting personnel is unsafe, hoisting operations must not begin or, if already in progress, must be terminated.

One commenter questioned where and how the wind speed must be determined. (ID–0120.) With respect to where the measurement must be taken, the language of this provision refers to wind speed "at the personnel platform." This means that a safety determination is required at any time at which the wind to which the platform is exposed exceeds 20 mph, whether the platform is on the ground or suspended.

The provision does not specify any particular type of device or protocol for taking the measurement. The Agency does not determine that such specificity is needed; any generally accepted method that accurately measures wind speed would suffice. Therefore, this paragraph is promulgated as proposed.

Paragraph (k)(8)(ii), *Environmental conditions—Other weather and environmental conditions,* requires a qualified person to determine if it is not safe to hoist personnel when there are indications of dangerous weather or any other impending/existing dangerous environmental condition. Upon determination that it is unsafe, personnel hoisting operations must not be started or must be terminated if already in progress.

Paragraph (k)(9) requires employees being hoisted to remain in direct communication with either the signal person (where used) or equipment operator at all times. In some instances the platform occupants are in a better position to see potential problems developing than the operator, or to recognize there is some other safety-related need for the operator to take action. In addition, there are instances when the operator becomes aware of a developing problem and needs to communicate that information to the employees being hoisted. This provision ensures that such information can be communicated quickly between the hoisted employees and operator.

No comments were received on paragraphs (k)(8)(ii) or (k)(9); they are promulgated as proposed.

Paragraphs (k)(10)(i) and (ii), *Fall protection,* require employees on the personnel platform to be provided with and use a personal fall arrest system attached to a structural member within the personnel platform. The fall arrest system (including the attachment point) must comply with § 1926.502, *Fall protection systems criteria and practices.* When hoisting personnel over water, a personal fall arrest system would not be required since, in the event that an error or failure occurred resulting in the employees being in the water, being tied-off exacerbates the drowning hazard. However, the requirements of § 1926.106, *Working over or near water,* do apply. Upon review of the rule, the Agency determined that it would provide greater clarity if the note referring to the requirements of § 1926.106 was included in paragraph (k)(10)(ii), instead of at the end of this paragraph. The regulatory text of the final rule reflects this change.

The purpose of this requirement is to protect employees from a fall hazard while in the personnel platform in the event of sudden movement, tipping, or other circumstance in which a fall would not be prevented by the platform's guardrail system.

Paragraph (k)(11)(i), *Other load lines,* mandates that while hoisting personnel no other lifts may be made with any of the equipment's other load lines. This provision serves several purposes. First, it prevents platform tipping due to entanglement with other load lines or loads. Second, it reduces the chance that the equipment could be overloaded. Third, when hoisting personnel, it is essential that the operator's full attention be devoted to the hoisted personnel; use of another load line necessarily diverts his/her attention. An exception applies for pile driving operations, as the pile driver is always suspended on a load line and at times personnel have to be hoisted on another line to conduct work during the pile driving operation.

In the preamble to the proposed rule, OSHA explained that the C–DAC consensus language for this provision would have applied the requirement only when personnel were suspended on a personnel platform. However, the standard permits personnel to be hoisted without a personnel platform under certain circumstances. Since the requirement also needs to apply in those circumstances, OSHA expanded the language so that, in proposed paragraph (k)(11)(i), it also applied in those circumstances (*see* 73 FR 59836, Oct. 9, 2008). No comments were received on this issue; the provision is promulgated as proposed.

Paragraph (k)(11)(ii), *Other load lines,* allows the use of a winch line while hoisting personnel when all of the following factors are present: the personnel platform is a factory-produced boom-mounted personnel platform incorporating a winch as original equipment, the load on the winch line does not exceed 500 pounds, and the load on the winch line itself does not exceed the rated capacity of the winch and platform. C–DAC selected these factors based on the experience of its members, and determined that when all of these factors are present, there is little chance that the use of the winch line will compromise employee safety. OSHA agrees.

Paragraph (k)(12)(i), *Traveling—equipment other than derricks,* prohibits any traveling by equipment with hoisted employees except in two circumstances. The first is where the equipment is traveling on fixed rails. The second is where the employer demonstrates that

there is no less hazardous way to perform the work than by traveling. However, this second exception does not apply to rubber-tired equipment, for which traveling is always prohibited. Traveling with hoisted employees is also always prohibited for derricks, as set forth under § 1926.1431(k)(13). (*See* the discussion of these provisions in the preamble to the proposed rule, 73 FR at 59836–59837, Oct. 9, 2008.)

No comments were received on paragraphs (k)(10), (k)(11)(ii) or (k)(12)(i); they are promulgated as proposed. However, the note that appeared at the end of (k)(10) has been added to (k)(10)(i) as described above.

Paragraph (k)(12)(ii) (A)–(E), *Traveling—equipment other than derricks,* establishes certain criteria that must be met when traveling with employees in the situations permitted under paragraph (k)(12)(i).

One commenter stated the requirement to limit travel to the boom length was unclear. (ID–0053.1.) This commenter believed it could be interpreted to limit the length of the boom itself and not the distance the equipment can travel. The Agency concludes the requirement as written in the proposed rule, "Travel shall be limited to boom length," is clear. However, in the interest of providing additional clarity, the Agency is adding the word "equipment" to the text of the final rule so that it will read, "Equipment travel must be limited to boom length." The addition of this word makes it clear the focus of the requirement is the distance of travel for the equipment.

Paragraph (k)(13), *Traveling—derricks,* prohibits a derrick from traveling while it is hoisting personnel. In C–DAC's experience, hoisting employees on a traveling derrick is dangerous because derricks are not sufficiently stable when traveling. No comment was received on this provision; it is promulgated as proposed.

Paragraph (l) [*Reserved.*]

Paragraph (m) Pre-Lift Meeting

This paragraph requires a meeting prior to the trial lift at each new work location to review the requirements of this section and the procedures to be followed when hoisting personnel. The pre-lift meeting would be attended by the equipment operator, signal person (when one is used for the lift), employees to be hoisted, and the person responsible for the task to be performed.

Also, this paragraph requires this meeting to be repeated when an employee is newly assigned to the operation. The purpose of this requirement is to make all employees involved in the personnel hoisting operation aware of the requirements of this section and the plan for the personnel lift. This provides an opportunity for all employees involved to have a common and complete understanding of the hoisting operation and to give uniform information and instructions immediately prior to the lift. This addresses hazards which result from misunderstanding of the requirements, particular lift conditions or procedures. no comments were received on this provision; it is promulgated as proposed.

Paragraph (n) Hoisting Personnel Near Power Lines

This paragraph prohibits hoisting personnel within 20 feet of a power line 350 kV and below or within 50 feet of a power line over 350 kV, except for work that is covered by 29 CFR part 1926, subpart V, Power Transmission and Distribution.

The purpose of this requirement is to establish a safe clearance distance from power lines to protect employees from an electrocution hazard that could result if the personnel, a personnel platform, or equipment makes electrical contact with a power line. The clearance distances are similar to those in §§ 1926.1407 and 1926.1408 for equipment operating near power lines. However, under §§ 1926.1407 and 1926.1408, clearances less than 20 and 50 feet are permitted for certain voltage ranges. However, C–DAC determined that when personnel are hoisted near a power line it is necessary to require the minimum distances of 20 feet for lines 350 kV or less and 50 feet for lines over 350kV. Note that all other requirements in subpart CC regarding power line safety must also be met, including §§ 1926.1406–1409. No comments were received on this provision; it is promulgated as proposed.

Paragraph (o) Hoisting Personnel in Drill Shafts

This paragraph provides requirements when hoisting personnel in drill shafts that are 8 feet and smaller in diameter. Drill shafts of this size may be either too small to use a personnel platform, or use of a personnel platform might not allow the room needed to perform the necessary work. Therefore, due to the limitations of a drill shaft of this size, use of a personnel platform would typically be infeasible and a boatswain's chair may be the only practical means of hoisting personnel and performing the necessary work.

One commenter stated that personnel should not be hoisted into a drill shaft unless the employer determined that use of a video camera was both impractical and infeasible. (ID–0120.0.) However, this commenter did not provide any explanation or supporting documentation of how this would improve safety beyond what the proposed rule required. As discussed at paragraph (a) of this section, equipment may be used to hoist personnel only when all other means of reaching the work area presents a greater hazard or is not possible because of the project's structural design or worksite conditions.

Because no information was provided to justify an additional restriction on an employer, OSHA is promulgating this provision as proposed.

Section 1926.1431(o)(1) allows the employer to use either a personnel platform or a boatswain's chair for hoisting personnel.[126] When an employer elects to use a boatswain's chair instead of a personnel platform, particular supplementary requirements in paragraph (o)(3) must be met. Those requirements address the heightened danger that the employee may fall from the chair or contact the wall of the drill shaft.

Paragraph (o)(2) requires the employer to follow requirements (a) through (n) of § 1926.1431 when using a personnel platform to hoist employees.

Section 1926.1431(o)(3) sets out additional requirements that must be met when the employer elects to use a boatswain's chair instead of a personnel platform for hoisting personnel.

Paragraph (o)(3)(i) identifies which of the provisions in § 1926.1431 (a)–(n) apply when using a boatswain's chair. For the applicable provisions, the phrase "boatswain's chair" is substituted for either "personnel platform" or "platform."

The § 1926.1431 paragraphs not listed in § 1926.1431(o)(3)(i) do not apply when a boatswain's chair is used. This is because those requirements are either specifically applicable to personnel platform design and use, or are otherwise not relevant when hoisting personnel in a drill shaft.

Paragraph (o)(3)(ii) requires a signal person to be stationed at the opening of

[126] Note that, under § 1926.1431(a), an employer may only use equipment to hoist personnel when other means of reaching the work area would present a greater hazard or would not be possible because of the project's structural design or worksite conditions. Therefore, before using either means to hoist personnel in drill shafts, the employer would need to determine and demonstrate that hoisting personnel instead of using other means of access to the work area is the least hazardous, or the only, means to gain access to the work area.

the shaft during personnel hoisting. The purpose is to ensure that a signal person is used and stationed at the best position to watch the employee being hoisted, since the hoisted employee is out of the view of the operator.

Paragraph (o)(3)(iii) requires the employee to be hoisted in a slow, controlled descent and ascent. This is to limit swinging or sudden movement of the boatswain's chair to prevent a fall from the chair or impact with the walls of the drill shaft.

Paragraph (o)(3)(iv) requires the employee in the boatswain's chair to use personal fall arrest equipment, including a full body harness, that is attached independent of the crane/derrick. The purpose of requiring a tie off point independent of the equipment is to protect the employee from a sudden drop or fall due to equipment failure or other problem associated with the operation of the crane/derrick, and to protect the employee from falls when accessing and egressing the boatswain's chair.

Paragraph (o)(3)(v) requires fall protection equipment to comply with § 1926.502, *Fall protection systems criteria and practices.*

Paragraph (o)(3)(vi) requires the boatswain's chair (excluding the personal fall arrest anchorages) to be capable of supporting, without failure, its own weight plus a minimum of five times the maximum intended load. This is similar to the requirement for personnel platforms at § 1926.1431(e)(4). The strength requirement applicable to personal fall arrest anchorages is in § 1926.502(d)(15).

Paragraph (o)(3)(vii) mandates that only one person can be hoisted at a time when using a boatswain's chair. No comments were received on paragraphs (o)(1)—(o)(3); they are promulgated as proposed.

Paragraph (p) Hoisting Personnel for Pile Driving Operations

This paragraph provides requirements for hoisting personnel in pile driving operations. Section 1926.1431(p)(1) requires the employer to use either a personnel platform or boatswain's chair when hoisting personnel in pile driving operations. As with drill shafts, use of a personnel platform will often be infeasible in this type of operation, and § 1926.1431(p)(1) gives the employer the option of choosing which method to use. No comments were received on this provision; it is promulgated as proposed.

Section 1926.1431(p)(2) delineates the alternatives to using an anti two-blocking device during pile driving operations, since the heavy vibrations of the pile driver typically damage this device. (*See* § 1926.1431(d)(45)(v), *Anti two-block*). The language C–DAC developed for this provision did not distinguish between lattice boom cranes and telescopic boom cranes. Its language would have required, for either type of equipment, that the cable used to hoist personnel be clearly marked so that they equipment operator would have sufficient time to stop hoisting to prevent two-blocking, or to use a spotter to warn the operator in time to prevent two-blocking. However, in reviewing the C–DAC language, OSHA realized that marking the cable is not a sufficient means of preventing two-blocking in telescopic boom cranes when extending the boom because extending the boom while the load hoist remains stationary can cause two-blocking. Instead, a spotter is always needed to warn against two-blocking for telescopic boom cranes.

Consequently, for the proposed rule, OSHA modified the language used by C–DAC and addressed lattice boom cranes and telescopic boom cranes separately. Proposed § 1926.1431(p)(2) requires employers, when using lattice boom cranes, to clearly mark the cable used to hoist personnel at the point on the cable that allows the equipment operator to stop hoisting in time to prevent two-blocking, or to use a spotter to warn the operator in time to prevent two-blocking. When using lattice boom cranes, in addition to marking the cable as above, a spotter must also be used. (*See* the discussion of the proposed provision at 73 FR 59838, Oct. 9, 2008.)

In the preamble to the proposed rule, OSHA asked for public comment on this change to the C–DAC language, but no comments were received on this issue. Therefore, the provision is promulgated as proposed.

Section 1926.1431(p)(3) requires the employer to follow §§ 1926.1431(b) through (n) when using a personnel platform to hoist employees. Section 1926.1431(a) does not apply because the employer is not required to demonstrate that the other means of access listed in § 1926.1431(a) are infeasible before being permitted to hoist personnel during pile driving operations. Demonstrating infeasibility prior to using a personnel platform is not required because in most instances another means of access is not feasible for this operation. No comments were received on this provision; it is promulgated as proposed.

Section 1926.1431(p)(4) establishes the requirements for use of a boatswain's chair instead of a personnel platform for hoisting personnel.

Section 1926.1431(p)(4)(i) identifies which of the provisions in §§ 1926.1431(a)–(o) apply when using a boatswain's chair in a pile driving operation. For the applicable provisions, the phrase "boatswain's chair" is substituted for either "personnel platform" or "platform."

The § 1926.1431 paragraphs not listed in § 1926.1431(p)(4)(i) do not apply when a boatswain's chair is used. This is because those requirements are either specifically applicable to personnel platform design and use, or are otherwise not relevant when hoisting personnel in a pile driving operation.

Section 1926.1431(p)(4)(ii) requires the employee to be hoisted in a slow, controlled descent and ascent. This is to limit swinging or sudden movement of the boatswain's chair to prevent a fall from the chair or impact with equipment or other structures.

Section 1926.1431(p)(4)(iii) specifies that the employee in the boatswain's chair use personal fall arrest equipment, including a full body harness. The fall arrest system must be attached to either the lower load block or the overhaul ball. The purpose of having the fall protection equipment and tie off point independent of the boatswain's chair and rigging used to hoist the employee is twofold: it protects the employee from a sudden drop or fall due to failure of that equipment and protects the employee when accessing and egressing the boatswain's chair.

Section 1926.1431(p)(4)(iv) requires fall protection equipment to comply with § 1926.502, *Fall protection systems criteria and practices.* This ensures that the fall protection equipment is sufficient to safely arrest the employee's fall.

No comments were received on paragraphs (p)(4)(i)—(p)(4)(iv); they are promulgated as proposed.

The C–DAC consensus document did not include provisions to require a minimum strength for the boatswain's chair and to require that only one person be hoisted at a time, when using a boatswain's chair in pile driving operations. As explained in the preamble to the proposed rule, the Agency determined these were unintended omissions by the Committee. OSHA stated that it planned on including such provisions in the final rule, and asked for comment. No comments were received on this issue. Therefore, the final rule includes § 1926.1431(p)(4)(v), which requires the boatswain's chair to be capable of supporting its own weight and at least five times the maximum intended load, and § 1926.1431(p)(4)(vi), which states

that only one person may be hoisted at a time.

Paragraph (q) [*Reserved.*]

Paragraph (r) Hoisting Personnel for Marine Transfer

This paragraph addresses the particular hazards related to hoisting personnel for transfer to or from a marine construction worksite. This paragraph applies when hoisting employees solely for such transfer.

Section 1926.1431(r)(1) requires the employer to use either a traditional personnel platform or a marine-hoisted personnel transfer device. This paragraph allows an employer to use a marine-hoisted personnel transfer device instead of a personnel platform for several reasons. Transferring personnel to or from a marine construction site poses special problems due to the effects of waves and gusting wind. These effects, which can be unpredictable, can result in a situation where the equipment operator will not be able to adequately control the equipment. In such a situation, the device used to transfer the employees may suddenly wind up in the water. Another situation is when employees may need to jump into the water to avoid a collision with the ship or an object on the construction site. A third situation is when the operator is unable to control the equipment while the employees are attempting to board or disembark. The longer it takes to get on or off, the greater this risk becomes. In all of these scenarios the employees need to be able to enter and exit the device being used to transfer them quickly and easily.

A personnel platform, which is designed, in part, to keep the employees inside, would, in most marine situations, compound the hazard faced by the employees, since they can be difficult to enter and exit quickly. In contrast, a marine-hoisted personnel transfer device is designed specifically to facilitate the employees' rapid entry and exit. The employer has the option of using such a device so that it may be used when the conditions are such that the risk of being prevented from entering or exiting quickly is greater than the risk of unintentionally falling.

In the proposed rule, OSHA requested public comment on whether paragraph (r)(1) should require the employer to first establish that use of a marine-hoisted personnel-transfer device was not less safe than a personnel platform. No comments were received on this issue.

Paragraph (r)(2) requires the employer to follow the requirements of paragraphs (a) through (n) of § 1926.1431 when using a personnel platform to hoist employees. As discussed previously, these provisions are designed to ensure that hoisting personnel is the safest means of the employees gaining access to the work and that the personnel platform's design and use are adequate from a safety standpoint.

Paragraph (r)(3) establishes the requirements when the employer elects to use a marine-hoisted personnel-transfer device instead of a personnel platform for hoisting personnel.

Paragraph (r)(3)(i) identifies which of the provisions in §§ 1926.1431 (a) through (q) apply when using a marine-hoisted personnel-transfer device. For the applicable provisions, the phrase "marine-hoisted personnel-transfer device" is substituted for either "personnel platform" or "platform."

The § 1926.1431 paragraphs not listed in § 1926.1431 (r)(3)(i) do not apply when a marine-hoisted personnel-transfer device is used. This is because those requirements are either specifically applicable to personnel platform design and use, or are otherwise not relevant when hoisting personnel at a marine worksite.

Paragraph (r)(3)(ii) requires the marine-hoisted personnel-transfer device to be used exclusively for transferring employees. One purpose of this provision is to prevent the device from being used as a work platform. The device's design, which specifically facilitates easy and rapid entry and exit, is ill suited to providing a safe work platform. In particular, it is not designed to prevent a fall when an employee is using his or her hands for working rather than holding on to the device. Also, it is ill suited as a material transfer device because it is not designed to prevent materials from falling from it, and could be damaged by such use.

Paragraph(r)(3)(iii) limits the number of employees on the marine-hoisted personnel-transfer device to the maximum number the device is designed to hold. This prevents overloading, which can result in structural failure of the device. It also prevents overcrowding, which can cause an unintended fall or preclude a worker from entering or exiting as rapidly as when used properly.

Paragraph (r)(3)(iv) requires each employee being transferred on a marine-hoisted personnel-transfer device to wear a U.S. Coast Guard personal flotation device that is approved for industrial use. The purpose is to protect the employee from drowning if the device enters the water, or if the employee falls or needs to jump into the water.

No comments were received on paragraphs (r)(1)—(r)(3); they are promulgated as proposed.

Paragraph (s) Hoisting Personnel for Storage-Tank (Steel or Concrete), Shaft and Chimney Operations

This paragraph establishes requirements when hoisting personnel in storage-tanks (steel or concrete), shaft operations and chimney operations. Use of a personnel platform, while usually feasible, is infeasible in some circumstances involving these operations due to the nature of the work activity. Consequently, boatswain's chairs are allowed instead of a personnel platform in such instances, but only when the employer can demonstrate that use of a personnel platform is infeasible. For these reasons, § 1926.1431(s)(1) allows the employer to use a boatswain's chair only when the employer has determined that use of a personnel platform is infeasible.

Section 1926.1431(s)(2) requires the employer to follow the requirements of paragraphs (a) through (n) of § 1926.1431 when using a personnel platform to hoist employees. Under § 1926.1431(a), an employer may only use equipment to hoist personnel when other means of reaching the work area presents a greater hazard or is not possible because of the project's structural design or worksite conditions. Therefore, before using a personnel platform to hoist personnel in storage tanks (steel or concrete), shaft operations and chimney operations, the employer must determine that hoisting personnel instead of using other means of access to the work area is the least hazardous, or the only, means to gain access to the work area.

Section 1926.1431(s)(3) establishes the requirements when the employer uses a boatswain's chair instead of a personnel platform for hoisting personnel.

Section 1926.1431(s)(3)(i) identifies which of the provisions in §§ 1926.1431(a) through (r) apply when using a boatswain's chair. For the applicable provisions, the phrase "boatswain's chair" is substituted for either "personnel platform" or "platform."

The § 1926.1431 paragraphs not listed in § 1926.1431(s)(3)(i) do not apply when a boatswain's chair is used. This is because those requirements are either specifically applicable to personnel platform design and use, or are otherwise not relevant when hoisting personnel on a boatswain's chair in storage tanks (steel or concrete), shaft operations and chimney operations.

Section 1926.1431(s)(3)(ii) requires the employee to be hoisted in a slow, controlled descent and ascent. This is to limit swinging or sudden movement of the boatswain's chair to prevent a fall from the chair or impact with the walls or other areas or structures involved in these operations.

No comments were received on paragraphs (s)(1) through (s)(3)(ii); they are promulgated as proposed.

Section 1926.1431(s)(3)(iii) requires the employee in the boatswain's chair to use personal fall arrest equipment, including a full body harness, that is attached independent of the crane/derrick. Having the tie off point independent of the equipment protects the employee from a sudden drop or fall due to equipment failure or other problems associated with the operation of the crane/derrick, and to protect the employee from falls when accessing and egressing the boatswain's chair.

One commenter noted that in certain construction projects there is no structure in place for independent attachment of personal fall arrest equipment. (ID–0130.l; –0343.1.) This commenter further requested that for activities related to construction of storage tanks, concrete shafts and chimneys, the requirement be changed to allow attachment to the lower load block or overhaul ball. The Agency found the information provided persuasive and has revised the regulatory language for the final rule. The Agency is limiting the change to those situations in which there is no adequate structure available for independent attachment. While there may be no available tie-off point during new construction, construction activities sometimes take place in storage tanks, concrete shafts and chimneys after the structure is in place. Therefore, the requirement has been changed to add a sentence specifying that when there is no adequate structure for attachment of personal fall arrest equipment as required in § 1926.502(d)(15), the personal fall arrest equipment should be attached to the lower load block or to the overhaul ball.

Section 1926.1431(s)(3)(iv) requires fall protection equipment to comply with § 1926.502, *Fall protection systems criteria and practices.* This ensures that the fall equipment is sufficient to safely arrest the employee's fall.

Section 1926.1431(s)(3)(v) requires the boatswain's chair to be capable of supporting, without failure, its own weight plus a minimum of five times the maximum intended load. This is consistent with the requirement for personnel platforms at § 1926.1431(e)(4).

Section 1926.1431(s)(3)(vi) mandates that only one person be hoisted at a time when using a boatswain's chair. No comments were received on paragraphs (s)(3)(iv) through (s)(3)(vi); they are promulgated as proposed.

Section 1926.1432 Multiple-Crane/Derrick Lifts

Final § 1926.1432 lists additional requirements for operations involving multiple cranes and derricks. As discussed in the proposed rule preamble, this section addresses hazards arising from operations that use more than one crane/derrick to lift a load (*see* 73 FR 59840–59841, Oct. 9, 2008). After reviewing comments on the proposed rule, the Agency is promulgating §§ 1926.1432(a) and 1926.1432(b)(1) as proposed. Section 1926.1432(b)(2) is nearly identical to the proposed text, but includes the following changes: the use of the terms "directed" and "lift director" instead of "supervised" and "supervisor," respectively, and language to clarify that the lift director must review the multiple crane/derrick lift plan with all workers "in a meeting."

Several commenters expressed the view that OSHA should add specific requirements and procedures for the protection of employees engaged in "critical lifts," which were not addressed separately in the proposed rules. (ID–0182.1; –0207.1.) One of these commenters requested that OSHA add "critical lifts" to the title of § 1926.1432, and define "critical lift" to include any lift that exceeds 75 percent of the rated capacity of the crane or derrick, requires the use of more than one crane or derrick, involves hoisting personnel, or is otherwise determined by a qualified person to involve an exceptional level of risk. (ID–0182.1.) OSHA disagrees with these commenters for the reasons discussed below.

C–DAC specifically considered whether to use the term "critical lift" for triggering additional requirements, such as planning and oversight. (OSHA–S030–2006–0663–0485.) There are a variety of differing views as to what ought to be considered a critical lift in this regard. For example, the Army Corps of Engineers, in its 2008 U.S. Army Corps of Engineers Safety and Health Requirements Manual, defines "critical lift" as "a non-routine crane lift requiring detailed planning and additional or unusual safety precautions." This manual describes critical lifts, in part, as lifts: (1) In which the load weighs 75% of the rated capacity of the crane; in which the load is out of the operator's view; involving more than one crane; involving non-routine or technically difficult rigging arrangement; hoisting personnel with a crane or derrick; or that the crane operator believes should be considered critical. EM 385–1–1, pg. 293. The National Aeronautics and Space Administration's definition is different:

> Critical lifts are lifts where failure/loss of control could result in loss of life, loss of or damage to flight hardware, or a lift involving special high dollar items, such as spacecraft, one-of-a-kind articles, or major facility components, whose loss would have serious programmatic or institutional impact. Critical lifts also include the lifting of personnel with a crane, lifts where personnel are required to work under a suspended load, and operations with special personnel and equipment safety concerns beyond normal lifting hazards.

NASA Standard for Lifting Devices and Equipment, NASA STD–8719.9, pg. 5.[127]

C–DAC identified and addressed the particular situations that necessitate special planning and procedures rather than using a more generalized "critical lift" approach based on a percent of rated capacity. For example, the Committee developed specific requirements for hoisting personnel, operating equipment when power lines are present, and in §§ 1926.1417(o)(3)(ii) and 1926.1417(s), for hoisting loads that exceed 75 percent of rated capacity or are 90 percent or more of rated capacity. This enabled the Committee to separately address the specific hazards associated with each type of operation. The advantage of this approach is that the standard's requirements could be specifically tailored to each type of situation, promoting both effectiveness and clarity. Therefore, OSHA defers to the expertise of C–DAC and declines to adopt the commenters' suggestions.

Paragraph (a) Plan Development

Section 1926.1432(a) requires an employer to develop a plan before beginning a crane/derrick operation in which more than one crane/derrick will be supporting the load, the operation must be planned. The planning must meet the criteria set forth in §§ 1926.1432(a)(1) through (3). The purpose of the requirement for a plan is to help ensure that the hazards involved

[127] In OSHA's steel erection standard, 29 CFR 1926 subpart R, critical lift is defined as "a lift that (1) exceeds 75 percent of the rated capacity of the crane or derrick, or (2) requires the use of more than one crane or derrick" (*See* § 1926.751). However, the steel erection standard does not require planning or other additional precautions whenever there is a critical lift. A critical lift plan is only required in subpart R when the employer elects to do a site-specific erection plan as an alternative to the requirements of §§ 1926.753(c)(5), 1926.757(a)(4), or 1926.757(e)(4).

with a multiple lift are identified and eliminated. The Committee determined that a plan-based requirement would be the most appropriate and effective means of reducing the risks associated with these operations.

Section 1926.1432(a) does not, however, require the multiple crane/derrick lift plan to be documented. One commenter suggested that the final rule require the plan to be in writing to ensure that the plan would be well designed and could be clearly communicated to all affected personnel. (ID–0182.1.) C–DAC carefully considered where to recommend including documentation requirements throughout the standard, and did not recommend including one for this provision. The commenter did not provide any explanation of how a documentation requirement would enhance the review of the plan or the communication of the plan to the parties involved, and OSHA has decided to defer to the expertise of the Committee and declines to include a documentation requirement for § 1926.1432.

Paragraph (a)(3)

Section 1926.1432(a)(3) requires engineering expertise to be provided by the employer whenever the qualified person determines that it is necessary. One commenter believed that all multiple-crane/derrick lifts should be planned by a licensed professional engineer due to the technical complexity of such lifts. (ID–0156.1.) As discussed in the preamble to the proposed rule, in the view of the Committee, some, but not all, multiple-crane/derrick lifts need to be planned with engineering expertise so that the lift can be performed safely (73 FR 59841, Oct. 9, 2008). Similarly, the Committee determined that it is not practical to set criteria in the rule for identifying which lifts need such expertise. OSHA defers to the expertise of the Committee on this issue and has decided not to adopt the commenter's suggestion.

Paragraph (b) Plan Implementation

Under this paragraph, the employer is required to take specific steps designed to ensure that the decisions and precautions built into the plan are effectively implemented.

Section 1926.1432(b)(1) requires direction of plan implementation by competent and qualified persons, or by one person who meets the definitions of both. OSHA has decided to replace the word "supervised" in this paragraph with the word "directed." (For a detailed explanation of competent and qualified persons and the reason for replacing "supervised," refer to the preamble discussion of § 1926.1404(a), *Supervision—competent-qualified person*).

One commenter suggested that the final rule require a "lift director" for each multiple-crane/derrick lift and that the "lift director must be present for each critical lift." (ID–0178.1.) OSHA agrees and, to also be consistent with the identification of the A/D director in § 1926.1404(a), has denoted the person directing the multiple-crane/derrick lift as the "lift director."

Paragraph (b)(2)

OSHA has decided to replace the term "supervisor" in § 1926.1432(b)(2) with the term "lift director." This decision was made to be consistent with the similar change from "A/D supervisor" to "A/D director" in § 1926.1404(a) and the change from "lift supervisor" to "lift director" in §§ 1926.1419(c)(2), 1926.1421(a), and 1926.1421(c). (For a detailed explanation of this change, refer to the preamble discussion of § 1926.1404(a), *Supervision—competent-qualified person*).

Section 1926.1432(b)(2) mandates that the director review the plan with all employees who will be involved with the operation before lift operations begin. The Committee determined that it is important for employees to know how the plan will work, including their responsibilities and the responsibilities of others, to help ensure that the diverse aspects of the operation will be coordinated (*see* the more complete discussion of this provision in the proposed rule preamble at 73 FR 59841, Oct. 9, 2008).

One commenter suggested adding an additional provision to proposed § 1926.1432(b) to enable the person directing the lift, or the operator, to halt operations if at any time the lift director determined the lift could not be safely executed pursuant to the lift plan. (ID–0182.1; –0357.1.) If such a halt to operations occurred, the suggested provision would require the lift director to modify the lift plan and review any such modifications with all workers involved with the operation. (ID–0182.1.)

Adding such a provision is unnecessary because § 1926.1432 and other provisions in subpart CC already incorporate the commenter's suggestions. As discussed above, § 1926.1432(b) requires the lift director to be a competent person. As defined in § 1926.1401, a competent person "is a person who is capable of identifying * * * hazards * * * and who has authorization to take prompt corrective measures to eliminate them." This ensures that the lift director has the authority to both halt operations and modify the plan if he or she determined the lift could not be executed safely according to the lift plan. Also, under § 1926.1418, the equipment operator has the authority to stop operations whenever there is a concern as to safety. Thus, both the lift director and equipment operator have the authority to halt a multiple-crane/derrick lift if either determines the lift cannot be executed safely pursuant to the lift plan.

Furthermore, if the lift director modified the plan, a review of the modified plan with the workers is required under § 1926.1432(b)(2) because it is a different plan from the one that had been used initially.

OSHA also received a comment suggesting that the plan-review requirement in proposed § 1926.1432(b)(2) did not make clear the intention that the review take place in a meeting so that the plan could be reviewed collectively with the workers as a group. (ID–0182.1.) Because a collective review is more likely to be effective than separate, individual reviews, OSHA agrees with the commenter's clarification and has inserted the phrase "in a meeting" into final § 1926.1432(b)(2).

Other than this additional language, the replacement of "supervised" with "directed," and the inclusion of the term "lift director," the Agency is promulgating this provision as proposed.

Section 1926.1433 Design, Construction and Testing

Previously, subpart N included design, construction, and testing requirements for specific types of equipment that either incorporate pre-1970 consensus standards or that require equipment to conform to manufacturer's specifications. The former category includes: crawler, locomotive, and truck cranes (ANSI B30.5–1968, incorporated by former § 1926.550(b)(2)); overhead and gantry cranes (ANSI B30.2.0–1967, incorporated by former § 1926.550(d)(4)); and derricks (ANSI B30.6–1969, incorporated by former § 1926.550(e)). The latter includes hammerhead tower cranes (former § 1926.550(c)(5)) and floating cranes and derricks (former § 1926.550(f)(2)(iii)). Except for crawler, locomotive, and truck cranes, design, construction and/or testing requirements for each of these categories of equipment is addressed in a section of this standard that is dedicated to that type of equipment. This section contains certain

requirements applicable only to crawler, locomotive, and truck cranes and, in addition, contains requirements that apply to all of the equipment covered by this subpart.

Paragraph (a)

Paragraph (a) of this section requires that crawler, truck and locomotive cranes manufactured prior to the effective date of this standard meet the applicable requirements for design, construction, and testing prescribed in ANSI B30.5–1968, safety code for "Crawler, Locomotive, and Truck Cranes," PCSA [128] Std. No. 2 (1968), the requirements in paragraph (b), or the applicable DIN (Deutsches Institut für Normung e.V., or German Institute for Standardization) standards that were in effect at the time of manufacture.

This provision allows employers to continue to use equipment that complies with former § 1926.550(b)(2) of subpart N and also gives them the flexibility to use equipment that was built to conform to applicable DIN standards.

One commenter objected to the inclusion of DIN standards, stating that those standards are less stringent than the ANSI standard. (ID–0178.1.) The commenter did not elaborate on this objection, and OSHA does not find merit in it. Many cranes currently in use in the United States were manufactured in Europe to DIN standards, and OSHA has no reason to conclude that these cranes are any less safe than those manufactured domestically. Accordingly, paragraph (a) is promulgated without substantive change. OSHA has clarified the paragraph by splitting the options for compliance into separate paragraphs (1) through (4), but has not changed any of the requirements.

Paragraph (b)

Paragraph (b) of this section uses the phrase "mobile and locomotive cranes" to reflect the current terminology used in ASME B30.5–2004. It specifies that such cranes must meet certain provisions of ASME B30.5–2004.

As drafted by C–DAC, paragraph (b) required that mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this standard meet certain provisions of ASME B30.5–2000 with addenda ASME B30.5a–2002, "Safety Code for Mobile and Locomotive Cranes." Here, as elsewhere in the proposal, OSHA updated the provision to refer to the 2004 version of ASME B30.5, which was published after C–DAC completed its draft and was the most current ASME standard available at the time OSHA prepared the proposed rule for publication. For the proposed rule, OSHA compared the 2004 and earlier version and, as discussed below, requested public comment on whether certain changes in the 2004 version should be adopted. Two commenters objected to the revisions to incorporate the 2004 standards. (ID–0205.1; –0213.1.) Neither of these commenters provided specific reasoning or analysis for their positions beyond saying that the 2004 standard was not available at the time the consensus document was created. OSHA concludes that in the absence of any reason for not referring to the updated ASME standard, the most recent version of the standard available prior to the publication of the proposed rule should be used in this provision. Therefore, this provision is promulgated as proposed.

The incorporation by reference of the listed provisions of ASME B30.5–2004 in paragraph (b) of this section does not mean that other provisions found in ASME B30.5–2004 do not apply to equipment under this subpart. Some other provisions of ASME B30.5–2004 are not incorporated into this section because they deal with issues addressed elsewhere in this standard. For example, two-block protection, which is required by sec. 5–1.9.9.1 of the ASME standard, is addressed in § 1926.1416 of this proposed standard. In addition, the issues addressed in paragraph (e) below are addressed in ASME B30.5–2004 but, instead of making those provisions applicable solely to mobile and locomotive cranes, C–DAC drafted corresponding provisions that would be applied to all of the equipment subject to this proposed standard.

The sections of ASME B30.5 referenced in §§ 1926.1433(b)(1) and (b)(13) contain requirements for equipment with outriggers partially extended that are not found in the earlier version of the ASME standard. In the discussion of § 1926.1433(b) of the proposed rule, OSHA noted that § 1926.1404(q)(1) permits partial deployment of outriggers when manufacturer procedures permit, and expressed its conclusion that incorporating the provisions on partially deployed outriggers in the 2004 version of ASME B30.5 would be consistent with § 1926.1404(q)(1). OSHA requested public comment on this issue. In response, one commenter recommended requiring a system or device that would sense the positions of the outriggers and interact with the crane's onboard computer system (LMI, RCL, *etc.*) to automatically reduce the crane's capacity based on the outrigger positions. (ID–0131.1.) Although this might well be a desirable addition, OSHA cannot find evidence in this rulemaking record to indicate that such a system/device is currently available and feasible. The Agency therefore declines to add such a requirement.

Paragraph (c)

Proposed paragraph (c) of this section, *Prototype testing,* required that mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this standard meet the prototype testing requirements in § 1926.1433(c)(1), *Test Option A* or § 1926.1433(c)(2), *Test Option B* of this section. Test Option A continues the prototype testing methodology that was previously required under subpart N for crawler, locomotive, and truck cranes through the incorporation of ANSI B30.5–1968. Test Option B permits, as an alternative, the use of computer modeling technology for prototype evaluation. C–DAC agreed to allow computer modeling testing under the European CEN standard only on the condition that the requirements of proposed § 1926.1433(c)(2), discussed below, are met to ensure the reliability of the computer modeling. OSHA is incorporating this option into the final rule with the same condition. OSHA has updated the reference to the CEN standard to BS EN 13000:2004. This change was made because for purposes of incorporation by reference OSHA must point to a specific document and OSHA has selected the English language version of EN 13000. In addition, for clarity, a note to paragraph (c) states that prototype testing of crawler, locomotive and truck cranes manufactured prior to the effective date of the standard must conform to paragraph (a). No comments were received on the provisions of paragraph (c) that apply to mobile cranes.

OSHA noted in the proposal that neither proposed § 1926.1433(c) nor any other proposed provisions would apply prototype testing requirements to tower cranes. It appeared to the Agency that this was an oversight on the part of C–DAC. OSHA requested public comment on whether there should be prototype testing requirements for tower cranes, and, if so, what requirements should apply. All four commenters on this issue recommended inclusion of computer modeling and/or verification for tower crane prototypes in accordance with BS EN 14439:2006. (ID–0156.1; –0180.1; –0205.1; –0213.1.) OSHA agrees with these comments and

[128] "PCSA" is the acronym for the Power Crane Shovel Association.

has added these requirements to the final version of § 1926.1433(c).

Another commenter suggested that the standard require equipment manufacturers to obtain independent verification that the prototype testing was performed. (ID–0156.1.) C–DAC addressed the prototype issues directly and did not recommend this approach. Based on the evidence in the record, the Agency is not convinced that placing this burden on the manufacturer is warranted.

Paragraph (d)

Paragraph (d) of this section mandates that all equipment covered by this subpart meet the requirements listed in §§ 1926.1433(d)(1) through (d)(13) of this section. The issues listed in paragraph (d) are addressed by ASME B30.5–2004. However, as explained in the proposed rule, C–DAC determined that these requirements were also appropriate for other equipment, and the proposed rule applied them to all equipment (*see* 73 FR 59843–59845, Oct. 9, 2008). The Agency did not receive any comments opposing this approach. Therefore, instead of applying these requirements solely to mobile and locomotive cranes, paragraph (d) applies them to all equipment covered by this subpart.

Section 1926.1433(d)(1), *Load capacity/ratings and related information,* requires the employer to ensure that the information available in the cab (*see* § 1926.1417(c)) regarding load capacity/ratings and related information include the data listed in §§ 1926.1433(d)(1)(i) through (d)(1)(xvi). These equipment specifications need to be made available for the operator to reference in the cab so that the operator has immediate access to information needed to ensure safe operation.

Section 1926.1433(d)(2) requires that load hooks (including latched and unlatched types), ball assemblies and load blocks be of sufficient weight to overhaul the line from the highest hook position for boom, or boom and jib lengths, and the number of parts of the line in use. This requirement is necessary to prevent any incidents that could occur when ball assemblies, load blocks, and load hooks are of insufficient weight to keep the load line from being unintentionally pulled up the boom due to the weight of the load line itself.

Section 1926.1433(d)(3) requires that hook and ball assemblies and load blocks be marked with their rated capacity and weight. Marking this equipment with their rated capacities and weights is needed to help ensure that they are not overloaded and is necessary to help enable employers to comply with proposed § 1926.1433(d)(2).

Section 1926.1433(d)(4), *Latching hooks,* requires that hooks meet the requirements in §§ 1926.1433(d)(4)(i)–(ii) of this section.[129] Section 1926.1433(d)(4)(i) requires that hooks be equipped with latches, except where the requirements of § 1926.1433(d)(4)(ii) are met. It also requires that latches close the throat openings of hooks and that they be designed to retain slings or other lifting devices/accessories in the hooks when the rigging apparatus is slack. This requirement is included to ensure that the rigging will not be unintentionally dislodged from the hook when the rigging apparatus is slack.

Section 1926.1433(d)(4)(ii) prohibits hooks without latches, or with latches removed or disabled, from being used unless two criteria are met. First, to ensure that the hazards are weighed appropriately, a qualified person must determine that it is safer to hoist and place the load without latches (or with the latches removed/tied-back). Second, routes for the loads must be pre-planned to ensure that no employee is required to work in the fall zone except for employees necessary for the hooking or unhooking of the load. The reason for generally requiring hooks to be equipped with latches is to prevent the load from accidentally disengaging from the hook. C–DAC determined that the use of hooks with latches is an industry recognized practice, but also recognized that there are some circumstances where the use of a hook with a latch presents a greater hazard. The exceptions in § 1926.1433(d)(4)(ii) are included to address the latter circumstances. For example, if an employee would have to climb up or out onto an unsecured, elevated member to unhook the load after its placement, the employee would be exposed to a fall hazard. The criteria in § 1926.1433(d)(4)(ii) for permitting a hook to be used without a latch are designed to ensure that the operation can still be conducted safely.

Section 1926.1433(d)(5), *Posted warnings,* states that posted warnings required by this subpart, as well as those originally supplied with the equipment by the manufacturer,[130] must be maintained in legible condition. Compliance with this requirement will increase the likelihood that employees will recognize the hazard identified on the posted warning and avoid or protect themselves from that hazard.

Section 1926.1433(d)(6) requires that an accessible fire extinguisher be on the equipment to eliminate small fires quickly. This provision continues a similar requirement that was in the former § 1926.550(a)(14)(i).

Section 1926.1433(d)(7), *Cabs,* states that equipment with cabs must meet the requirements listed in § 1926.1433(d)(7)(i) through (v) of this section. These provisions ensure that the crane operator is provided with a safe work station that has adequate ventilation, safe means of access and egress, good visibility, protection against window breakage, and sufficient roof strength. Most of these requirements continue the protections provided under OSHA's prior rules for crawler, locomotive, and truck cranes, which incorporated by reference various sections of ANSI B30.5–1968.

Section 1926.1433(d)(7)(i) requires that cabs be designed with a form of adjustable ventilation and method for clearing the windshield for maintaining visibility and air circulation. Examples of means for adjustable ventilation include an air conditioner or window that can be opened (for ventilation and air circulation); examples of means for maintaining visibility include heater (for preventing windshield icing), defroster, fan, and windshield wiper. This provision ensures adequate air circulation, both for the operator's health and for good visibility.

Under § 1926.1433(d)(7)(ii), cab doors (whether swinging or sliding) must be designed to prevent inadvertent opening or closing while traveling or operating the machine. Swinging doors adjacent to the operator must open outward. Sliding operator doors must open rearward. Standardization of the direction for opening doors helps ensure that an operator will be able to exit the cab quickly in an emergency.

Section 1926.1433(d)(7)(iii), *Windows,* requires that cab windows meet the requirements listed in §§ 1926.1433(d)(7)(iii)(A) through (C).

Section 1926.1433(d)(7)(iii)(A) requires that the cab have windows in front and on both sides of the operator. Forward vertical visibility must be sufficient to give the operator a view of the boom point at all times.

---

[129] Pursuant to a commenter's suggestion on the structure of this section as proposed (ID–0172.1), this section was reorganized in the final rule for clarity but was not changed substantively.

[130] Two commenters stated that posted warnings originally supplied with the equipment by the manufacturer should not be included in this provision and were not agreed to by C–DAC; they believed that C–DAC required only original posted warnings related to electrical hazards. (ID–0205.1; –0222.1.) These commenters are mistaken; the proposed language is unchanged from the C–DAC consensus document. In any event, OSHA believes that maintenance of manufacturers' original posted warnings is critical to safe operation of equipment and is promulgating this provision as proposed.

Section 1926.1433(d)(7)(iii)(B) allows windows to have sections designed to be opened or readily removed. Windows with sections designed to be opened must be designed so that they can be secured to prevent inadvertent closure. Compliance with this provision ensures that the operator can adequately ventilate the cab should conditions within the cab affect the safe operation of the crane.

Section 1926.1433(d)(7)(iii)(C) specifies that windows be constructed of safety glass, or material with similar optical and safety properties, that introduces no visible distortion or otherwise obscures visibility. In the final rule, OSHA has deleted the phrase "that interferes with the safe operation of the crane" from the end of this paragraph as proposed to eliminate an ambiguity that might arise in interpreting this provision.

Section 1926.1433(d)(7)(iv) requires that a clear passageway be provided from the operator's station to an exit door on the operator's side. This provision will enable the operator to enter and exit the equipment safely and will enable the operator to escape from the cab quickly in the event of an emergency.

Section 1926.1433(d)(7)(v) states that areas of the cab roof that serve as a workstation for rigging, maintenance or other crane-related tasks must be capable of supporting 250 pounds without permanent distortion.

Section 1926.1433(d)(8) requires that belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, and other parts or components that reciprocate, rotate or otherwise move be guarded where contact by employees (except for maintenance and repair workers) is possible in the performance of normal duties. The exception permits maintenance and repair workers to remove the guards when their work requires access to the parts being guarded.

Section 1926.1433(d)(9) requires that all exhaust pipes, turbochargers, and charge air coolers be insulated or guarded where contact by employees is possible in the performance of normal duties. As with § 1926.1433(d)(8), an exception is provided when maintenance and repair workers need to remove the guards to perform their work. This provision is included to protect workers against injuries that can occur if they contact components that are hot enough to cause burns.

Section 1926.1433(d)(10) requires that hydraulic and pneumatic lines be protected from damage to the extent feasible. For example, where hydraulic or pneumatic lines are subject to chafing from vibration or movement of the equipment, they must be secured, protected with anti-chafing gear, or otherwise protected from chafing damage. Denting, crushing, puncturing, or nicking a hydraulic or pneumatic line could adversely affect the structural integrity of the line and compromise the safe operation of the affected systems and the crane as a whole.

Section 1926.1433(d)(11) requires that equipment be designed so that exhaust fumes are not discharged in the cab and are discharged in a direction away from the operator. This provision ensures that exhaust gases that are likely to adversely affect or incapacitate the operator will not accumulate in the cab because of the design of the equipment. For the same reason, OSHA is amending the final rule to clarify that the exhaust fumes must also be discharged away from any air intake source for the cab.

Section 1926.1433(d)(12), *Friction mechanisms,* states that where friction mechanisms (such as brakes and clutches) are used to control the boom hoist or load line hoist, they must be: of a size and thermal capacity sufficient to control all rated loads with the minimum recommended reeving; and adjustable to permit compensation for lining wear to maintain proper operation. The words "all rated" have been added back into paragraph (d)(12)(i) of this section in response to several comments who correctly pointed out that the phrase was included in the C–DAC consensus document. (ID–0180.1; –0205.1; –0213.1.) This phrase was inadvertently deleted from the proposal and is needed to clarify the requirement.

Section 1926.1433(d)(13), *Hydraulic load hoists,* specifies that hydraulic drums have an integrally mounted holding device or internal static brake to prevent load hoist movement in the event of hydraulic failure. This requirement will protect employees against unintended movement of the load hoist caused by a hydraulic failure.

As noted above, §§ 1926.1433(d)(7)(iii)(C) and 1926.1433(d)(11) were amended to clarify those provisions, and § 1926.1433(d)(12)(i) was amended to address comments received. All other provisions of paragraph (d) are promulgated as proposed with minor grammatical corrections and changes in numbering.

Paragraph (e)

Section 1926.1433(e) permits employers to rely on documentation from manufacturers to show that they are in compliance with §§ 1926.1433(a)–(c) and 1926.1433(d)(7)–(d)(13) where the equipment has not been modified [131] since it was manufactured, except in accordance with § 1926.1434, *Equipment modifications.* Sections 1926.1433(d)(1)–(d)(6) are excluded from this provision because the employer can easily verify compliance with them without recourse to documentation provided by the manufacturer. An employer's failure to have such documentation in its possession would not, in itself, constitute a violation of these provisions. Rather, § 1926.1433(e) is intended to make clear that crane users need not independently determine whether their equipment meets certain provisions of this section but may rely on manufacturer documentation for that purpose. No comments were received on this paragraph, and it is promulgated as proposed.

Section 1926.1434 Equipment modifications

This section addresses the procedures an employer must follow when equipment is modified in a way that affects its capacity or safe operation. Its purpose is to safeguard against unsafe modifications and to ensure that the equipment's instructions and specifications are updated to reflect the modifications so that the equipment may be used safely.

This section uses the term "modification/addition" to refer to "modification or addition" to clarify that an addition to the equipment is a type of modification and needs to be subject to the same approval procedures as other types of modifications. For example, the addition of a generator to the back of the cab of a crane needs to be subject to the approval procedures because it will alter the crane's backward stability.

Paragraph (a)

Paragraph (a) of this section prohibits modifications or additions to equipment which affect the capacity or safe operation of the equipment except where any of five options set out in §§ 1926.1434(a)(1), (2), (3), (4), and (5) are met. Options outlined in (a)(4) and (a)(5) were not in the proposed rule; *see* discussion below.

Option (1)—Manufacturer Review and Approval

Under paragraph (a)(1)(i), the employer must get the manufacturer of the equipment to approve the modifications/additions in writing.

[131] For clarification, the phrase in the final standard: "where the equipment has not been modified" replaces the phrase in the proposed standard: "where the equipment has not changed."

Paragraph (a)(1)(ii) requires that load charts, procedures, instruction manuals, and instruction plates/tags/decals be modified in accordance with the modification/addition. Under (a)(1)(iii), the original safety factor of the equipment must not be reduced. Meeting the requirements of this paragraph ensures that the original safety factor is not reduced and that all affiliated materials related to safe operation of the equipment (instructions, charts) are updated to reflect the changes made. Paragraph (a)(1) is promulgated as proposed.

Option (2)—Manufacturer Refusal To Review Request

Under paragraph (a)(2), the employer must provide a detailed description of the proposed modification to the manufacturer and ask it to approve the modification/addition. If the manufacturer declines to review the technical merits of the proposal or fails, within 30 days, to acknowledge the request or initiate the review, the employer may proceed with the modification/addition if it complies with the other requirements in paragraph (a)(2). In these conditions, the employer may utilize a registered professional engineer who is a qualified person with respect to the equipment to approve the modification/addition in lieu of the manufacturer. *See* § 1926.1401 for the definition of qualified person. C–DAC found it important to clarify that this individual needs to be a qualified person "with respect to the equipment involved," since specialized knowledge beyond that of a general registered professional engineer is needed to make the required assessments regarding the particular equipment that is being modified.

The Committee recommended this option because it determined that the refusal of a manufacturer to review a request, or a manufacturer's failure to act on the request within a reasonable time, would not preclude an employer from making a modification if adequate precautions are followed. The Committee concluded that 30 days would give the manufacturer a reasonable amount of time to decide whether to simply decline to review the request or to proceed with evaluating it. Also, the Committee concluded that a failure to respond at all in this period would fairly reflect an intention not to act on the request in a timely manner.

Under paragraph (a)(2)(i)(A) OSHA requires that the approval by the registered professional engineer specify the equipment configurations to which it applies. Cranes typically can be configured in a variety of ways. Modifications may have different effects depending on the configuration. C–DAC determined that it was essential for purposes of ensuring safe operation that the approval specify the configurations to which it applies. An example of an approval satisfying this would be the following: "This is an approval to add an additional boom section of the above-described design for a brand K lattice boom crane, model 1. This approval applies only when the crane is configured without a jib."

Paragraph (a)(2)(i)(B) requires that the registered professional engineer modify load charts, procedures, instruction manuals, and instruction plates/tags/decals as necessary to accord with the modification/addition. Under paragraph (a)(2)(ii), the original safety factor of the equipment must not be reduced.

One local jurisdiction commented that local governments should have the option of reviewing and approving cranes that are not modified in conjunction with the manufacturer. (ID–0156.1.) The commenter did not explain how such a requirement would work in practice or how it would enhance employee safety. OSHA defers to C–DAC's judgment that having a registered professional engineer (who is a qualified person with respect to the equipment involved) approve the modification in accordance with the requirements of paragraph (a)(2) will provide adequate protection. *See, e.g., Building & Constr. Trades Dep't, AFL–CIO* v. *Brock,* 838 F.2d 1258, 1271 (DC Cir. 1988) ("[A] party challenging an OSHA standard must bear the burden of demonstrating that the variations it advocates will * * * provide more than a de minimis benefit. * * *"). Paragraph (a)(2) is adopted without change from the proposal.

Option (3)—Unavailable Manufacturer

Paragraph (a)(3) addresses a scenario in which the manufacturer of equipment is unavailable to review proposed modifications/additions because, for example, it has gone out of business (and has not been taken over by a successor company). In this situation, if the employer wishes to modify its equipment in a way that affects its capacity or safe operation, it can get approval from a registered professional engineer in accordance with the requirements of (a)(2)(i) and (ii) above. This paragraph is adopted as proposed.

Option (4)—Manufacturer Does Not Complete the Review Within 120 Days of the Request

Paragraph (a)(4) has been added to this section of the final rule based on a particular scenario raised by a commenter where a manufacturer agrees to review a proposed modification/addition, but fails to complete that review within 120 days of the date on which it was provided with a detailed description of the proposed modification/addition. (ID–0187.1.) OSHA agrees with the commenter that in that scenario the employer should have the option of seeking approval from a registered professional engineer in accordance with the requirements of (a)(2)(i) and (ii) above. OSHA concludes that 120 days will generally be sufficient for manufacturers to complete reviews; for proposed modifications/additions that are particularly extensive or complex, OSHA assumes that the length of time needed to review the proposal will be longer and will be addressed as a contractual matter between the parties.

Option (5)—Multiple Manufacturers of Equipment Designed for Use on Marine Work Sites

Paragraph (a)(5) has been added to this final rule in response to a comment regarding equipment used on marine work sites. (ID–0187.1.) According to this commenter, in the marine construction industry, contractors routinely hire shipyards to build specialized barges or modify existing barges used as floating platforms for hoisting equipment. Custom-made hoisting equipment for such operations is frequently assembled using component parts manufactured by multiple manufacturers and then installed on the floating platform. In such cases, it is impossible to identify a single "manufacturer" from which to seek approval for a modification/addition; therefore OSHA concludes that it was reasonable to provide employers in these instances with the ability to seek approval for a proposed modification/addition from a registered professional engineer in accordance with paragraphs (a)(2)(i) and (ii) above. The term marine worksite is defined in § 1926.1401 as "a construction worksite located in, on, or above the water."

Paragraph (b)

Paragraph (b) of this section prohibits modifications or additions which affect the capacity or safe operation of the equipment where the manufacturer, after a review of the technical safety merits of the proposed modification/addition, rejects the proposal and explains the reasons for the rejection in a written response.

OSHA concludes, as did C–DAC, that it was important to expressly state the need for the manufacturer to explain why it rejected the employer's proposed modification. Such an explanation both

demonstrates that the manufacturer reviewed the technical safety merits of the request and gives the employer the opportunity to modify the proposal to address the manufacturer's objections. If the manufacturer does not provide the reasons for its rejection in writing, the employer may consider this a refusal to review a request under paragraph (a)(2) above.

No comments were received for this paragraph; it is promulgated as proposed.

Paragraph (c)

Paragraph (c) of this section states that the provisions in §§ 1926.1434(a) and (b) do not apply to modifications made or approved by the U.S. military. During C–DAC negotiations, a representative of the U.S. Navy indicated to C–DAC that such an exception is needed in the event of military exigencies. OSHA defers to the Committee's expertise on this issue. No comments were received for this paragraph; it is promulgated as proposed.

Section 1926.1435 Tower Cranes

Definition of Tower Crane

OSHA's proposed definition reflected three changes from the Committee draft. First, a characteristic of tower cranes that was missing from the C–DAC definition was that the working boom is in an elevated position above the ground. Second, the working boom on some tower cranes, even of the non-luffing type, may not be at a 90 degree angle to the tower, and so the term "fixed horizontally" may not always be appropriate for a non-luffing jib. Third, tower cranes do not always rotate about the tower center to swing loads. There are "top slewing" tower cranes—those in which the working boom rotates on the top of a fixed tower, and "bottom slewing" tower cranes—those in which the tower itself (with the working boom fixed to it) rotates on its base, and for the latter, the boom does not rotate about the tower center. OSHA requested public comment on the changes it made to the Committee draft definition.

One commenter agreed with the proposed definition of "tower crane," saying that OSHA's changes removed any ambiguity in the definition. (ID–0187.1.) Three commenters suggested adding the words "or near vertical" to the first sentence of the definition so that it would say, "a type of lifting structure which utilizes a vertical, or near vertical, mast or tower. * * *" (ID–0180.1; –0205.1; –0213.1.) These commenters were evidently concerned that a tower crane could, under § 1926.1435(b)(5), *Plumb tolerance,* permissibly deviate from being perfectly vertical by a slight amount. As explained below in the discussion of § 1926.1435(b)(5), the crane's tower must be plumb to the manufacturer's tolerance or, where the manufacturer does not specify the plumb tolerance, plumbed to a tolerance of at least 1:500.

OSHA concludes that adding the words "or near vertical" to the definition of tower crane is not necessary. Although a tower crane may deviate from being perfectly vertical by the amount of the manufacturer's tolerance or, where the manufacturer does not specify a tolerance, at least 1:500, the tower crane would still be "vertical" within the ordinary meaning of that word. Adding the words "or near vertical" could create additional ambiguity and is not necessary to avoid misleading tower crane users into thinking that their equipment does not fall within OSHA's definition if the tower deviates from perfect vertical by the amount permitted by the rule.

Two commenters suggested adding the following sentence at the end of the definition:

> Mobile cranes that are configured with luffing jib and/or tower attachments are not considered tower cranes under this section.

(ID–0205.1; –0213.1.)

The provisions in this section for tower cranes are not appropriate for application to a mobile crane configured with a luffing jib. This conclusion is equally applicable to mobile cranes used with tower attachments. Such attachments typically consist of devices that fix the mobile crane's main boom at a near-vertical position and use of a luffing jib. OSHA therefore agrees that a mobile crane configured in either manner should not be treated as a tower crane, since the supplemental provision for tower cranes in this section are not designed for such applications.[132] Therefore, the Agency has added the language suggested by the commenters to the definition.

Paragraph (a)

Section 1926.1435(a) states that § 1926.1435 contains supplemental requirements for tower cranes and that all other sections of this standard apply to tower cranes unless specified otherwise. This paragraph makes clear that all provisions of this subpart apply to tower cranes unless a specific provision states that they are inapplicable. As discussed below, two sections of this standard that do not apply to tower cranes are §§ 1926.1415 (safety devices) and 1926.1416 (operational aids). Instead, this section lists the safety devices and operational aids that are required for tower cranes. In addition, this section contains additional requirements for erecting, climbing, dismantling, and inspections that are specific to tower cranes. No comments were received on this paragraph, and it is promulgated as proposed.

Paragraph (b) Erecting, Climbing and Dismantling

Section 1926.1435(b)(1) requires the employer to comply with the assembly and disassembly requirements set out in §§ 1926.1403–1926.1406, except as otherwise specified in this section. Section 1926.1435(b)(1) notes that the industry generally refers to the assembly and disassembly of tower cranes as erecting, climbing and dismantling. Therefore, when the term "assembly" is used in §§ 1926.1403 through § 1926.1405, it is replaced with "erecting and climbing" when referring to tower cranes. Similarly, where the term "disassembly" is used, it is replaced with "dismantling" when referring to tower cranes.

Section 1926.1435(b)(2), *Dangerous areas (self-erecting tower cranes),* addresses the hazards associated with crew members located in certain areas. Employees must not be in or under the tower, jib, or rotating portion of the crane during erecting, climbing and dismantling operations until the crane is secured in a locked position and the competent person indicates it is safe to enter these areas. The only exception to this is where the manufacturer's instructions direct otherwise and the employer limits access to necessary employees only.

These areas are hazardous because, in the event of unintended movement of components, there is a heightened chance that an employee could be struck or crushed. The exception accounts for those situations in which, due to the design of the equipment, it is infeasible for all employees to be out of these areas during erecting, climbing and dismantling operations. No commenters addressed § 1926.1435(b)(2). It is promulgated without change.

Proposed paragraph (b)(3), *Foundations and structural supports,* provided: "Tower crane foundations and structural supports shall be designed by the manufacturer or a registered professional engineer."

When a tower crane is mounted to portions of a structure, it is vital for safe operation that the structure be able to

[132] Note, however, that some tower cranes are mobile, *i.e.,* truck-mounted (such as truck-mounted self-erecting tower cranes). These are considered tower cranes under this standard.

withstand the forces imposed by both the crane and the loads the crane will handle throughout the job. Accordingly, when portions of a structure are used to support a tower crane, the manufacturer or registered professional engineer who designs the crane's structural supports must ensure not only that the structure is adequate to support the crane when it is mounted but that it will continue to support the crane under all anticipated conditions of use.

In the proposal, OSHA noted that it interpreted "structural supports" in this provision to include both the portions of the structure used for support and the means of attaching the tower to the structure, and requested public comment on whether proposed § 1926.1435(b)(3) stated this intent with sufficient clarity.

Five commenters recommended that OSHA clarify that "structural supports" means both the portions of the structure used for support and the means of attachment. (ID–0120.0; –0156.1; –0180.1; –0205.1; –0213.1.) OSHA has modified paragraph (b)(3) of this section of the final rule accordingly.

Section 1926.1435(b)(4), *Addressing specific hazards,* requires the employer to comply with §§ 1926.1404(h)(1) through (9), which pertain to erecting, climbing and dismantling. In particular, § 1926.1404(h) requires that the A/D Director address certain hazards, which are discussed above in the discussion of § 1926.1404. Section 1926.1435(b)(4) lists additional hazards, specific to tower cranes, that the A/D Director also must address. These additional hazards are those associated with (i) the foundations and structural supports for tower cranes, (ii) the loss of backward stability, and (iii) wind speed.

Proposed § 1926.1435(b)(4)(i) required the A/D Director to "verify" that the foundation and structural supports are installed in accordance with their design. This paragraph is designed to ensure that the design of these components by the manufacturer or registered professional engineer is followed when they are installed.

Three commenters stated that the A/D Director is not qualified to perform this function and that the registered professional engineer who designed the support should verify that the foundation and structural supports are properly installed. (ID–0180.1; –0205.1; –0213.1.)

OSHA determines that the commenters are assuming that, by the use of the term "verify," the proposed provision meant that the A/D Director would have to independently assess the foundation and supports to determine if they were installed in accordance with their design. OSHA is not, however, requiring the A/D Director to make such an independent assessment. For example, the intent of the provision is met when the A/D Director determines from the engineer of record that the installation was done correctly. To make this clear, OSHA has, in the final rule, changed the word "verify" to "determine."

Paragraph (b)(4)(ii) requires that the A/D Director address the backward stability of the crane before self erecting tower cranes or cranes on traveling or stationary undercarriages are swung. OSHA has removed the words "must be considered" that were in the proposed paragraph to avoid ambiguity. Paragraph (b)(4) requires the A/D Director to "address" certain issues, including the stability issue in paragraph (b)(4)(ii), and the words "must be considered" could be read as limiting or modifying that duty. This provision is similar to the assembly/disassembly requirement in § 1926.1404(h)(11) except that it applies only to self erecting tower cranes and cranes that are on traveling or static (stationary) undercarriages. It applies to these types of tower cranes to highlight the fact that, because they do not have a base that is fixed to the ground, the backwards stability safety issue needs to be addressed. No comments were received on this provision, and it is promulgated with only the one revision.

Proposed § 1926.1435(b)(4)(iii) provided that erecting, climbing, and dismantling not take place when the wind speed recommended by the manufacturer is exceeded. Where the manufacturer does not recommend a maximum wind speed, a qualified person is required to establish the maximum wind speed that must not be exceeded. This provision was included because the horizontal force caused by wind during erecting and dismantling can have a substantial effect on the stability of a tower crane.

One commenter suggested that climbing should not be allowed if the wind speed perpendicular to the jib is in excess of 20 miles per hour. (ID–0137.1.) This commenter stated that most manufacturers will allow climbing in winds up to 40 miles per hour but are not specific on winds that are perpendicular to the jib. OSHA concludes that any manufacturer who specifies wind speed will assume that the wind might be blowing in any direction, including perpendicular to the jib, and take that into account in the recommendation. OSHA further concludes that manufacturers (and qualified persons) are well qualified to determine the maximum wind speed and finds no basis in the record to set a maximum wind speed during erection of 20 miles per hour. Accordingly, OSHA is promulgating § 1926.1435(b)(4)(iii) as proposed.

Paragraph (b)(5) of this section, *Plumb tolerance,* requires that the crane's tower be plumb to the manufacturer's tolerance and verified by a qualified person. Where the manufacturer does not specify the plumb tolerance, this provision requires that the tower be plumb to a tolerance of at least 1:500. The tower needs to be plumb within the manufacturer's tolerance to ensure the crane's stability and prevent it from collapsing. The Committee noted that a tolerance of at least 1:500 is generally what manufacturers specify and that for any type of vertical structure this generally is the accepted plumb tolerance in the engineering and construction industries. No comments were received on this provision; it is promulgated as proposed.

Paragraph (b)(6), *Multiple tower crane jobsites,* requires construction jobsites with more than one fixed jib (hammerhead) tower crane installed to be located so that no crane can contact the structure of another crane. However, the jibs of multiple hammerhead tower cranes are permitted to pass over/under one another. This provision is designed to ensure that multiple tower cranes on a construction site do not collide with each other. No comments were received on this paragraph. OSHA has replaced the word "may" with "can" in the final rule to clarify that it must be physically impossible for the structure of one crane to contact the structure of another. The text is otherwise unchanged in the final rule.

Paragraph (b)(7), *Climbing procedures,* contains special requirements that have to be followed during the climbing process. Climbing is defined in § 1926.1401. Paragraph (b)(7) requires that prior to, and during, all climbing procedures the employer (i) Comply with all manufacturer prohibitions; (ii) have a registered professional engineer verify that the host structure is strong enough to sustain the forces imposed through the braces, brace anchorages and supporting floors; and (iii) ensure that no part of the climbing procedure takes place when wind exceeds the speed recommended by the manufacturer or, where the manufacture does not specify the wind speed, the speed determined by a qualified person. No comments were received on this paragraph; it is unchanged in the final rule. The Agency notes that several commenters did object generally to the mandatory compliance with manufacturer

requirements. These arguments are addressed in the discussion of § 1926.1417.

Paragraph (b)(7)(ii) requires the employer to have a registered professional engineer verify that the host structure is strong enough to sustain the forces imposed through the braces, brace anchorages and supporting floors. Examples of typical host structures include a building, parking garage, bridge or pier. If the host structure is not strong enough, the host structure could collapse and cause the tower crane to collapse as well. No comments were received on this paragraph; it is unchanged in the final rule.

Proposed paragraph (b)(7)(iii) required the employer to ensure that no part of the climbing procedure takes place when wind exceeds the speed recommended by the manufacturer or by a qualified person if the manufacturer does not specify this information. The Agency noted that § 1926.1435(b)(4)(iii) requires wind speed to be addressed during erecting, climbing and dismantling in the same manner as § 1926.1435(b)(7)(iii) and requested public comment on whether § 1926.1435(b)(7)(iii) should be omitted as redundant. Three commenters agreed that § 1926.1435(b)(7)(iii) was redundant and should be deleted. (ID–0180.1; –0205.1; –0213.1.) OSHA agrees and has deleted § 1926.1435(b)(7)(iii) from the final rule.

One commenter suggested that all rigging used during the climbing process should follow the rules provided in § 1926.1431 (Hoisting personnel), and in particular the requirement that the lift not exceed 50% of the equipment's rated capacity. (ID–0137.1.) This commenter said that such a requirement is appropriate because climbing frames are often hoisted or lowered by the crane while workers are on them. OSHA is aware of no reason why workers need to be on a climbing frame while it is being hoisted and it notes that such a practice would violate a number of provisions of § 1926.1431. As discussed in § 1926.1431, cranes are designed to hoist material, not personnel, and may only be used to hoist personnel when stringent requirements to ensure safety are followed, including the requirement that the lift not exceed 50% of the equipment's rated capacity. OSHA is not requiring that all rigging used in climbing a tower crane meet this requirement because it does not determine that workers should be, or commonly are, hoisted while on the climbing frame.

The same commenter stated that the swing should be disabled during climbing and that a pre-test of the hydraulic system should be performed when the upper structure is initially raised. This commenter did not offer any rationale in support of these suggestions, and OSHA does not conclude they are needed to ensure the safety of the climbing process.

Section 1926.1435(b)(8), *Counterweight/ballast,* addresses the hazard of instability that can result from improper installation or removal of counterweight/ballast, which can cause a collapse. Sections 1926.1435(b)(8)(i) and (ii) require that tower cranes not be erected, dismantled or operated without the amount and position of counterweight or ballast in place as specified by the manufacturer or a registered professional engineer familiar with the equipment and that the maximum amount of counterweight or ballast not be exceeded. No comments addressed this paragraph, and it is promulgated as proposed.

Paragraph (c) Signs

Section 1926.1435(c) requires employers to comply with the manufacturer's specifications regarding the size and location of signs. This requirement addresses the hazards that can result from attaching signs (such as signs with the company's name) to tower cranes. The force of the wind bearing against a large sign can significantly increase the horizontal force the wind exerts on the crane. According to the Committee, most manufacturers specify the maximum size and permissible location of signs so that the stability of the tower crane is not compromised. Where the manufacturer does not specify this information or where such information is unavailable, this provision requires a registered professional engineer who is familiar with the specific type of tower crane involved to give written approval of the size and location of any signs. The provision applies irrespective of whether the sign was installed during or after erecting/climbing. No comments were received on this provision, and it is promulgated as proposed.

Paragraphs (d) Safety Devices and (e) Operational Aids

These paragraphs set out the safety devices and operational aids that are required on tower cranes. Sections 1926.1415 and 1926.1416, which require safety devices and operational aids on other types of cranes, are not applicable to tower cranes. Instead, §§ 1926.1435(d) and (e) apply. Although some of the safety devices and operational aids for tower cranes are the same as those that §§ 1926.1415 and 1926.1416 require for other equipment, others are unique to tower cranes. C–DAC determined it would promote clarity to list all the devices and aids for tower cranes in this section.

Safety devices must be in proper working order. Where a safety device is not in proper working order, the crane must be taken out of service until it is again functioning properly. The Committee determined that the protection offered by safety devices is critical to safe operation and that there is no alternative way to achieve the same level of safety that the safety devices provide. By contrast, if an operational aid is malfunctioning, operations may continue where the employer implements specified temporary alternative measures. Where the tower crane manufacturer specifies more protective alternative measures than those specified in this section, the employer is required to follow those more protective alternative measures.

Safety Devices: Paragraph (d)(2) requires the safety devices on tower cranes discussed below.

Boom stops on luffing boom type tower cranes (§ 1926.1435(d)(2)(i)) and jib stops on luffing boom type tower cranes if equipped with a jib attachment (§ 1926.1435(d)(2)(ii)) are required. These are comparable to the boom and jib stops required for other cranes under § 1926.1415 (discussed above) and are intended to prevent the boom and jib from being raised to too high an angle and toppling over backwards.

Paragraph (d)(2)(iii) requires travel end rail stops at both ends of the travel rail. These are comparable to the rail stops required for equipment on rails under § 1926.1415 and are designed to keep the crane from overshooting the boundaries on the rail within which it is supposed to operate, which could cause the crane to collapse.

Paragraph (d)(2)(iv) requires travel rail clamps on all travel bogies. A "travel bogie (tower cranes)" is defined in § 1926.1401 as "an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels." When tower cranes travel on rails, they are mounted on travel bogies. The rail clamps that are required by this paragraph enable the bogies to be clamped to the rail to prevent the crane from lifting off the rail.

Paragraph (d)(2)(v) requires integrally mounted check valves on all load supporting hydraulic cylinders. A check valve permits fluid to flow in one direction only. When installed on load supporting hydraulic cylinders, such as

the cylinders used to climb the crane, they protect against the loss of load support in the event of a hydraulic pressure failure by preventing the reverse flow of the hydraulic fluid supporting the cylinder.

Paragraph (d)(2)(vi) requires a hydraulic system pressure limiting device.

A pressure limiting device, such as a relief valve, would prevent the pressure in a hydraulic system from exceeding its design limit, which can cause the system to fail.

Paragraph (d)(2)(vii) requires the following brakes, which must automatically set in the event of pressure loss or power failure: A hoist brake on all hoists; a swing brake; a trolley brake; and a rail travel brake. These types of brakes are needed to enable the motion of the crane and load to be controlled safely. Under this paragraph, they must set automatically to avoid uncontrolled movement of the crane or load in the event of pressure loss or power failure that prevents their operation.

Paragraph (d)(2)(viii) requires a "deadman" control or forced neutral return control (hand) levers. These devices ensure that the crane does not move unless the movement is being controlled by the operator. In the case of a deadman control, the motion being controlled, such as hoisting or trolleying, ceases when the operator releases the control. Forced neutral return control levers automatically return to the neutral position when they are released.

Paragraph (d)(2)(ix) requires an emergency stop switch at the operator's station. This safety device is needed to enable the operator to immediately stop all crane functions in the event of an emergency.

Paragraph (d)(2)(x) requires trolley end stops as safety devices because trolley travel limiting devices, which are required by § 1926.1435(e)(5)(i), will not work without trolley end stops.

Paragraph (d)(3) requires that all of the safety devices listed in § 1926.1435(d)(2) be in proper working order for the crane to be operated. Where a device stops working properly during operations, the operator would have to safely stop operations, and operations are prohibited from resuming until the device is once again in proper working order. In the final rule, OSHA is adding text and a cross-reference to § 1926.1417 to make it clear that the equipment must be taken out of service, and tagged as such, when a safety device is not operational.

Three commenters stated that several of the proposed safety devices—the hydraulic system pressure limiting device required by § 1926.1435(d)(2)(vi), the brakes required by § 1926.1435(d)(2)(vii), and the deadman control required by § 1926.1435(d)(2)(viii), should be listed as design features rather than safety devices because they cannot be checked every shift, as safety devices must under § 1926.1412(d)(1)(xiv). (ID–0180.1; –0205.1; –0213.1.) OSHA declines to adopt this suggestion because it agrees with C–DAC's determination that these devices must be working properly for the crane to operate safely, and they therefore need to be listed as safety devices under the standard. Moreover, the commenters who said these devices cannot be checked every shift did not explain why they believed this was so, and C–DAC's inclusion of them as safety devices shows that C–DAC determined that checking these devices for proper operation, as § 1926.1412(d)(1)(xiv) requires, is feasible.[133]

Operational aids: Like § 1926.1416 for other equipment, § 1926.1435(e) divides operational aids for tower cranes into Category I aids and Category II aids, with the two categories differing in the amount of time that temporary alternative measures can be used until the aids are repaired. For Category I aids that period is seven days, and for Category II it is 30 days. Also like § 1926.1416, if a required part is ordered within seven days of the occurrence of the deficiency and not received in time to complete the repair in seven and thirty days, respectively, the employer would have seven days from receiving the part to complete the repair. The rationale for these time periods is discussed under § 1926.1416. For purposes of clarification, the Agency has added a reference to § 1926.1435(e)(3) noting that the requirements of § 1926.1417(j) are applicable. *See* further discussion at § 1926.1417(j).

Section 1926.1435(e)(4) specifies that operational aids must work properly during operations and, if an aid stops working, the operator is required to safely stop operations until the aid is working properly again or until the temporary alternative measures specified in this section are implemented. Where a replacement part for an operational aid is not available, the substitution of a device that performs the same function would not be considered a modification subject to § 1926.1434, *i.e.,* it would not need to be approved by the manufacturer or a registered professional engineer. (*See* the discussion above regarding § 1926.1416 for an explanation of the Committee's rationale for this approach to operational aids.)

Three of the operational aids discussed below are required on tower cranes manufactured more than one year after the effective date of the standard. The remainder are required on all cranes. It was C–DAC's understanding that the three aids not required on existing cranes represent technology only recently available to the industry, while the aids that are required on all cranes have routinely been used in the industry for some time.

Paragraph (e)(5) requires the Category I operational aids discussed below and specifies the alternative measures that would have to be followed if they are not working properly. If these operational aids are not working properly, they must be repaired no later than 7 days after the deficiency occurs. However, if the employer documents that it has ordered the necessary parts within 7 days of the occurrence of the deficiency, the repair must be completed within 7 days of receipt of the parts.

OSHA noted in the proposed rule preamble that the term "days" could mean either business days or calendar days. For the reasons outlined in the discussion of § 1926.1416 above, in the final rule OSHA has changed "days" to "calendar days" to reflect the Committee's intent.

Paragraph (e)(5)(i) requires trolley travel limiting devices. These devices are required at both ends of the jib to prevent the trolley from running into the end stops. If the trolley were to run into an end stop, injuries or fatalities could result in a variety of ways. For example, the sudden stopping of the trolley at the outward end stop could cause the load to swing significantly past the crane's maximum working radius, causing a collapse. Another example is where the load swing from the sudden stopping of the trolley could cause the load to fall and strike employees.

If this operational aid were not working properly, the employer would have to use one of two temporary alternative measures: (A) Mark the trolley rope so it can be seen by the operator at a point that will give the operator sufficient time to stop the trolley prior to the end stops, or (B) use a spotter who is in direct communication with the operator when

[133] The three commenters included one C–DAC member and two organizations that nominated members who served on C–DAC. As discussed above, OSHA gives reduces weight to comments offered by C–DAC members and organizations that nominated C–DAC members when those comments oppose the position those members took in C–DAC deliberations.

operations are conducted within 10 feet of either end of the travel rail end stops; the spotter must inform the operator of the distance of the travel bogies from the end stops or buffers.

Proposed § 1926.1435(e)(5)(i)(B) did not explicitly require the spotter to be in direct communication with the operator. The Agency proposed adding this language as necessary to make the provision work effectively and as the Committee intended and requested public comment on whether to add specific language to that effect. Five commenters supported the addition of an explicit requirement that the spotter be in direct communication with the operator; no commenters opposed the change. (ID–0069.1; –0156.1; –0180.1; –0205.1; –0213.1.) OSHA has amended § 1926.1435(e)(5)(i)(B) accordingly.

A similar change has been made to §§ 1926.1435(e)(5)(ii), (e)(5)(iii), (e)(5)(iv), and (e)(5)(vii) discussed below, which also provide for the use of a spotter as a temporary alternative measure when certain operational aids are not functioning.

In addition, one commenter suggested there should be visual acuity requirements for spotters. (ID–0069.1.) For the reasons discussed earlier under § 1926.1408(b)(4)(ii), OSHA is not specifying such a requirement in this rule.

Paragraph (e)(5)(ii) requires a boom hoist limiting device. As defined in § 1926.1401, the word "boom" used in reference to tower cranes refers to a luffing boom. Therefore, under this paragraph, a boom hoist limiting device would only be required on cranes with luffing booms. A boom hoist limiting device automatically prevents the boom hoist from pulling the boom past the minimum allowable radius (maximum boom angle), which can result in boom failure (*see* the discussion above of boom hoist limiting device with respect to § 1926.1416(d)(1)). The temporary alternative measures for this operational aid are similar to the ones for the trolley travel limiting device and the boom hoist limiting device in § 1926.1416(d)(1): the employer has the option of clearly marking the cable at a point that would give the operator sufficient time to stop the boom hoist within the minimum and maximum boom radius or use a spotter who is in direct communication with the operator to inform the operator when this point is reached.

Paragraph (e)(5)(iii) requires an anti two-blocking device. This is comparable to the requirement for anti two-blocking devices for other cranes required by § 1926.1416. This operational aid is required on tower cranes to prevent damage from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). Where the operational aid is not working properly, the employer has the option of clearly marking the cable at a point that would give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter who is in direct communication with the operator to inform the operator when this point is reached. (*See* the discussion of the need for this type of device, and rationale for including it as an operational aid, above with respect to § 1926.1416(d)(3)).

Paragraph (e)(5)(iv) requires a hoist drum lower limiting device. This paragraph requires that tower cranes manufactured more than one year after the effective date of this standard be equipped with a device that prevents the last two wraps of hoist cable from being spooled off the drum. Such a device prevents the entire rope from being spooled off the drum, which can cause the rope to separate (and the load to fall) from the drum due to the shock from the load suddenly stopping.

Paragraph (e)(5)(v) requires a load moment limiting device. "Load moment (or rated capacity) limiter" is defined in § 1926.1401. This type of device detects and prevents a potential overload condition which could cause the load to fall, the crane to collapse or other failure of the crane.

Where the load moment limiting device is not in proper working condition, two types of measures are required. The first type of measure is designed to ensure that the operator determines the radius. If the crane is equipped with a radius indicating device, it is required to be used. If the crane is not so equipped, the radius is required to be measured (such as with a tape measure) to ensure that the load is within the rated capacity of the crane.

The second type of measure is designed to ensure that the operator accurately determines the weight of the load. The load weight is required to be determined from a source recognized by the industry (such as the load's manufacturer), or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight). This information must be provided to the operator prior to the lift. The proposed rule had provided for calculations based on a "reliable" source or calculation method, or "by other equally reliable means." To avoid potentially subjective interpretations of "reliable," OSHA is instead requiring that the measurements be from a source typically relied on in the industry.

Paragraph (e)(5)(vi) requires a hoist line pull limiting device so that the load applied to the hoist drum will not exceed the hoist's capacity. If the hoist is equipped with a multiple speed hoist transmission, the device would have to limit the hoist's lifting capacity in each individual gear ratio. If the hoist line pull were to exceed the hoist's capacity, the hoist could fail and unspool the line, causing the load to drop suddenly.

The temporary alternative measure for this operational aid is that the operator ensure that the weight of the load does not exceed the capacity of the hoist, taking into account each individual gear ratio if the crane is equipped with a multiple speed hoist transmission. For example, this could be done by the operator checking the hoist capacity in the equipment manual and verifying that the load will not exceed that capacity.

Paragraph (e)(5)(vii) requires a rail travel limiting device in each direction to prevent the travel bogies from running into the end stops or buffers. As noted above, rail stops that keep the crane from overshooting the section of rail within which it is supposed to operate is one of the safety devices required for tower cranes that travel on rails. A rail travel limiting device is a device that limits the crane's travel to keep a travel bogie from running into a rail stop. C–DAC determined that rail stops should not be the exclusive means of ensuring that the crane stays within its intended limits because the travel bogie could jump the tracks if it were to strike the rail stops at a high enough speed. The temporary alternative to a rail travel limiting device that is not in proper working order is to use a spotter who is in direct communication with the operator when operations are conducted within 10 feet of either end of the travel rail end stops; the spotter must inform the operator of the distance of the travel bogies from the end stops or buffers.

Proposed paragraph (e)(5)(viii) required the boom hoist drum to be equipped with a device that would positively lock the boom hoist drum. One example of such a device is a ratchet and pawl mechanism. The purpose of the device is to prevent the boom hoist (and therefore the load as well) from inadvertently lowering. The temporary alternative measure that was proposed was to require the device to be set manually if an electric, hydraulic, or automatic device is not working.

In the proposed rule, OSHA noted that the temporary alternative proposed in paragraph (e)(5)(viii) addressed the

situation where the mechanism to automatically set the locking device was malfunctioning but did not address the situation where the locking device itself was not working properly. The Agency requested public comment on whether this provision should include a temporary measure that would be required if the positive locking device is not working properly (regardless of whether it is attempted to be set automatically or manually) and, if so, what temporary measure is available in such a situation.

Several commenters responded that boom hoist drum should have either a positive locking device, an integrally mounted holding device, a secondary braking device, or an internal static brake to prevent boom hoist movement in the event of hydraulic or main brake failure. (ID –0180.1; –0205.1; –0213.1.) According to these commenters, any of these devices would prevent the boom hoist drum from spinning freely and allowing the boom to free fall in the event the main boom hoist brake (required by § 1926.1435(d)(vii)(A)) fails.

OSHA concludes that any of the devices mentioned by these commenters, if working properly, would comply with this provision. However, the commenters did not address the question posed in the proposal as to whether there is a temporary measure that should be required if the device is not working properly. If the drum was, for example, equipped with a ratchet and pawl locking device, the record does not show that it would be practical to install another type of device in the event the ratchet and pawl device is not working properly.

Upon further reviewing proposed paragraph (e)(5)(viii), OSHA determines it was C–DAC's intent to require a positive locking mechanism that could be set from a control at the operator's station and to require, as a temporary alternative measure if the control is not working, that the device be set manually. Moreover, OSHA concludes that such an alternative would provide an adequate temporary alternative. Such a device would be analogous to the parking brake of a car, which can normally be actuated from the driver's seat but, in the event that control fails, the car can be kept from moving by chocking the wheels. To express this intent more clearly, OSHA is modifying paragraph (e)(5)(viii) accordingly.

Paragraph (e)(6) requires the category II operational aids discussed below and specifies the alternative measures that would have to be followed if they are not working properly. If these operational aids are not working properly, they must be repaired no later than 30 days after the deficiency occurs. However, if the employer documents that it has ordered the necessary parts within 7 days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 days, the repair must be completed within 7 days of receipt of the parts. As noted above, the word "days" in the proposed rule has been changed to "calendar days" in the final rule.

Paragraph (e)(6)(i) requires a boom angle or hook radius indicator as specified in §§ 1926.1435(e)(6)(i)(A) and (B). Under these provisions, luffing boom tower cranes are required to have a boom angle indicator readable from the operator's station. Hammerhead tower cranes manufactured more than one year after the effective date of this standard are required to have a hook radius indicator readable from the operator's station. These devices are needed because the information they provide is necessary for the operator to determine the crane's capacity under its load chart. As with the similar devices required under § 1926.1416, the temporary alternative is to measure the boom angle or hook radius with a measuring device (§ 1926.1435(e)(6)(i)(C)).

Section 1926.1435(e)(6)(ii) requires tower cranes to have a trolley travel deceleration device that would automatically reduce the trolley speed before the trolley reaches the end limit in both directions. Section 1926.1435(e)(6)(iii) requires tower cranes to have a boom hoist deceleration device, which would automatically reduce the boom speed before a luffing boom reaches the minimum or maximum radius limit. Section 1926.1435(e)(6)(iv) requires tower cranes to have a load hoist deceleration device, which would automatically limit the load speed before the load hoist reaches the upper limit. In the proposed rule, the temporary alternative measure for each of these operational aids was for the operator to reduce the speed when approaching the limits.

In specifying temporary alternative measures generally for operational aids, C–DAC sought to identify some measure in each instance that would assist the operator in performing the necessary task (in this case, slowing the action of a crane component before it reaches a limiting point). However, in the case of these deceleration devices, the Committee was unable to identify or develop that type of alternative measure. The temporary alternatives listed in the proposed rule instruct the operator to do manually what the operational aids are supposed to do automatically but do not assist the operator in carrying out this function. Because the temporary alternatives specified in the proposed rule did not meet the usual criteria for temporary alternative measures, the Agency requested public comment on whether there are any alternative measures that could be used to assist the operators if these deceleration devices malfunction.

Four commenters stated there are no temporary alternative measures for these devices. (ID–0172.1; –0180.1; –0205.1; –0213.1.) No commenters suggested that there are available measures.

As neither C–DAC nor public commenters have been able to identify appropriate temporary alternative measures, OSHA has considered whether to continue to characterize these devices as operational aids or to treat them as safety devices and prohibit operation of the equipment unless they are working properly. OSHA has also considered whether to retain them as Category II operational aids, which must be repaired within 30 days, or to change them to Category I operational aids, which must be repaired within 7 days. OSHA has decided to retain them as Category II operational aids but to modify the temporary alternative from that in the proposed rule to ensure that the operator is able to operate the crane safely even if a deceleration device is not working.

As noted above, the proposed rule specified as a "temporary alternative measure" that the operator reduce speed when approaching a limit (such as a trolley's end limit) if a deceleration device is not working properly. In fact, reducing the speed near a limit is a work practice that crane operators generally follow even if the deceleration devices are working properly because serious damage, such as the load falling, can result if a deceleration device should fail suddenly while the component is moving too fast at the end of its travel. The deceleration devices serve as backup devices that slow down the components in the event the operator fails to do so properly, but operator control is the primary means of slowing the trolley, boom hoist, and load hoist before they reach the end of their travel.

As noted above, OSHA is retaining C–DAC's characterization of these deceleration devices as Category II operational aids. C–DAC determined that the crane could be operated safely if the deceleration devices were malfunctioning as long as the operator follows the normal practice of manually slowing the trolley, boom hoist, and load hoist when they are near the end of their travel. No commenter or witness

suggested that a different characterization was proper.

To address operations when the deceleration device is malfunctioning, OSHA is requiring the employer to make sure that the operator is aware of the malfunctioning deceleration device and of the need to take extra care when the component is near the end of its travel, instead of requiring the temporary alternative measures listed in the proposed rule. OSHA is therefore specifying, in the final rule, that as a temporary alternative measure for each deceleration device, the employer must post a notice in the cab of the crane notifying the operator that the device in question is malfunctioning and instructing the operator to reduce speed when approaching a limit corresponding to the malfunctioning device. OSHA concludes that an operator who knows that the deceleration device is not working properly will take the extra care needed to ensure that the component is moving at a safe speed. OSHA modified paragraphs (e)(6)(ii)—(iv) in the final rule accordingly.

Paragraph (e)(6)(v) requires tower cranes to have a device that displays the wind speed, mounted above the upper rotating structure. On self erecting tower cranes, which typically rotate at the tower base and do not have an "upper rotating superstructure," it would have to be mounted at or above the jib level to be in a position to give a useful reading. The temporary alternative measure is for the wind speed to be obtained from a properly functioning device on another tower crane on the same site or to be estimated by a qualified person.

One commenter suggested that paragraph (e)(6)(v) be modified to make it clear that the qualified person performing the estimate of the wind speed must be located at the same height as the operator of the crane. (ID–0199.1.) OSHA does not determine such a change is needed. First, the operator's station is not always at the level of the jib; in some cranes the operator cab is well below the jib, and in others the operator may even be at ground level. Second, a qualified person is expected to use his or her judgment and expertise to perform numerous functions throughout this rule, and OSHA concludes that the qualified person at the site is best able to determine how best to estimate the wind speed if called upon to do so under this paragraph.

Section 1926.1435(e)(6)(vi) requires tower cranes manufactured more than one year after the effective date of this standard to have a device that displays the magnitude of the load on the hook. This could be either a separate device or one that is part of the load moment limiting device (discussed above) that displays magnitude of the load on the hook. By informing the operator of the weight of the load, this device helps the operator ensure that the crane is operated within its rated capacity. The temporary alternative is for the weight of the load to be determined from a source recognized by the industry (such as the load's manufacturer), by a calculation method recognized by the industry (such as calculating the weight a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information must be provided to the operator prior to the lift. The proposed rule had provided that the weight of the load and calculations be based on a "reliable source." To avoid the potentially subjective interpretations of "reliable," OSHA is instead requiring in the final rule that these be from a source typically relied on in the industry.

One commenter believed that most of the operational aids listed in this section are so vital to safe operation that the crane should not be operated if they are not functioning properly. (ID–0172.1.) In effect, this commenter would convert these devices from operational aids to safety devices. This commenter also believed the time period for other operational aids to be repaired should be shortened.

It was C–DAC's considered judgment that safety would not be compromised if the employer follows the temporary alternative measures specified for the various operational aids and that the time periods for getting malfunctioning devices repaired was reasonable. This commenter has offered no basis for OSHA to override C–DAC's judgment on these issues.

Paragraph (f) Inspections

Proposed paragraph (f)(1) of this section did not state that § 1926.1413 (Wire rope—inspection) applies to tower cranes. OSHA notes that the wire rope inspections required under § 1926.1413 must also be conducted for tower cranes and determines it is useful to reference all tower crane inspection requirements in § 1926.1435(f). Therefore, OSHA modified § 1926.1435(f)(1) of the final rule to specify that 1926.1413 applies to tower cranes.

Under paragraph (f)(1), the post-erection, shift, monthly, and annual inspections required under §§ 1926.1412 and 1926.1413 must be conducted for tower cranes.

Proposed paragraphs (f)(2) and (f)(3) specified additional requirements for the post-erection and monthly inspections for tower cranes beyond those required under § 1926.1412. OSHA received no comments objecting to those requirements but did receive comments suggesting that a pre-erection inspection should be required and recommending that additional items be included in the monthly inspection. OSHA will first address the pre-erection inspection issue.

Two commenters and witnesses at the hearing urged OSHA to add a requirement for a pre-erection inspection of the crane's component parts. (ID–0182.1; –0199.1.) One of the commenters reasoned that a thorough inspection of a tower crane's component parts is more difficult once the crane is erected because the inspector would have to be jacked or hoisted into place and access to the parts would be more restricted. (ID–0199.1.) A witness testified that shift inspections are not adequate to detect damage from previous use, dismantling, handling, or shipping, and such damage could remain undetected until the next comprehensive inspection unless a pre-erection inspection is conducted. (ID–0341.)

Several witnesses who use tower cranes also testified in favor of pre-erection inspections and said that they routinely conduct such inspections. (ID–0344.) For example, a representative from a steel erection contractor and crane vendor was asked by a public participant if there is a benefit to require a pre-erection inspection of all component parts by a qualified person. In response, he testified that a pre-erection inspection is done routinely anyway because his company is required to inspect the crane components before erection to make sure the components were not damaged during shipping. (ID–0344.)

In addition, one commenter noted that ASME B30.3 (2003), Construction Tower Cranes, includes a provision on pre-erection inspections, which suggests that such inspections are routinely conducted in the industry. (ID–0405.1.) The ASME B30.3 provision reads:

> 3–1.1.2(g). Before crane components are erected, they shall be visually inspected for damage from shipping and handling. Dented, bent, torn, gouged, or otherwise damaged structural members shall not be erected until repaired in accordance with the manufacturer's or a qualified person's instructions, or replaced.

Although the record contains substantial support for pre-erection inspections, it also reflects different views regarding the appropriate scope of such an inspection. One commenter recommended an inspection of "the

tower crane's component parts." (ID–0182.1.) As noted above, the ASME B30.3 standard similarly refers to "crane components." Another commenter listed the turntable, jib, and boom as items to be inspected. (ID–0199.1.) One witness at the hearing stated that the pre-erection inspection should include the tower, turntable, jib, counterjib, machinery, masts, boom, and pendants. (ID–0341.) However, the organization represented by that witness submitted a considerably longer list of items it believed should be inspected. (ID–0333.) Another witness favored pre-erection inspections of "major components" but could not offer a more specific definition than "components that, if they failed, would have a catastrophic result." (ID–0344.)

In light of the record, OSHA concludes that pre-erection inspections should be required for tower cranes, with such inspections focused on discovering defects that would be difficult to detect during the shift inspections that will be conducted regularly after the crane is put in service. By focusing the inspection on such components, the pre-erection inspection will address the concern expressed by commenters that some defects will be difficult to detect during shift inspections after the crane is erected.

OSHA is requiring the pre-erection inspection to be conducted by a "qualified person." The final rule requires that certain other inspections be conducted by a qualified person, including the post-erection inspection required by § 1926.1412(c) and the annual/comprehensive inspection required by § 1926.1412(f). As discussed below, under the pre-erection inspection required by this final rule, the individual conducting the inspection must make decisions similar to those that must be made during the annual/comprehensive inspection, *i.e.,* deciding whether a deficiency would be an immediate safety hazard or whether it requires scrutiny during the monthly inspections. Since the pre-erection inspection requires the same degree of expertise as the annual/comprehensive inspections, paragraph (f)(2) is similarly requiring the pre-erection inspection to be conducted by a qualified person.

Paragraph (f)(2)(i) requires the qualified person to pay particular attention to components that will be difficult to inspect thoroughly during shift inspections. As noted above, inspection of such components was a special concern of commenters who believed that pre-erection inspections should be required.

The shift, monthly, and annual inspections required under § 1926.1412 leave it up to the individual conducting the inspection to determine if a deficiency revealed by an inspection constitutes a safety hazard that requires either immediate correction or further scrutiny. In particular, §§ 1926.1412(f)(4)–(6) on annual inspections require the qualified person who conducts the inspection to determine whether a deficiency is a safety hazard that requires immediate correction or whether it is not yet a safety hazard but is of sufficient concern to be monitored in the monthly inspections.

OSHA determines that a similar approach is appropriate here because a deficiency revealed in a pre-erection inspection may be sufficiently serious that a component should not be used at all, or it may not presently be a safety hazard but may be a matter of concern to the inspector so as to require periodic scrutiny. Accordingly, paragraph (f)(2)(ii) requires the qualified person who conducts the inspection to determine, before a component is erected, whether the component would create a safety hazard if used on the crane. If so, the component cannot be used unless it is repaired and upon re-inspection is found not to constitute a safety hazard.

Paragraph (f)(2)(iii) specifies that, if the qualified person determines that, though not presently a safety hazard, the component needs to be monitored, the employer must ensure that the component is checked in the monthly inspections. To ensure that any individual who conducts a monthly inspection knows that the component must be monitored during that inspection, paragraph (f)(2)(iii) requires that any such determination be documented and the documentation made available to any person who conducts a monthly inspection.

Proposed paragraph (f)(2) specified two additional post-erection inspection requirements in addition to those required under § 1926.1412(c). It required a load test using certified weights, or scaled weights using a certified scale with a current certificate of calibration, after each erection. It also specified that the load test be conducted in accordance with the manufacturer's instructions, or if no instructions are available, in accordance with written load test procedures developed by a registered professional engineer. No adverse comment was received on these provisions, and proposed paragraph (f)(2) is promulgated as proposed but renumbered as paragraph (f)(3).

Proposed paragraph (f)(3) required that additional items be included in the monthly inspections of tower cranes. These include tower (mast) bolts and other structural bolts (for loose or dislodged condition) from the base of the tower up or, if the crane is tied to or braced by the structure, those above the upper-most brace support (§ 1926.1435(f)(3)(i)). The monthly inspection must also include the upper-most tie-in, braces, floor supports, and floor wedges where the tower crane is supported by the structure (§ 1926.1435(f)(3)(i)), for loose or dislodged components.

One commenter's suggestion addressed the suitability of the bolts used to erect the tower and to support the turntable. (ID–0172.1.) Although OSHA agrees with the commenter that these bolts serve an important safety function, the commenter did not provide any supporting information that would enable OSHA to evaluate whether the detailed requirements proposed by the commenter are needed to improve tower crane safety. However, OSHA does determine that the bolts should be included as components to be inspected and is adding paragraph (f)(5) requiring them to be inspected for proper condition and torque as part of the annual inspection.[134]

A commenter suggested that the upper rotation structure should undergo a special, thorough inspection before climbing. (ID–0137.1.) This commenter did not state why it believed such an inspection was needed. Accordingly, OSHA has no basis in the record to conclude that the additional inspection requested by this commenter would improve the safety of the climbing operation.

Proposal for Tower Crane Tracking System

A witness at the hearing suggested that OSHA adopt a tracking system whereby any major part of a tower crane that suffered a structural failure would be able to be identified even if that part was moved to another jurisdiction. (ID–0342.) The witness explained that the proposed system would require the serial number of parts that failed to be reported to the manufacturer so that localities such as New York City could contact the manufacturer to determine whether a particular crane was safe to operate within that jurisdiction.[135]

[134] Accordingly, OSHA is promulgating proposed paragraph (f)(3) but renumbering it as paragraph (f)(4).

[135] This commenter also called for prototype testing of tower cranes. (ID–0156.1.) As explained in § 1926.1433, OSHA has added such a requirement to § 1926.1433(c).

OSHA is not promulgating requirements to implement the system proposed by this witness. Such a scheme is complex, and appears to require the development of new tracking systems and required reporting to manufacturers that might be beyond the scope of OSHA's authority. It also goes far beyond any provisions of the proposed standard, and its adoption would require OSHA to reopen the rulemaking record to allow other interested persons to comment on it. OSHA does not conclude that such a reopening is justified on the basis of the witness's testimony. The Agency notes, however, that it is not preempting a locality's authority to establish such a scheme within its jurisdiction. (*See* discussion of preemption under federalism in section V.D of this preamble.)

Section 1926.1436 Derricks

This section contains requirements for derricks that supplement the other requirements of this standard. Subpart N, at former § 1926.550(e), required derricks to comply with applicable provisions for design, construction, installation, inspection, testing, maintenance, and operation in ANSI B30.6–1969, safety code for "Derricks," as well as the general provisions of subpart N that applied to all equipment.

C–DAC's experience, and its review of injury and fatality statistics, did not indicate a need to deviate significantly from the requirements of subpart N. For the most part, the most recent version of the ANSI standard, ASME B30.6–2003, does not differ substantively from the 1969 version, so the requirements of this new section differ substantively in only limited respects from previous subpart N. Where substantive differences exist, they are discussed in the context of that requirement.

Paragraph (a)

Section 1926.1436 contains supplemental requirements for derricks, whether temporarily or permanently mounted; all sections of this subpart apply to derricks unless specified otherwise. Section 1926.1436(a) defines a derrick as powered equipment consisting of a mast or equivalent member that is held at or near the end by guys or braces, with or without a boom, and its hoisting mechanism. The mast/equivalent member and/or the load is moved by the hoisting mechanism (typically base-mounted) and operating ropes. Derricks include: A-frame, basket, breast, Chicago boom, gin pole (except gin poles used for erection of communication towers), guy, shearleg, stiffleg, and variations of such equipment.

Paragraph (a) excludes the gin poles when used for the erection of communication towers. This mirrors the exclusion of such equipment from the scope of the standard under § 1926.1400(c)(12). *See* discussion of this exclusion in § 1926.1400(c)(12). No comments were received; therefore this provision is promulgated as proposed.

Paragraph (b) Operation—Procedures

Paragraph (b)(1) of this section states that § 1926.1417 (Operation) of this standard applies to derricks except for § 1926.1417(c) (Accessibility of procedures). C–DAC concluded and OSHA agreed that it was appropriate to keep the operation requirements for derricks consistent with those of cranes as much as possible because they both present many of the same hazards and operational issues. However, § 1926.1417(c) requires the operating procedures, including load charts, to be located in "the cab" of the equipment and derricks often do not have a cab. Therefore, it was not appropriate to require that § 1926.1417(c) apply to derricks. The discussion of § 1926.1436(b)(3) sets forth the requirements for the accessibility of the load chart for derricks.

Paragraph (b)(2) of this section, *Load chart contents,* lists the information that must be included on load charts. Subpart N incorporated similar load chart requirements via sec. 6–1.1.2 in ANSI B30.6–1969, which remains the same in the 2003 version of the consensus standard.

Paragraph (b)(2)(i) requires the load chart contain the rated capacity at corresponding ranges of boom angle or operating radii. This information is necessary to prevent overloading of the derrick.

Paragraph (b)(2)(ii) requires the load chart to list the specific lengths of components to which the rated capacities apply. This information is necessary because the derrick's load capacity varies with different component lengths.

Paragraph (b)(2)(iii) requires the load chart to list required parts for hoist reeving. By listing the reeving parts considered during the tabulation of available load charts, the derrick operator can determine if available load charts are applicable to the configuration of the derrick at the work site. As with paragraphs (b)(2)(i) and (ii), meeting the requirement of paragraph (b)(2)(iii) will help prevent accidents that could occur as a result of errors in determining the equipment's rated capacity.

Paragraph (b)(2)(iv) requires the size and construction of rope to be included on the load chart or in the operating manual. This requirement prevents hoisting accidents that might occur if a rope fails because it was the wrong size or construction for the load being lifted.

Paragraph (b)(3) of this section, *Load chart location,* sets forth the requirement for the location of load charts. Section 1926.1436(b)(3)(i), *Permanent installations,* requires permanently installed derricks with fixed lengths of boom, guy, and mast, to have a load chart posted where it is visible to personnel responsible for the operation of the equipment. Section 1926.1436(b)(3)(ii), *Non-permanent installations,* requires derricks that are not permanently installed to have the load chart readily available at the job site to personnel responsible for the operation of the equipment. These requirements ensure the critical information contained on these charts is readily available on the worksite enabling the calculation of the parameters for a safe lift. No comments were received for § 1926.1436(b); it is promulgated as proposed.

Paragraph (c)—Construction

Paragraph (c) of this section contains supplemental engineering and fabrication requirements that address hazards specific to derricks. Paragraph (c)(1), *General requirements,* lists general construction requirements that apply to the use of all types of derricks. These requirements are similar to sec. 6–1.2.1 of ANSI B30.6–1969 and ASME B30.6–2003 and would help the employer prevent accidents caused by inadequate structural design and fabrication.

Paragraph (c)(1)(i) states that derricks must be constructed to meet all stresses imposed on members and components when installed and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity. "Builder" is defined in § 1926.1401 as "the builder/constructor of equipment." This definition distinguishes a "builder" of equipment (a derrick that is erected at the worksite by an employer) from a manufacturer, who sells products that may be used at any worksite. Section 1926.1436(c)(1)(i) uses the word "builder" in addition to "manufacturer" because it will often be the builder's procedures, rather than the manufacturer's, that must be followed to ensure that derricks are constructed properly. In the proposed rule, the definition of builder included the word employer. Upon review of the definition proposed, OSHA determines that the word employer did not enhance the

definition and could possibly lead to confusion. Therefore, OSHA has modified the definition in the final rule.

Paragraph (c)(1)(ii) specifies that the welding of load sustaining members must conform to recommended practices in ANSI/AWS D14.3–94 or AWS D1.1/D1.1M:2002. This is similar to sec. 6–1.2.1(b) of ASME B30.6–2003 which relies on newer welding standards than ANSI B30.6–1969. Paragraph (c)(1)(ii) will prevent structural failures when the derrick is used within its rated capacity.

One commenter wanted the referenced consensus standards to be included as an appendix for ease of compliance. (ID–0214.1.) Including all the consensus standards relevant to this final rule would make the regulatory text or an appendix cumbersome. Moreover, OSHA determines that employers using this equipment are likely to have ready access to the pertinent standards referenced in paragraph (c)(1)(ii). For these reasons, OSHA is not adding the full text of referenced consensus standards to the regulatory text or an appendix. This paragraph is promulgated as proposed.

Paragraph (c)(2) of this section, *Guy derricks,* lists the additional requirements applicable to the construction of guy derricks. (*See* the preamble to the proposed rule for a short description of guy derricks, 73 FR 59853, Oct. 9, 2008.)

Paragraph (c)(2)(i) specifies the minimum number of guys to be six, with equal spacing, except where a qualified person or derrick manufacturer approves variations from these requirements and revises the rated capacity to compensate for such variations. This requirement is comparable to sec. 6–1.2.2 of ANSI B30.6–1969 and ASME B30.6–2003. This paragraph is adopted as proposed.

Paragraph (c)(2)(ii) states that guy derricks must not be used unless the employer has the following guy information from a manufacturer or from a qualified person when not available from the manufacturer: (A) The number of guys; (B) the spacing around the mast; and (C) the size, grade, and construction of rope to be used for each guy. Paragraph (c)(2)(iii) requires that for guy derricks manufactured after December 18, 1970, in addition to the information required by § 1926.1436(c)(2)(ii), the employer must have the following guy information from a manufacturer or from a qualified person when not available from the manufacturer: (A) The amount of initial sag or tension; and (B) the amount of tension in guy line rope at anchor.

These provisions are substantially different from requirements in the relevant ANSI/ASME standards. The corresponding ANSI/ASME provisions are sec. 6–1.2.2 of ANSI B30.6–1969 and ASME B30.6–2003. The ANSI/ASME standards require the derrick manufacturer to furnish complete information recommending the guy specifications listed in §§ 1926.1436(c)(2)(ii) and (c)(2)(iii).[136] The OSHA standard, by contrast, imposes an obligation on derrick users to possess the necessary information. No comments were received on this deviation from the consensus standard and OSHA has deferred to C–DAC's judgment that it is better to place this responsibility on the derrick user rather than the manufacturer.

Paragraphs (c)(2)(ii) and (c)(2)(iii) have been revised from the proposal. As proposed, these paragraphs simply required the employer to have the listed pieces of information before using the guy derrick. OSHA requested comments on whether the standard should require guy specifications to be developed by a qualified person if they are not available from the manufacturer. Several comments were received supporting the proposed revision. (ID–0180.1; –0205.1; –0213.1.) No comments were received that opposed this proposed revision. In the final rule the regulatory text in both paragraphs has been updated to clarify that the required information must come from the manufacturer or from a qualified person when that information is not available from a manufacturer.

Paragraph (c)(2)(iv) states that the mast base must permit the mast to rotate freely with allowance for slight tilting of the mast caused by guy slack. No comments were received for this provision; it is promulgated as proposed.

Paragraph (c)(2)(v) requires that the mast cap must: (A) permit the mast to rotate freely; (B) withstand tilting and cramping caused by the guy loads; (C) be secured to the mast to prevent disengagement during erection; and (D) be provided with means for attaching guy ropes. Paragraphs (c)(2)(iv) and (v) track similar provisions in secs. 6–1.2.2(c) and (d) of ANSI B30.6–1969 and ASME B30.6–2003. No comments were received on (c)(2)(v); it is promulgated as proposed

Additional installation requirements for guy derricks that are specific to the anchoring of its guys are addressed in § 1926.1436(d).

[136] The 1969 version of the ANSI standard does not include the pieces of information described in § 1926.1436(c)(2)(iii), but later versions of the B30.6 standard, including the 2003 version, list those items.

In the proposed rule, §§ 1926.1436(c) and 1926.1436(d) both contained requirements related to guy derricks. OSHA asked for public comment as to whether having specifications for guy derricks in both paragraphs (c) and (d) of this section could lead to confusion or impede compliance with its provisions. Several commenters believed that the two sets of proposed requirements for guy derricks should be combined. (ID–0180.1; –0205.1; –0213.1.) However, the commenters did not offer an explanation for how this would prevent confusion or enhance compliance. Upon consideration, OSHA disagrees with the commenters and therefore, requirements for guy derricks will be found in both paragraphs (c) and (d) of this section, just as in the proposed rule.

Paragraph (c)(3), *Stiffleg derricks,* provides additional requirements specific to stiffleg derricks to help ensure their safe use. These requirements which have not been changed from the proposal are similar to those in secs. 6–1.2.2(c) and (d) of ANSI B30.6–1969 and ASME B30.6–2003.

Paragraph (c)(3)(i) requires the mast to be supported in the vertical position by at least two stifflegs; one end of each must be connected to the top of the mast and the other end securely anchored.

Paragraph (c)(3)(ii) specifies that stifflegs must be capable of withstanding the loads imposed at any point of operation within the rated load chart range.

Paragraph (c)(3)(iii) specifies that the mast base must: (A) permit the mast to rotate freely (when necessary); and (B) permit deflection of the mast without binding.

Paragraph (c)(3)(iv) states that the mast must be prevented from lifting out of its socket when the mast is in tension.

Paragraph (c)(3)(v) requires the stiffleg connecting member at the top of the mast to: (A) permit the mast to rotate freely (when necessary); (B) withstand the loads imposed by the action of the stifflegs; and (C) be secured so as to oppose separating forces.

OSHA requested public comment on whether the provisions in paragraphs (c)(3) and (d)(3), which both contained requirements for stiffleg derricks, needed to be changed or modified to avoid potential confusion. As discussed above, with respect to the requirements for guy derricks in both paragraphs (c) and (d), OSHA has decided to adhere to the proposal; requirements for stiffleg derricks will be found in both paragraphs (c) and (d) of this section.

Paragraph (c)(4) of this section, *Gin pole derricks,* contains additional requirements specific to gin pole

derricks to help ensure their safe use. Similar requirements are found in sec. 6–1.2.4 of ASME B30.6–2003. No comments were received for paragraph (c)(4); it is promulgated as proposed.

Under paragraph (c)(4)(i), guy lines must be sized and spaced so as to make the gin pole stable in both boomed and vertical positions. If the size and/or spacing of guy lines does not result in the gin pole being stable in both boomed and vertical positions, the employer must ensure that the derrick is not used in an unstable position.

Paragraph (c)(4)(ii) requires that the base of the gin pole permit movement of the pole (when necessary).

Under paragraph (c)(4)(iii), the gin pole must be anchored at the base against horizontal forces (when such forces are present).

Paragraph (c)(5) of this section, *Chicago boom derricks,* states that the fittings for stepping the boom and for attaching the topping lift must be arranged to: (i) Permit the derrick to swing at all permitted operating radii and mounting heights between fittings; (ii) accommodate attachment to the upright member of the host structure; (iii) withstand the forces applied when configured and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity; and (iv) prevent the boom or topping lift from lifting out under tensile forces. Similar requirements, which will help ensure that such derricks are used safely, are found in sec. 6–1.2.5 of ASME B30.6–2003. No comments were received for paragraph (c)(5); it is promulgated as proposed.

Paragraph (d) Anchoring and Guying

Paragraph (d) of this section lists requirements for anchoring and guying derricks to the surfaces that support them.

Paragraph (d)(1) requires the use of load anchoring data developed by the manufacturer or a qualified person. Subpart N, via sec. 6–1.4.3 of ANSI B30.6–1969, required load anchoring data for non-permanent installations, which include most derricks used for construction work, to be determined by the user. The 2003 version of ASME B30.6 requires the data to be determined by a qualified person. C–DAC concluded that, to better ensure safety, a qualified person (as defined in § 1926.1401) is needed to develop such data. The final rule affords the employer the additional flexibility of relying on data provided by the derrick manufacturer rather than relying exclusively on a qualified person to develop such data.[137] No comments were received for this provision; it is promulgated as proposed.

Paragraph (d)(2) of this section, *Guy derricks,* lists additional requirements, for anchoring and guying, that are specific to the use of guy derricks. These provisions are similar to sec. 6–1.4.1 of ANSI B30.6–1969 and ASME B30.6–2003. Under paragraph (d)(2)(i) the mast based must be anchored. Paragraph (d)(2)(ii) provides that the guys must be secured to the ground or another firm anchorage. And under paragraph (d)(2)(iii) the anchorage and guying must be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular guy slope and spacing specified for the application. No comments were received for paragraph (d)(2); it is promulgated as proposed.

Paragraph (d)(3) of this section, *Stiffleg derricks,* lists anchoring and guying requirements that are specific to the use of stiffleg derricks. This paragraph is similar to sec. 6–1.4.2 in ANSI B30.6–1969 and ASME B30.6–2003.

Under paragraph (d)(3)(i) the mast base and stifflegs must be anchored. Additionally, (d)(3)(ii) provides that the mast base and stifflegs must be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular stiffleg spacing and slope specified for the application. Paragraph (d)(3) had no comments and is promulgated as proposed.

Paragraph (e) Swingers and Hoists

Paragraph (e) of this section lists requirements for swinger mechanisms and hoists that are used as part of a derrick. Paragraph (e)(1) requires that the boom, swinger mechanisms, and hoists be suitable for the derrick work intended and be anchored to prevent displacement from the imposed loads. This provision is similar to sec. 6–1.5.1 of ANSI B30.6–1969 and sec. 6–1.5 of ASME B30.6–2003. No comments were received for paragraph (e)(1); it is promulgated as proposed.

Paragraph (e)(2) of this section, *Hoists,* specifies the minimum requirements for hoists used for derricks. This paragraph of the proposed rule was originally titled and related to base-mounted drum hoists. However, a tank building institute whose members use derricks routinely commented that confusion will result in their industry from the use of the term "Base-Mounted Drum Hoists," in this context. (ID–0130.1.) Hoists used are not limited to the base-mounted type. The commenter requested that the regulatory text of § 1926.1436(e)(2) be revised to replace the words "base mounted drum hoists" with the word "hoist" to eliminate ambiguity.

OSHA determines that it is appropriate to revise § 1926.1436(e)(2) to replace the reference to "base-mounted drum hoist" with the term "hoist." This revision recognizes that there may be designs of hoists, other than base-mounted drum, that are used with derricks.

Additionally, the commenter suggested that § 1926.553 be revised in conjunction with this final rule. (ID–0130.1.) *See* discussion in the preamble explanation of the amendment to subpart M.

Paragraphs (e)(2)(i)(A) through (D) require base-mounted drum hoists to meet requirements in specified sections of ASME B30.7–2001. Paragraph (e)(2)(i) does not apply to other types of hoists. No comments were received on these provisions and the provisions are adopted as proposed.

Paragraph (e)(2)(ii), *Load tests for new hoists,* outlines the requirements for load testing new hoists used with a derrick. The employer must ensure that new hoists are load tested to a minimum of 110% of rated capacity, but not more than 125% of rated capacity, unless otherwise recommended by the manufacturer. This requirement is met where the manufacturer has conducted this testing. ASME B30.7–2001, in section 7–2.2.2(a), requires similar testing but requires the test to be conducted by the manufacturer. OSHA recognizes that the manufacturer will usually be the party who conducts the test and allows the manufacturer to do so, but paragraph (e)(2)(ii) permits the test to be conducted by any party as long as it is performed correctly. This paragraph received no comments and it is adopted as proposed.

Paragraph (e)(2)(iii), *Repaired or modified hoists,* outlines the requirements for use of a hoist that has been repaired or modified. If a hoist has had repairs, modifications or additions that affect its capacity or safe operation it must be evaluated by a qualified person to determine if a load test is necessary If a load test is necessary, load testing must be conducted in accordance with paragraphs (e)(2)(ii) and (iv). This requirement parallels section 7–2.2.2(b)(1) of ASME B30.7–2001. OSHA received no comments on

[137] C–DAC believed that derrick users should be able to rely on data developed by the manufacturer or a qualified person for any type of installation and therefore did not distinguish between fixed and temporary installations for this purpose.

this provision and it is adopted as proposed.

Paragraph (e)(2)(iv), *Load test procedure,* outlines how tests required by paragraphs (e)(2)(ii) or (iii) must be conducted. Under paragraph (e)(2)(iv)(A) the test load must be hoisted a vertical distance to assure the load is supported by the hoist and held by the hoist brakes. Paragraph (e)(2)(iv)(B) requires the test load to be lowered, stopped and held with the brake(s). These provisions are comparable to section 7–2.2.2(b)(2) of ASME B30.7–2001.

Paragraph (e)(2)(iv)(C) states that the hoist must not be used unless a competent person determines that the test has been passed. ASME B30.7–2001 does not specify who must determine if a hoist passes its load test. C–DAC concluded, however, that to ensure the load test is properly assessed, this determination needs to be made by a competent person. The requirement that a competent person determine whether the hoist has passed a load test is consistent with the requirement, discussed below under § 1926.1436(g), that a competent person determine whether a derrick has passed a load test.

A commenter recommended that § 1926.1436(e)(2)(iv) be revised to add a paragraph requiring derrick users to simulate test/trial lifts in similar working cycle durations for actual field work cycles. (ID–0120.1.) The commenter provided no explanation for this suggestion nor any information on how the practice would improve safety beyond the requirements proposed. OSHA defers to C–DAC's judgment that the load test procedures specified in paragraph (e)(2)(iv) of this section will provide the necessary level of safety to employees.

For these reasons, OSHA did not modify the proposed text of § 1926.1436(e)(2)(iv) to add a paragraph (D). No other comments were received on paragraph (e)(2)(iv); it is promulgated as proposed.

Paragraph (f) Operational Aids

Paragraph (f) of this section specifies the types of operational aids that must be used on derricks during construction activities.

Paragraph (f)(1) is adopted as proposed and states that § 1926.1416 (Operational aids) applies, except for §§ 1926.1416(d)(1), (e)(1) and (e)(4). Under § 1926.1436(f)(1), two operational aids—an anti two-block device and a hoist drum rotation indicator (if the drum is not visible from the operator's station)—are required on a derrick manufactured more than one year after the effective date of this subpart. *See* discussion of § 1926.1416 for information about the safety functions served by these operational aids.

Proposed paragraph (f)(2) of this section, *Boom angle aid,* provided that the employer had to ensure that either: (i) the boom hoist cable is marked with caution and stop marks, corresponding to maximum and minimum allowable boom angles, that are within view of the operator or a spotter who is in direct communication with the operator, or (ii) an electronic or other device that signals the operator in time to prevent the boom from moving past its maximum and minimum angles, or automatically prevents such movement, is used.

C–DAC intended these precautions to be taken in lieu of requiring boom angle indicators and that they are unnecessary if the derrick has such a device. Therefore, OSHA requested public comment on whether proposed § 1926.1436(f)(2) should be modified by adding the words, "If the derrick is not equipped with a functioning boom angle indicator."

Several commenters supported OSHA's recommended revision of § 1926.1436(f)(2) but noted that the language should be more explicit in stating that a boom angle indicator is not required. (ID–0180.1; –0213.1; –0205.1.) They also asked OSHA to clarify that the options provided in paragraphs (e)(2)(i) and (ii) of this section are not required when boom angle indicators are used. To address these concerns, OSHA has modified the language of § 1926.1436(f)(2) to clarify that while a boom angle indicator is not required, if the derrick has a boom angle indicator, the employer need not use the options provided in paragraphs (e)(2)(i) and (ii) unless the boom angle indicator is not functioning.

Paragraph (f)(3) of this section, *Load weight/capacity devices,* requires that derricks manufactured more than November 8, 2011 with a maximum rated capacity over 6,000 pounds have at least one of the following: load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter. This paragraph adopts, for derricks, a requirement comparable to that required for cranes under § 1926.1416(e)(4). Because this paragraph imposes a requirement not previously applied to derricks by an industry standard, OSHA concludes, as did C–DAC, that it is appropriate to allow one year after this standard becomes effective for new derricks to be equipped with such devices.

Paragraph (f)(3) sets temporary alternative measures that must be used when the load weight/capacity device is not working properly. In that case the weight of the load must be determined from a source recognized by the industry (*e.g.,* the load's manufacturer), or by a calculation method recognized by the industry (*e.g.,* calculating a steel beam from measured dimensions and a known per foot weight). This information must be provided to the operator before the lift. These temporary alternatives are the same as those required by § 1926.1416(e)(5) for equipment generally and under § 1926.1435(e)(6)(vi) for tower cranes specifically. For purposes of clarification, the Agency has added a reference to § 1926.1436(f)(3)(i) noting that the requirements of § 1926.1417(j) are applicable. (*See* further discussion at § 1926.1417(j).)

Under §§ 1926.1416(e) and 1926.1435(e)(6), a load weight/capacity device is a category II operational aid and, as such, it must be repaired within 30 days if it is not working properly.

OSHA requested comment on whether to apply that same 30-day requirement, along with the exception for a situation in which a part is ordered within 7 days of the malfunction but is not received in time to complete the repair within 30 days.

Several commenters supported a revision of paragraph (f)(3) of this section to include the recommended time limits. (ID–0205.1; –0213.1; –0343.) OSHA concludes it is reasonable to make this revision for consistency with alternatives that are available to crane users during the repair of similar operational aids. Section 1926.1436(f)(3) has been revised to reflect this modification.

Paragraph (g) Post-Assembly Approval and Testing—New or Reinstalled Derricks

Paragraph (g) of this section lists the minimum testing and approval requirements that an employer must meet to assure that its derrick will be structurally and functionally able to perform within the manufacturer's specifications and recommendations. C–DAC determined that by meeting these minimum requirements, the employer would provide its workers with a safe derrick that will not endanger the workers during hoisting operations.

Paragraph (g)(1), *Anchorages,* lists minimum requirements for an anchor used to support a derrick. Section 1926.1436(g)(1)(i) requires that the anchorages, including the structure to which the derrick is attached (if applicable), be approved by a qualified person.

A commenter recommended that § 1926.1436(g)(1)(i) be revised to require design inspection by a registered

professional engineer instead of a qualified person as proposed. (ID–0120.1.) However, the commenter submitted no explanation for the recommendation nor any information as to why the use of a registered professional engineer would result in a higher level of safety than the use of a qualified person. Since no information supporting this position was presented, OSHA finds no reason to modify the provision based on this comment; it is promulgated as proposed.

Paragraph (g)(1)(ii) requires the qualified person to determine whether any special testing of the anchorage is needed when rock or hairpin anchorages are used. If so, it must be tested accordingly.

The provisions of paragraph (g)(1) are similar to what was required by subpart N through its incorporation of section 6–2.2.1b in ANSI B30.6–1969 and also what is currently in section 6–2.2.1(b) in its newest revision, ASME B30.6–2003.[138] These requirements will help the employer ensure that the derrick does not collapse due to insufficient anchoring and injure or kill workers who must use or be in the vicinity of the derrick. Paragraph (g)(1) is adopted without change from the proposal.

OSHA received no comments on paragraph (g)(2), *Functional test,* and it is adopted as proposed. The provision requires that, prior to initial use, new or reinstalled derricks must be tested by a competent person with no hook load to verify proper operation as outlined in paragraphs (g)(2)(i) through (v). The test must include (i) lifting and lowering the hook(s) through the full range of hook travel; (ii) raising and lowering the boom through the full range of boom travel; (iii) swinging in each direction through the full range of swing; (iv) actuating the anti two-block and boom hoist limit devices (if provided); and (v) actuating locking, limiting and indicating devices (if provided). These provisions are similar to section 6–2.2.1 of ASME B30.6–2003.

OSHA received no comments on paragraph (g)(3), *Load test,* and it is adopted as proposed. The provision requires that, prior to initial use, new or reinstalled derricks must be load tested by a competent person. Subpart N required operational tests prior to initial use of all new and altered derricks through the incorporation of section 6–2.2.1 of ANSI B30.6–1969, but a load test was not explicitly required. C–DAC recommended that OSHA adopt the revised guidance provided in section 6–2.2.2 of ASME B30.6–2003, which includes a requirement to load test all new and reinstalled derricks prior to initial use and specifies the elements such a test should include. OSHA determines, as did C–DAC, that compliance with the load test requirements listed in paragraph (g)(3) will help the employer identify defects in the derrick prior to its actual use. The requirements for the load test are outlined in paragraphs (g)(3)(i) through (g)(3)(iii).

Under paragraph (g)(3)(i) test loads must be at least 100% and no more than 110% of the rated capacity, unless otherwise recommended by the manufacturer or qualified person, but in no event must the test load be less than the maximum anticipated load. Under paragraph (g)(3)(ii) the test must consist of (A) hoisting the test load a few inches and holding to verify that the load is supported by the derrick and held by the hoist brake(s); (B) swinging the derrick, if applicable, the full range of its swing, at the maximum allowable working radius for the test load; (C) booming the derrick up and down within the allowable working radius for the test load; and (D) lowering, stopping and holding the load with the brake(s). Paragraph (g)(3)(iii) provides that the derrick must not be used unless the competent person determines that the test has been passed.

Paragraph (g)(4), *Documentation,* requires that tests conducted under this paragraph must be documented. The document must contain the date, test results, and the name of the tester. The document must be retained until the derrick is re-tested or dismantled, whichever occurs first. Because a load test meeting the criteria listed in the standard is so important to the safe use of the derrick, C–DAC determined that documentation of the test was needed to show that the test had been conducted properly. Section 6–2.2.2(a)(1) of ASME B30.6–2003 similarly requires that a written report of the load test be prepared and maintained. OSHA received no comments on this paragraph. OSHA is adding language to clarify that all inspection documentation must be available to inspectors in accordance with § 1926.1412(k).

Paragraph (h) Load Testing Repaired or Modified Derricks

Paragraph (h) of this section requires that derricks that have had repairs, modifications, or additions affecting the derrick's capacity or safe operation be evaluated by a qualified person to determine if a load test is necessary. If so, load testing must be conducted and documented in accordance with § 1926.1436(g). Subpart N, through incorporation of section 6–2.3.3 of ANSI B30.6–1969, required all replaced and repaired parts to have at least the original safety factor. However, there was no explicit requirement to load test the derricks after parts were repaired or replaced. ASME B30.6–2003 does address load testing of repaired, altered or modified derricks in section 6–2.2.2(b), specifying that the need for such a test be determined by a qualified person. Paragraph (h) is consistent with the ASME requirement. Such testing will help the employer identify safety defects in a repaired or modified derrick prior to its actual use. No comments were received for (h); it is promulgated as proposed.

Paragraph (i) [*Reserved.*]

Paragraph (j) Power Failure Procedures

Paragraph (j) of this section requires the derrick operator to safely stop operation if the power fails during operations and lists additional steps that must be taken. Section 1926.1436(j)(1) requires setting all brakes or locking devices. Section 1926.1436(j)(2) requires moving all clutch and other power controls to the off position. These steps will prevent inadvertent movement of the load during the power outage or upon restoration of power. These precautions are found in section 6–3.2.3(h) of ANSI B30.6–1969 and are reiterated in ASME B30.6–2003. No comments were received for (j); it is promulgated as proposed.

Paragraph (k) Use of Winch Heads

Paragraph (k) of this section specifies minimum requirements for the safe use of a winch during hoisting operations. Paragraph (k)(1) requires that ropes not be handled on a winch head without the knowledge of the operator. Section 1926.1436(k)(2) requires the operator to be within reach of the power unit control while a winch head is being used. These requirements are in sec. 6–3.3.5 of ANSI B30.6–1969 and are continued in sec. 6–3.3.6 of ASME B30.6–2003. No comments were received for (k); it is promulgated as proposed.

Paragraph (l) [*Reserved.*]

Paragraph (m) Securing the Boom

Paragraph (m) of this section lists minimum requirements for ensuring the stability of a derrick's boom when at rest to prevent injuries and deaths that could occur if it inadvertently shifted or fell.

[138] The OSHA standard differs from ASME B30.6–2003 in the following respect: The ASME section states that rock or hairpin anchorages "may require" special testing. C–DAC believed that it is necessary to explicitly require that a qualified person determine whether such testing is needed.

Paragraph (m)(1) requires that when the boom is being held in a fixed position, dogs, pawls, or other positive holding mechanisms on the boom hoist be engaged. Section 1926.1436(m)(2) requires that when taken out of service for 30 days or more, the boom be secured by one of the following methods: (i) By laying down the boom; (ii) by securing the boom to a stationary member, as nearly under the head as possible, by attachment of a sling to the load block; (iii) for guy derricks, by lifting the boom to a vertical position and securing it to the mast; or (iv) for stiffleg derricks, by securing the boom against the stiffleg.

The comparable ASME B30.6–2003 provision (sec. 6–3.3.7) would require the boom to be secured when the derrick is "not in use." C–DAC concluded the intent of the ANSI provision was to require the boom to be secured when the derrick was not in service but concluded that the ASME wording could be misconstrued to mean that the boom had to be secured whenever the derrick was not in the process of lifting a load. To avoid misunderstanding and establish an objective requirement for when the boom had to be secured, C–DAC proposed that the boom be secured whenever the derrick is taken out of service for 30 days or more. No comments were received for paragraph (m); it is promulgated as proposed.

Paragraph (n)

"Jumping the derrick" is the practice of moving structural components of the derrick to different locations, such as to the upper floors as a building is constructed, and is essential to some construction activities. Section 1926.1436(n) requires that the process of jumping the derrick be supervised by the A/D (assembly/disassembly) director. As defined in § 1926.1401, the A/D director must either be a person who meets the criteria for both a competent person and a qualified person, or a competent person who is assisted by one or more qualified persons.

As discussed above, paragraph (g) of this section requires a derrick to be load tested to confirm that the derrick and its support can withstand rated loads. C–DAC discussed whether load testing should be required when a derrick is jumped, but ultimately concluded that a jumped derrick need not be load tested and determined that the A/D director could be relied upon to see that the jumped derrick is properly erected and anchored and complies with the applicable requirements of this standard. OSHA is satisfied with C–DAC's rationale and agrees that giving the A/D director the responsibility for supervising the jumping of a derrick will ensure that the jumped derrick is safe to use.

Several labor representatives objected to the use of the word "supervisor" in the term "A/D supervisor" used in proposed § 1926.1404(a). (ID–0182.1; –0199.1; –0172.1.) As explained in the discussion of assembly/disassembly, OSHA has decided to replace the term A/D supervisor with "A/D director" in § 1926.1404(a). Accordingly, OSHA has revised this paragraph to replace the term A/D supervisor with the term A/D director.

A commenter recommended that § 1926.1436(n) be revised to add a requirement to include a "site-specific jumping plan approved by a registered professional engineer." (ID–0120.1.) However, the commenter provided no explanation for this recommendation, nor did the commenter provide any information to establish how this would be an improvement over the rule's requirement to have the jumping process directed by an A/D director. Since no information supporting this revision was presented, OSHA finds no persuasive reason to modify the provision based on this comment; it is promulgated as proposed.

Paragraph (o)

Paragraph (o) of this section requires that derrick operations be supervised by a competent person. No comments were received for this provision; it is promulgated as proposed. Subpart N incorporated sec. 6.3.1.1 of ANSI B30.6–1969, which requires derrick operations to be directed by a designated individual. ASME B30.6–2003 contains a similar requirement, and both consensus standards specify the requirements and practices of that designated individual. OSHA concludes, as did C–DAC, that the definition of competent person meets the objectives of the ANSI/ASME designated individual requirements to competently perform the specific duties involved in supervising derrick operations. The experience and knowledge possessed by the competent person and his/her ability to recognize and correct potential hazardous conditions will help ensure the safety of derrick operations.

Paragraph (p) Inspections

Under paragraph (p) of this section, the inspection requirements of § 1926.1412 apply to derricks. In addition to the items that must be inspected under § 1926.1412, this paragraph requires certain additional items to be inspected. These additional items, when combined with the items that must be inspected under § 1926.1412, are consistent with ANSI B30.6–1969 and ASME B30.6–2003.

Paragraph (p)(1), *Daily,* requires the inspection of guys for proper tension. Guy wires are critical elements of the support system for derricks.

Paragraph (p)(2), *Annual,* contains two requirements. Paragraph (p)(2)(i) requires inspection of the gudgeon pin for cracks, wear, and distortion. Paragraph (p)(2)(ii) requires inspection of the foundation supports for continued ability to sustain the imposed loads. Since a derrick is more likely to remain stationary and supported by the same foundation throughout the duration of its use than the majority of the equipment covered by this standard, C–DAC determined it was necessary to require the foundation to be inspected annually in addition to the items specified in § 1926.1412. No comments were received for this paragraph; it is promulgated as proposed.

Paragraph (q) Operator Qualification and Training

Paragraph (q) of this section, *Qualification and Training,* requires that derrick operators be trained in the safe operation of the specific type of equipment that operator will be using. Section 1926.1427 does not apply.

C–DAC discussed whether there should be a certification requirement for derrick operators, but decided against recommending such a provision. The Committee noted that there are no accredited testing criteria to use for testing derrick operators. Nor are there nationally recognized accredited testing facilities readily available. C–DAC questioned whether testing providers would find it cost-effective to establish accredited testing programs for derrick operators, noting that most training for derricks must be site specific because the types of derricks used, their support structures, and the hazards associated with specific projects vary from company to company. Moreover, the accident investigation data reviewed by C–DAC did not indicate that there was a need to require derrick operators to meet certification requirements similar to those proposed for crane operators.

One commenter opposed excluding derrick operators from the certification requirements of § 1926.1427 of this subpart because derrick operations require similar skills to make a safe pick as those required for cranes. (ID–0172.1.) Testimony from hearing participants confirmed that the industry was unable to accommodate a need for accredited testing facilities or applicable

testing criteria for derrick operators. (ID–0343.) A commenter asserted there were no organizations that provided accredited testing for derrick operators in the industry. (ID–0130.1.) Overall OSHA did not find sufficient evidence in the record to support a requirement for derrick operators to meet the certification requirements of § 1926.1427. More general discussion of this topic is provided in § 1926.1427.

In reviewing the C–DAC language of §§ 1926.1430 and 1926.1436, OSHA realized that the Committee did not specify any training requirements for derrick operators, which OSHA concludes was an inadvertent omission.

The Agency noted in the preamble to the proposed rule that it was planning to add a training requirement to § 1926.1436 and requested public comment on the addition of such a provision.

Commenters supported OSHA's recommended addition, so this section now includes a requirement that derrick operators be trained on the specific type of equipment being used. (ID–0130.1; –0205.1; –0213.1.) This provision has been modified from the proposed rule to specifically address the training that is required for derrick operators.

A commenter asked that employers be allowed to train and qualify their operators and that the qualification be valid for a limit of five years. (ID–0130.1.) Since this final rule does not require qualification for derrick operators beyond that of the training requirement, OSHA disagrees with this proposition. For additional information on comments received about training to particular types of equipment, *see* the discussion at § 1926.1427(j)(1)(i).

Section 1926.1437 Floating Cranes/Derricks and Land Cranes/Derricks on Barges

Section 1926.1437 covers two types of equipment in a marine environment. The first type is referred to as "floating cranes/derricks," defined in § 1926.1401, *Definitions,* as "equipment designed by the manufacturer (or employer) for marine use by permanent attachment to a barge, pontoons, vessel, or other means of flotation." The second type, "Land cranes/derrick" is defined in § 1926.1401 as "equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of flotation. Section 1926.1437(m) applies only to floating cranes/derricks, and § 1926.1437(n) applies only to land cranes/derricks used on barges, pontoons, vessels or other means of flotation.

Paragraph (a)

Paragraph (a) of this section specifies that the requirements of § 1926.1437 are supplemental requirements; therefore, all other requirements of this subpart apply unless specifically noted otherwise. Section 1926.1437(a) exempts equipment operating on jacked barges from the requirements of § 1926.1437 when the jacks are deployed to the river, lake, or sea bed and the barge is fully supported by the jacks.

A jacked barge deployed in this manner has four "spuds" on its corners that are grounded into the sea-bottom, providing a level and stable platform on which employees work. This configuration results in work conditions similar to a crane working on land, unlike the work conditions pertinent to equipment covered by this section. Therefore, equipment used on a jacked barge deployed in this manner is subject to all other applicable requirements of this proposed subpart but not to the requirements of this section.

One commenter raised a question as to whether the exclusion of jacked barges would apply when the barge is supported by jacks anchored to the river, lake, or sea bed, but not fully supported "in a more permanent condition." (ID–0172.1.) However, the commenter does not explain what is meant by "a more permanent condition." The test for whether the jacks, on deployment in the river, lake, or sea bed, fully support the barge.

OSHA received no substantive comments or information indicating that the exception for jacked barges is unsafe for employees. Therefore, OSHA is retaining the exception in the final rule because it determines that employees on jacked barges will be protected by the other provisions of this subpart. OSHA also is retaining the language explaining the application of the section because it provides useful explanatory information to the regulated community regarding compliance obligations.

Paragraph (b) General Requirements

Paragraph (b) of this section specifies that paragraphs (c)–(k) of this section apply to both floating cranes/derricks and land cranes/derricks. As noted above and discussed below, § 1926.1437(m) applies only to floating cranes/derricks, and § 1926.1437(n) applies only to land cranes/derricks mounted on vessels/flotation devices. OSHA received no comments on the proposed paragraph. OSHA is retaining the paragraph as proposed because it provides useful explanatory information to the regulated community regarding compliance obligations.

Paragraph (c) Work Area Control

Paragraph (c) of this section provides that the requirements of § 1926.1424, *Work area control,* apply to equipment covered by this section, except for the requirements of § 1926.1424(a)(2)(ii). Paragraph (c)(2) of this section closely parallels § 1926.1424(a)(2)(ii) but omits the requirement that employers demonstrate infeasibility before using a combination of warning signs and high visibility markings in place of erecting and maintaining control lines, warning lines, railings, or similar boundaries of hazard areas. Because equipment covered by this section typically operates within a very limited physical work space, employers often need increased flexibility in determining which work area control method is most appropriate in light of special site-specific circumstances. To help ensure that employees are adequately protected if the employer uses high visibility markings to supplement warning signs, this paragraph requires the employer to train employees to understand the meaning of the markings.

OSHA received no comments on this provision as proposed. Upon review of this provision, the Agency determined the two examples provided in the regulatory text were redundant. Therefore, except for the removal of one of the examples, OSHA is retaining the provision as proposed, because it will ensure maximum worker safety under the limited space available on many of these vessels.

Paragraph (d) Keeping Clear of the Load

Paragraph (d) of this section states that the requirements of § 1926.1425, *Keeping clear of the load,* do not apply to the equipment covered by § 1926.1437. Due to the limited space available for equipment on worksites covered by this section (*i.e.,* the decks of barges and other vessels), the requirements of § 1926.1425 are infeasible under these worksite conditions, in the experience of C–DAC. OSHA received no comments on this provision, and, therefore, is promulgating it in the final rule as proposed because it strikes a balance between the practicalities of the worksite and safety for employees. Other provisions within this section provide other means of protecting employees in the unique worksites covered by this section.

Paragraph (e) Additional Safety Devices

Paragraph (e) of this section lists additional safety devices required for equipment covered by this section. Equipment covered by § 1926.1437 is required to have the safety devices listed in § 1926.1415, *Safety devices,* unless otherwise noted in § 1926.1415. The additional safety devices required by § 1926.1437(e) address the special conditions of a marine worksite, especially with respect to vessel stability, inadvertent movement due to water conditions, and the greater effect of wind and other environmental conditions on equipment operating at these sites. However, note that § 1926.1415 excepts floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels, or other means of flotation from having crane level indicators and floating cranes from having foot pedal brake locks. (*See* the discussion above under §§ 1926.1415(a)(1)(iii) and 1926.1415(a)(4) for an explanation of these exceptions.)

Paragraph (e)(1) requires equipment covered by this section to have a list and trim device. It is necessary to have this device since the degrees of list and trim are directly related to the stability of the vessel/flotation device and therefore to the stability of the equipment and its safe operation.

Proposed paragraph (e)(2) required equipment covered in this section to have a horn. In the experience of C–DAC, the sounding of the equipment's horn is commonly understood in the marine industry as a way to warn employees about the presence of or movement of the equipment or its load. In the final rule, OSHA has added the requirement of a horn to the general list of safety devices required in § 1926.1415. *See* § 1926.1415(a)(7). As noted above, the requirements of § 1926.1415 apply to floating cranes/derricks, so restating the requirement in § 1926.1437(e)(2) would be redundant. OSHA is therefore removing the horn requirement from this section and renumbering the remainder of § 1926.1437(e).

Paragraph (e)(2), as renumbered in the final rule, now requires that all equipment with a rotating superstructure have a positive crane house lock. This device is necessary for equipment covered within this section because it positively locks the rotating superstructure. The lock provides additional protection from the superstructure's accidental movement that can result due to the action of wind, waves, or current.

Because the speed and direction of the wind can directly affect equipment operations, such as by diminishing equipment capacity and inducing unintended movement of the load, § 1926.1437(e)(3) requires equipment covered by this section to have and use a wind speed and direction indicator when a competent person determines that wind is a factor that needs to be considered during operations.

OSHA received no comments on proposed paragraphs (e)(1)–(e)(4), and is retaining all of these provisions in the final rule, except for the requirement of a horn and with renumbering, because they improve the safety of the vessels, and, therefore, the safety of the employee involved in crane/derrick operations onboard the vessel.

Paragraph (f) Operational Aids

Paragraph (f) of this section modifies the application of some of the requirements in proposed § 1926.1416, *Operational aids,* for equipment covered by this section. Apart from these differences, § 1926.1416 applies to equipment covered by this section.

Paragraph (f)(1) requires that equipment covered by this section to be equipped with an anti-two-block device when hoisting personnel or when hoisting over an occupied cofferdam or shaft. As discussed at § 1926.1416(d)(3), two-blocking can result in a sudden drop of the load on the line. Anti-two-block devices protect against this danger. However, anti-two-blocking devices have a high rate of failure in a marine environment due to wind and other environmental factors. Also, the equipment covered by this section is often performing live boom/fast-moving functions, causing an anti-two-block device to consistently malfunction. Therefore, an anti-two-block device is only required when hoisting personnel or hoisting over an occupied cofferdam or shaft due to the additional risk to employees during these operations.

Paragraph (f)(2) specifies that employers using equipment to perform dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, and pile driving work covered by this section, are exempt from the requirements of § 1926.1416(e)(4), *Load weighing and similar devices.* These operations add heavy loads and repetitive motion to the marine characteristics described above. As a result, load weighing devices used during these operations consistently malfunction. Additionally, the listing and tilting that is typical in marine worksites often prevents these devices from providing accurate load readings.

OSHA received no comments on these provisions as proposed. However, OSHA is retaining these provisions in the final rule because the provisions afford protection to workers involved in personnel lifting operations or exposed to a load failure while working in cofferdams or shafts. The provisions also prevent employers from relying on malfunctioning equipment to the detriment of employees using or exposed to the equipment.

Paragraph (g) Accessibility of Procedures Applicable to Equipment Operation

Paragraph (g) of this section sets forth requirements regarding accessibility of equipment operation procedures. The provision requires equipment with a cab to comply with the requirements of § 1926.1417(c), *Operation—accessibility of procedures.* If the equipment does not have a cab then the requirements of this paragraph apply.

The Agency determined that it is necessary to have the load chart located where the operator is stationed. Under § 1926.1437(g)(1), if the operator's station is movable, such as with pendant-controlled equipment, the load chart must be posted on the equipment. Under § 1926.1437(g)(2), the remaining procedures (other than load charts) must be readily available on board the vessel/flotation device. Where there is no cab for the equipment, it is impractical to require these other procedures to be next to the operator; however, it is still necessary for the operator to have easy access to these procedures for reference during operations.

While OSHA received no comments on the proposed provisions, it is retaining the provisions in the final rule because, as explained elsewhere in this preamble, having this procedural information as readily available as possible is critical to operating cranes/derricks safely, thereby ensuring the protection of the workers involved in the crane/derrick operations.

Paragraph (h) Inspections

Paragraph (h) of this section sets forth additional inspection requirements applicable to equipment covered by this section. The introductory sentence to this paragraph states that § 1926.1412, *Inspections,* applies to the inspection of the crane/derrick, and that the additional inspection requirements in this paragraph apply to the vessel/flotation device that supports the crane/derrick.

In the proposed rule, the Agency modified the language of the C–DAC consensus document for this introductory sentence by including

coverage for floating cranes/derricks and requested comment on this modification. Two commenters responded and both agreed with the modified language as used in the proposed rule. (ID–0205.1; –0213.1.) OSHA is retaining this language in the final rule because the increased coverage enhances employee protection, and the introductory language provides useful explanatory information to the regulated community regarding compliance obligations.

With respect to the requirements of § 1926.1437(h)(2)(ii), a commenter expressed concern that the Agency expected an employer to physically open the hatch on a barge to inspect for "taking on water." (ID–0345.26.) The commenter further explained that hatch covers are usually sealed, and generally are removed only if there is suspected damage to the hull. (ID–0345.26.) Another commenter confirmed that most non-freshwater vessels have permanently sealed hatches. (ID–0344.1.)

Under this provision, as proposed, a competent person must inspect the vessel for "taking on water" and does not specify any particular method for making this determination. As one commenter suggested, measuring freeboards is a way to determine if a vessel is listing more than a couple of degrees and, therefore, possibly taking on water. (ID–0344.1.) The requirement here is for the competent person to use an effective means of determining if the vessel is taking on water, which can vary depending on the type of vessel.

With respect to § 1926.1437(h)(2)(iv), a commenter was concerned that the requirement to check the "fuel compartments * * * for serviceability as a water-tight appliance" included an expectation that the hatch cover would be removed to inspect the fuel compartment. (ID–0345.26.) The commenter further stated the usual means of checking for water in a fuel tank is by using a plumb bob and clear coat that changes color if water is present. The proposed provision requires a competent person to inspect the fuel compartments, among other areas, for "serviceability as a water-tight appliance." The provision does not specify any particular method for making this determination, provided the competent person uses an effective method for doing so.

Based on the need to ensure the integrity of the vessel/flotation device for employee safety, and the availability of nonintrusive means of determining this integrity, OSHA is retaining §§ 1926.1437(h)(2)(ii) and 1926.1437(h)(2)(iv) in the final rule.

OSHA received no comments on the remaining provisions proposed for paragraphs (h)(2) and (h)(3) and OSHA is retaining these provisions to ensure that vessels/flotation devices used for crane/derrick operations remain safe for employees, and that the employer corrects deficiencies in the vessels/flotation devices that are hazardous to employees.

Under § 1926.1437(h), inspections are required at four distinct times: Each shift, each month, annually, and every four years. As specified in paragraph (h)(3), a competent person must conduct the shift and monthly inspections. If the competent person identifies a deficiency, an immediate determination by a qualified person is then required to ascertain if the deficiency constitutes a hazard. If the deficiency constitutes a hazard, the vessel must be removed from service until the deficiency is corrected.

These requirements differ from the shift and monthly general inspection requirements of § 1926.1412, in which the competent person who identifies a deficiency then determines whether the deficiency is a safety hazard requiring immediate correction. The reason for this difference is that the equipment covered under this section is highly specialized and therefore requires a high level of knowledge.

With respect to the annual inspections, § 1926.1437(h)(4) requires the equipment and vessel/flotation device to be inspected by a qualified person with expertise with respect to vessels/flotation devices. The Agency concludes it is important to state explicitly that the qualified person conducting these inspections must have the necessary expertise for the items listed for the annual inspection with respect to barges, pontoons, vessels or other means of flotation. Accordingly, OSHA is retaining the provision in the final rule.

The qualified person required for the shift and monthly inspections must have expertise with respect to the work conditions, the crane/derrick, and the vessel/flotation device. However, the annual inspection is more extensive than the shift or monthly inspections. The qualified person for the annual inspection must have a greater level of expertise than the qualified person required for determining whether deficiencies identified in shift and monthly inspections constitute hazards. The qualified person for the annual inspection must have expertise in all the areas covered by the annual inspection, in addition to general expertise regarding the equipment and vessel/flotation device. This expertise will ensure that the operational conditions are safe for employees, and, therefore, OSHA is retaining these requirements in the final rule.

Section 1926.1437(h)(4)(i)(C) requires an inspection of various component parts of the vessel to determine if there is significant corrosion, wear, deterioration or deformation. The use of the word significant is to indicate that the functionality of these components is not impaired in any way due to exposure to the elements or use. The Committee determined, and OSHA agrees, that these components are essential to safe operation of the vessel and therefore critical to employee safety.

A commenter indicated that the requirement to check for "external evidence of leaks and structural damage" in § 1926.1437(h)(4)(i)(C) should not apply below the waterline of the hull. (ID–0345.26.) That commenter suggested that applying the requirement below the waterline would be unduly burdensome because it would require dry-docking the vessel. Another commenter, indicated that dry-docking a vessel is expensive—between $20,000 and $60,000 per dry-docking, depending on the type of vessel. (ID–0344.1.) This cost estimate was supported by another commenter, who noted the average cost for its fleet was $50,000 to dry-dock a vessel. (ID–0383.1.) A commenter indicated that industry practice is to conduct the routine annual inspection from the waterline up, and that inspecting below the waterline would not enhance safety. (ID–0344.1.)

The Agency agrees that it is not necessary to require dry-docking on an annual basis. Instead, OSHA modified the language used in the proposed rule to allow employers to check for leaks and damage below the waterline inside the vessel/flotation device, by, for example, opening hatches and access/inspection ports, but not by opening sealed compartments or cutting openings.

Paragraph (h)(4)(iii)(A) requires the removal from service of any vessel/flotation device when a qualified person determines a deficiency in the equipment constitutes a immediate hazard. As with other removal from service requirements, OSHA is including a cross-reference to the tag-out requirement in § 1926.1417(f), which is triggered when equipment is removed from service.

Paragraph (h)(5) requires an inspection every four years of the internal portion of the barge, pontoons, vessel, or other means of flotation by a marine engineer, marine architect, licensed surveyor, or other qualified

person who has expertise with respect to vessels/flotation devices. A higher level of expertise is necessary for performing the four-year inspection than the annual inspection. By listing "other qualified person" together with "marine engineer," "marine architect," and "licensed surveyor," the Agency clarifies that the expertise of the "other qualified person" must be equivalent to that of a marine engineer, marine architect, or licensed surveyor. In this regard, the proposal did not list inspection items for the four-year inspection. Instead, OSHA determines (based on C–DAC's recommendation) that a better approach is to rely on the expert knowledge of the marine engineer, marine architect, licensed surveyor, or other qualified person who has expertise with respect to vessels/flotation devices.

OSHA received two comments regarding the use of the term "quadrennial" in the proposed rule. (ID–0343; –0344.1.) Both recommended using the term "four-year" because it is consistent with current terminology used by the marine industry. In light of this information OSHA revised the term "quadrennial" to "four-year" in the final rule in paragraphs (h)(5) and (h)(6) of § 1926.1437.

Paragraph (h)(6) sets forth the documentation requirements for the monthly, annual, and four-year inspections, which follow those in § 1926.1412, *Inspections,* at §§ 1926.1412(e)(3) and 1926.1412(f)(7). However, with respect to four-year inspections the written documentation of the inspection must be maintained for four years. This provision enables the employer to track changes in the condition of the vessel from the previous inspection, thereby correcting hazards in a timely manner. Therefore, OSHA is retaining this provision in the final rule. The Agency is adding language to paragraph (h)(6) to clarify that all of the inspection documentation (including the four year inspection documentation) must be made available, for the duration of the document retention period, to persons performing inspections, in accordance with § 1926.1412(k).

Paragraph (i) [*Reserved.*]

Paragraph (j) Working With a Diver

Paragraph (j) of this section sets forth supplemental requirements designed to ensure that a diver is hoisted safely from the vessel and back onto the vessel when equipment covered by this section is used for this purpose. Extra precautions and measures are needed when engaged in this activity due to the drowning, struck-by, crushed-by, and other hazards involved.

Marine environments and the condition of a diver can change quickly and unexpectedly; the crane/derrick operator must be constantly aware of the diving operation and in position to take immediate action when necessary. Therefore, under proposed § 1926.1437(j)(1), when one or more divers are being hoisted into and out of the water, the employer is prohibited from using the equipment for any other purpose until all divers have returned back on board. This requirement ensures the operator's attention is not diverted from the welfare of the divers. Paragraph (j)(2) of this section requires the equipment operator to remain at the equipment controls during the entire diving operation. This provision ensures that the operator is able to respond when necessary.

Paragraph (j)(3) requires that, in addition to the signal requirements in §§ 1926.1419–1926.1422, the diver tender must be in direct communication with the equipment operator. This communication must be done either through maintaining a clear line of sight between the operator and tender or by electronic transmission between the operator and tender. The tender is the individual responsible for monitoring and communicating with the diver. In this section, the diver tender is required to maintain effective communication with the equipment operator when the equipment is used to get the diver in and out of the water. The tender is the member of the dive team who closely monitors the diver's condition during the dive and checks the equipment prior to the dive. Therefore, the tender is able to let the operator know when a diver needs to be lifted out of the water or when other action by the equipment operator is needed.

Paragraph (j)(4) specifies that when using a crane/derrick to hoist a diver, the crane/derrick must be secured in such a way that there is no amount of shifting in any direction. A small shift of a crane/derrick on a barge can result in movement that can injure the diver.

OSHA notes that § 1926.1431, *Hoisting personnel,* applies when a crane/derrick is used to hoist personnel. In most instances when personnel are hoisted, they must be located in a personnel platform that meets criteria specified in § 1926.1431. However, § 1926.1431(b)(2) contains exceptions to the use a personnel platform and one such exception, specified by § 1926.1431(b)(2)(iii), applies when an employer transfers an employee to or from a marine worksite in a marine-hoisted personnel-transfer device. Under the definition in § 1926.1401, "marine worksite" includes a worksite in the water; therefore, the exception specified by § 1926.1431(b)(2)(iii) to the requirement to use a personnel platform applies when a diver is hoisted into or out of the water in a marine-hoisted personnel-transfer device.

OSHA received no comments on any of the provisions in proposed paragraph (j). Accordingly, OSHA is retaining these provisions in the final rule because, in the Committee's view, use of a personnel platform could be infeasible or more hazardous to employees than an alternative means of hoisting personnel such as marine-hoisted personnel-transfer devices (*see* the discussion above in this preamble for § 1926.1431(b)(2)(iii)).

Paragraph (k)

Paragraph (k) of this section requires the employer to adhere to the specifications and limitations established by the manufacturer of the barge, pontoon, vessel, or other means of flotation with respect to imposed environmental, operational, and in-transit loads. The purpose of this provision is to ensure that the equipment can operate safely under the forces imposed on it. In its deliberations, the Committee noted that the manufacturer is in the best position to determine the maximum external loads the vessel/flotation device can withstand while maintaining necessary stability and buoyancy, and that requiring employers to adhere to the manufacturer's specifications and limitations would provide employees with the requisite level of protection.

The language of the proposed rule varied from the text in the C–DAC consensus document. OSHA made this revision to clarify that it was an employer's responsibility to follow the manufacturer's specifications and limitations. OSHA requested public comment on this revision. OSHA received two comments in response to this request. (ID–0205.1; –0213.1.) Both commenters stated the C–DAC language showed the Committee's "original intent of this paragraph was a design specification," and further stated that the revision as proposed by OSHA did not consider the Committee's language was addressing design specifications.

On reviewing these comments, the C–DAC consensus document, and OSHA's proposed text, OSHA determines that paragraph (k) needs to address both the commenters' position that there is a need for a design specification, and OSHA's position in the proposed rule that employers must comply to the manufacturer's

specifications and limitations. OSHA revised proposed paragraph (k) accordingly.

In addition, another commenter raised the issue that, for many vessels covered by this section, the manufacturer no longer exists, or that the vessel has been modified and an expert has established the appropriate specifications and limitations for the vessel. (ID–0345.26.) One commenter noted the company's fleet had vessels that were 60 years old and the manufacturers of some of these vessels were no longer in business. (ID–0344.1.) OSHA finds these comments persuasive, and is adding a provision to paragraph (k) to require the employer to follow specifications and limitations established by a qualified person in such instances.

Paragraph (l) [*Reserved.*]

Paragraph (m) Floating Cranes/Derricks

Paragraph (m) of this section sets forth requirements with respect to load charts, rated capacity, allowable list, allowable trim, wind speed and related measures for floating cranes/derricks. The requirements in §§ 1926.1437(m)(1) through (5) address the various hazards that contribute to instability of the vessel/flotation device and the effect of marine conditions that can lead to boom/equipment failure.

As defined in § 1926.1401, a floating crane/derrick includes equipment built either by a manufacturer or by the employer using the equipment. Both types must meet the criteria in §§ 1926.1437(m)(1) through (m)(3). These provisions are designed to prevent the crane/derrick portion of the equipment from failure due to overloading, thereby, preventing the vessel/flotation device from capsizing.

Paragraph (m)(1) requires that load charts applicable to operations on water not be exceeded. Paragraph (m)(2) establishes criteria (in Table M1) for maximum allowable list and trim relative to the rated capacity of the equipment. Section 1926.1437(m)(3) provides two charts that set the stability criteria for specific conditions. The first of these charts (Table M2) contains the minimum requirements to maintain stability with respect to wind speed and freeboard distance of the vessel/flotation device. The second chart (Table M3) addresses the backward stability of the boom.

The Agency requested public comment on a definition of freeboard as it is used in Table M2. In response, a commenter offered this definition: "Freeboard is the vertical distance between the water line and the main deck of the vessel." (ID–0383.1.) This definition is consistent with OSHA's review of the definition of freeboard; therefore, OSHA is adding this definition to the regulatory text of § 1926.1437(m)(2) in the final rule and is including it in § 1926.1401, *Definitions.*

Under paragraph (m)(4), employer-made equipment must meet the same criteria specified by §§ 1926.1437(m)(1)–(m)(3) for manufacturer-made equipment. In addition, an employer using equipment it builds is required to have documents demonstrating that these criteria have been met. Such documents must be signed by a registered professional engineer who is a qualified person with respect to the design of the type of equipment involved.

Manufacturers have sufficient expertise with respect to the development of load charts, rated capacities, and related operational limitations, so there is no need for a documentation requirement for manufacturer-built floating cranes/derricks. However, given the variety of employer-made equipment, the Agency included this documentation requirement to ensure that employer-made equipment has the same level of safety as manufactured equipment.

Paragraph (m)(5) addresses structural and access requirements for the barge, pontoon, vessel, or other means of flotation. These requirements are related to the stability of the vessel, including minimizing movement while operating equipment, thereby increasing employee safety by reducing the likelihood of capsizing.

Paragraph (m)(5)(i) requires the vessel to be structurally sufficient to withstand the stress of both static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all planned deck loads and ballasted compartments. This provision is necessary to minimize the likelihood of the vessel's structure failing, which would expose employees to a drowning hazard, or endanger them because of inadvertent movement during equipment operations.

Paragraph (m)(5)(ii) requires a subdivided hull with at least one longitudinal watertight bulkhead to reduce the free surface effect on the vessel. Subdividing the hull limits the effects of liquid movement on vessel stability, thereby, reducing the risk of the vessel capsizing.

Paragraph (m)(5)(iii) requires void compartments to be accessible for inspection and pumping. This requirement ensures that the employer evaluates the amount of water in the compartments to determine the potential free surface effect on vessel stability, and then to initiate pumping when necessary to avoid capsizing.

OSHA received no comments were received on paragraphs (m)(3) through (m)(5). OSHA is retaining these provisions in the final rule to ensure the stability of vessels/flotation devices during crane/derrick operations, thereby preventing employee exposure to drowning, impact, and other hazards associated with crane/derrick operations onboard vessels/flotation devices.

Paragraph (n) Land Cranes/Derricks

Paragraph (n) of this section sets forth the requirements for land cranes/derricks when used on a barge, pontoons, vessel or other means of flotation. As noted above, land cranes/derricks are not originally designed for marine use but are covered by this section when they are mounted on a vessel/flotation device and used on water. The Agency determined that special requirements are needed to address the distinctive safety issues presented when using such equipment.

The stability of the vessel/flotation device is affected by the use of a land crane/derrick on board. Implementing a system that keeps the equipment properly located on the vessel is essential for maintaining stability. In addition, land cranes/derricks have less capacity when on a vessel/flotation device than when on land, due to the fact that the crane/derrick is not originally designed for the special conditions on a vessel/flotation device. Consequently, the employer must adjust the rated capacity of the crane/derrick when used on the vessel/flotation device. If not properly determined, the land crane/derrick may be overloaded, which can cause loss of stability (including tip-over) and boom/equipment failure, thereby endangering employees.

Paragraph (n)(1) sets forth the requirements for determining the rated capacity for land cranes/derricks used on a vessel/flotation device. Load charts for this equipment developed for use on land do not address the use of the equipment on a flotation device or the environmental conditions of a marine worksite. Therefore, under § 1926.1437(n)(1)(i), the rated capacity (as depicted in the load charts) must be reduced for list, trim, wave action, and wind.

In establishing the rated capacity for use on the vessel/flotation device, the capacity of the vessel/flotation device also must be considered. Since some locations on the vessel/flotation device will have less ability to support the

crane/derrick than others, under § 1926.1437(n)(1)(ii), the rated capacity must be applicable to a specified location(s) on the vessel/flotation device. This assessment must be made considering the expected and encountered environmental conditions.

Paragraph (n)(2) specifies that the modification to rated capacity required by § 1926.1437(n)(1) of this section must be performed either by the manufacturer of the equipment or by a qualified person with expertise in both land crane/derrick capacity and the stability of vessels/flotation devices. Performance by a qualified person will achieve equivalent operational safety conditions as for the modified floating cranes/derricks. In the proposed rule, OSHA (at the request of the SBREFA Panel) requested public comment as to whether qualified persons are available in the industry with expertise in both land crane/derrick capacity and the stability of vessels/flotation devices with respect to equipment performing duty-cycle work (73 FR 59864, Oct. 9, 2008). Two commenters responded to this inquiry by stating that qualified persons are available in the industry with expertise in both land crane/derrick capacity and stability of vessels with respect to equipment performing duty-cycle work. (ID–0205.1; –0213.1.)

OSHA also requested comment from the public on whether the requirements of (n)(2) are necessary for the safety of employees when equipment is engaged in duty cycle work. Two commenters found that these requirements are necessary for safety when equipment is engaged in duty cycle work. (ID–0205.1; –0213.1.) Another commenter supported this position by noting instances when the input of a qualified person is needed since the list and trim of the vessel can affect the rated capacity of the equipment. (ID–0345.26.) Based on these comments, and the employee protection afforded by the requirements of paragraph (n)(2), OSHA is including these requirements in the final rule as proposed.

Paragraph (n)(3) sets parameters for the maximum allowable list and trim for the vessel/flotation device and the land crane/derrick to ensure vessel and crane/derrick stability and to prevent the crane/derrick from exceeding its rated capacity. Under paragraph (n)(4), when a land crane/derrick is used on a flotation device, all deck surfaces must be above water and the entire bottom area must be submerged. This provision is necessary to ensure a stable platform when operating the land crane/derrick, to protect against loads that would cause the system used to secure the land crane/derrick (*see* § 1926.1437(n)(5)) to fail, and to protect against overloading the vessel/flotation device land/crane derrick.

Even though OSHA received no comments on these two paragraphs, it is retaining the paragraphs in the final rule because maintaining proper list and trim, as well as buoyancy, is critical to the stability of the vessel/flotation device, which will prevent the vessel/flotation device from capsizing and endangering employees.

Paragraph (n)(5) sets forth four options for securing [139] the land crane/derrick on the vessel/flotation device. Providing several options to employers addresses the various of work scenarios found in the industry. Each option is effective in preventing the land crane/derrick from rolling, sliding, or in any way shifting away from its proper location. These horizontal movements can cause the vessel/flotation device to become unstable, or the land crane/derrick to slide or fall into the water. Additionally, OSHA determines that an exception is appropriate for use of mobile auxiliary cranes on a vessel. The requirements for this type of equipment are specified by § 1926.1437(n)(5)(vi).

Paragraphs (n)(5)(i) through (iv) provide the four options for securing the land crane/derrick to the vessel/flotation device. The options for preventing equipment shifting include direct physical attachment, corralling, a rail system or a centerline cable system. These options serve to prevent inadvertent movement of the equipment away from its proper location on the vessel/flotation device, which can harm employees working nearby, or such movement can endanger employees by capsizing the vessel. However, it is not the purpose of these options to prevent any portion of the land crane/derrick from pulling vertically up from the deck when handling loads beyond the land crane/derrick's rated capacity. Rather, these options will prevent horizontal rolling or shifting away from the land crane/derrick's proper location.

Paragraph (n)(5)(v) requires that the option selected for securing the equipment on the vessel be designed by a marine engineer, a registered professional engineer familiar with floating crane/derrick design, or a qualified person familiar with floating crane/derrick design. The Agency determined that expertise in floating crane/derrick design is necessary to design a securing system that meets the selected option's requirements and to prevent inadvertent movement of the equipment on the vessel/flotation device.

OSHA received no comments on any of the requirements in proposed paragraph (n)(5). Consequently, OSHA is retaining this paragraph in the final rule because properly securing land crane/derrick on the vessel/flotation device will maintain the stability of the vessel/flotation device, thereby preventing the vessel/flotation device from capsizing and endangering employees.

Paragraph (n)(6) [140] provides an exception stating that an employer does not have to secure mobile auxiliary cranes as required by paragraph (n)(5) when the employer demonstrates that specific conditions have been met. Typically, the movement of the mobile crane on these vessels does not adversely affect the stability of the floating crane/derrick because of the large size, displacement and design of the floating crane/derrick. The size and design of the floating crane/derrick also makes it less susceptible than other vessels to the effects of wind, waves, and other environmental conditions. OSHA finds that when the employer demonstrates meeting the criteria specified by §§ 1926.1437(n)(6)(v) and (vi), employees will receive adequate protection from inadvertent horizontal movement of a mobile crane located on the deck of a floating crane/derrick.

Under paragraph (n)(6)(i), a written plan that is developed and signed by a marine engineer, or a registered professional engineer familiar with floating crane/derrick design, is required. OSHA finds that developing a written plan for the use of these cranes requires specialized knowledge and skill because of the catastrophic consequences to employees that could result if the task is not performed correctly.

Paragraph (n)(6)(ii), requires that the written plan be developed so that the applicable requirements of § 1926.1437 are met despite the position, travel, operation, and lack of physical attachment, corralling, use of rails, or use of cable system of the mobile auxiliary crane. For example, a section of the plan could address a vessel's

[139] In this preamble the Agency uses the term "securing" and "secured" to refer collectively to the systems described in Options (1)–(4) in §§ 1926.1437(n)(5)(i) through (iv). The Agency notes that this definition differs from the term "positively secured" in subpart N in former § 1926.550(f)(1)(iv), which required that "mobile cranes on barges shall be positively secured." As OSHA stated in a letter of interpretation, the term "positively secured" in the subpart N means "physically attached"—similar to the type of system described in Option (1) of paragraph (n)(5)(i). (*See* OSHA's interpretation letter to Mr. Gary C. Hay, October 12, 2004 (ID–0014).)

[140] Formerly paragraph (n)(5)(vi) in the proposed rule.

stability while it is operating within specified dynamic and environmental conditions (*see* §§ 1926.1437(n)(6)(v) and (vi)), *i.e.,* that the movement of the vessel under these conditions does not cause the mobile crane to shift horizontally, or that the maximum list and trim specified for vessel and mobile crane are not exceeded.

Under paragraph (n)(6)(iii), the plan must specify the areas of the deck where the mobile auxiliary crane is permitted to be positioned, travel, and operate. It must also specify the parameters (that is, limitations) of such movements and operation. For example, a section of the plan could limit movement of the mobile crane to a specified area without a load, and to another specified area while handling a load.

Under paragraph (n)(6)(iv), the employer must mark the deck to identify the permitted areas for positioning, traveling, and operating the mobile crane. This provision is necessary so that the operator maneuvers and operates the crane within the permitted areas specified by the plan, thereby ensuring the stability of the vessel/flotation device and the safety of employees.

Under paragraph (n)(6)(v), the plan must specify the dynamic and environmental conditions that have to be present for the mobile auxiliary crane to move and operate on the vessel. Under § 1926.1437(n)(6)(v), if the specific dynamic and environmental conditions are not present, the mobile auxiliary crane must be secured according to one of the four options outlined in §§ 1926.1437(n)(5)(i) through (iv). For example, the plan must address environmental conditions, such as the maximum amount of wind and wave action permitted; if these conditions are exceeded, the mobile crane must be secured using one of the four options specified by § 1926.1437(n)(5). While OSHA received no comments on the requirements of this paragraph in the proposal, it is retaining this paragraph in the final standard as proposed because a properly prepared plan will ensure the structural integrity and stability of the vessel/flotation device, thereby protecting employees from drowning, impact, and other hazards.

Paragraph (n)(7) [141] contains requirements regarding the barge, pontoon, vessel or other means of flotation on which the land crane/derrick is located. The requirements § 1926.1437(n)(7) are identical to those listed at paragraph (m)(5) of this section. These requirements ensure the structural capacity of the vessel/flotation device to support the land crane/derrick and the loads handled by this equipment, as well as the stability of the vessel/flotation device. These provisions are designed to help prevent unintended movement while operating equipment and to prevent capsizing. OSHA finds these requirements necessary to provide a safe, stable work environment. OSHA received no comments on this paragraph in the proposed rule. However, as with paragraph (m)(5), OSHA is retaining this paragraph in the final rule to ensure the stability of vessels/flotation devices during crane/derrick operations, thereby preventing employee exposure to drowning, impact, and other hazards associated with crane/derrick operations onboard vessels/flotation devices.

[141] Formerly paragraph (n)(6) in the proposal.

Section 1926.1438 Overhead and Gantry Cranes

As defined in § 1926.1401, overhead and gantry cranes include overhead/bridge cranes, semigantry cranes, cantilever gantry cranes, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means. The Committee developed this definition to reflect the wide range of this type of equipment.

Overhead and gantry cranes are commonly found on general industry as well as construction worksites. Sometimes overhead and gantry cranes installed in general industry facilities are used for construction purposes (for example, the overhead/gantry crane in a factory is sometimes used when a part of the factory is being renovated). The Committee determined that applying the general industry standard for overhead and gantry cranes, § 1910.179, to the use of those cranes for construction work, rather than the requirements of new subpart CC, would reduce compliance burdens without jeopardizing employee protection. All comments received agreed it is reasonable to require cranes fitting this particular description to comply with § 1910.179 in lieu of requirements imposed under this subpart.

The rule therefore distinguishes between permanently installed overhead and gantry cranes and those that are not permanently installed. Overhead and gantry cranes permanently installed in a facility are considered an irremovable part of the property and are primarily used in general industry but may, on rare occasions, be used for construction activities. Generally, these cranes are installed in facilities and are not easily assembled or disassembled. They are typically physically fastened to a building and enhance the utility of the property. The requirements of § 1910.179, the general industry standard, and not subpart CC, apply to these permanently installed overhead and gantry cranes.

In contrast, overhead and gantry cranes used frequently for construction activities are generally not permanently installed in a facility. They tend to be more easily assembled or disassembled than their permanently installed counterparts. The determining factor of whether an overhead or gantry crane is or is not permanently installed is whether or not it is regarded as a permanent part of the facility. If it is intended as a temporary installation or meant to be removed from the property, then the overhead or gantry crane is not considered permanently installed, and subpart CC applies. For example, if an employer attaches the base of a gantry crane to a concrete slab at a building construction site for use in constructing the building, that gantry crane would be covered by the provisions in subpart CC.

Paragraph (a) Permanently Installed Overhead and Gantry Cranes

Section 1926.1438(a) applies the requirements of § 1910.179, with the exception of § 1910.179(b)(1), to six listed types of cranes and "others with fundamentally similar characteristics," when they are used in construction and are permanently installed in a facility. The requirements in subpart CC do not apply to these cranes. Section 1910.179(b)(1) sets forth the scope of the general industry standard as defined under 29 CFR part 1910. It is excluded to avoid any confusion that might arise from having two separate scope provisions applicable to § 1926.1438(a). Nonetheless, the types of overhead and gantry cranes covered under §§ 1926.1438(a) and 1910.179(b)(1) are the same, in that they all share fundamental characteristics. These cranes are grouped because they all have trolleys and similar travel characteristics.

Paragraph (b) Overhead and Gantry Cranes That Are Not Permanently Installed in a Facility

Paragraph (b)(1) of this section provides the scope of § 1926.1438(b). By its terms, § 1926.1438(b) pertains to overhead and gantry cranes, overhead/bridge cranes, semigantry cranes, cantilever gantry cranes, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment having the same fundamental characteristics, when they are used in construction and

are not permanently installed in a facility. The words "having the same fundamental characteristics" have been added to be consistent with the language in § 1926.1438(a).

Paragraph (b)(2) specifies which requirements apply to the equipment identified in § 1926.1438(b)(1).

Paragraph (b)(2)(i) requires overhead and gantry cranes not permanently installed in a facility to comply with §§ 1926.1400 through 1926.1414; §§ 1926.1417 through 1926.1425; § 1926.1426(d); §§ 1926.1427 through 1926.1434; §§ 1926.1437, 1926.1439, and 1926.1441 of subpart CC. Sections 1926.1435, 1926.1436 and 1926.1440, entitled Tower cranes, Derricks, and Sideboom cranes, respectively, are not applicable because they pertain to different kinds of equipment. Sections 1926.1415, 1926.1416 and 1926.1426(a)–(c) do not apply because they refer to devices not used on overhead and gantry cranes.

Paragraph (b)(2)(ii) requires employers to comply with the requirements of § 1910.179.

Paragraph (b)(2)(ii)(A) specifies the portions of § 1910.179 that are applicable to the equipment identified in § 1926.1438(b)(1). The Committee selected these requirements because each is a safety requirement that applies to this type of crane regardless of whether it is used in construction or general industry. Other than certain definitions (described below), these are the only provisions of § 1910.179 that apply to the equipment identified in § 1926.1438(b)(1). These requirements are:

§ 1910.179(b)(5)—Rated load marking
§ 1910.179(b)(6)—Clearance from obstruction
§ 1910.179(b)(7)—Clearance between parallel cranes
§ 1910.179(e)(1)—Trolley stops
§ 1910.179(e)(3)—Trolley bumpers
§ 1910.179(e)(5)—Guards for hoisting ropes
§ 1910.179(e)(6)—Guards for moving parts
§ 1910.179(f)(1)—Brakes for hoists
§ 1910.179(f)(4)—Brakes for trolleys and bridges
§ 1910.179(g)—Electric equipment
§ 1910.179(h)(1)—Sheaves
§ 1910.179(h)(3)—Equalizers
§ 1910.179(k)—Testing
§ 1910.179(n)—Handling the load

Section 1926.1438(b)(2)(ii)(B) states that the definitions in § 1910.179(a), except for "hoist" and "load," apply to equipment covered by § 1926.1438(b). For those words, the definitions in § 1926.1401 apply. Only three terms are defined in both § 1926.1401 and § 1910.179: "hoist," "load," and "runway."

With respect to "hoist" and "load," the definitions in §§ 1926.1401 and 1910.179(a) are similar but worded differently. "Hoist" is defined in § 1926.1401 as "a mechanical device for lifting and lowering loads by winding rope onto or off a drum." In § 1910.179, "hoist" is defined as "an apparatus which may be part of a crane, exerting a force for lifting and lowering." "Load" is defined in § 1926.1401 as "the object to be hoisted and the weight of the object being lifted or lowered, including the weight of the load-attaching equipment such as the load block, ropes, slings, shackles, and any other ancillary equipment." Section 1910.179 defines "load" as "the total superimposed weight on the load block or hook." In both cases, the § 1926.1401 definition is clearer and more precise.

With respect to "runway," the § 1926.1401 and § 1910.179 definitions address different subject matter. The definition in § 1926.1401 addresses the criteria for a ground surface used as a path of travel for a mobile crane traveling with a suspended personnel platform. The definition in § 1910.179 refers to the rails, beams, and other structural components along which an overhead or gantry crane travels. Because the § 1926.1401 definition of "runway" does not pertain to overhead and gantry cranes, the § 1910.179 definition applies under this section.

Paragraph (b)(2)(ii)(C) limits the application of § 1910.179(b)(2) to equipment identified in § 1926.1438(b)(1) that was manufactured before September 19, 2001. Section 1910.179(b)(2) requires cranes manufactured after August 31, 1971, to comply with the design specifications in American National Standard Safety Code for Overhead and Gantry Cranes, ANSI B30.2.0–1967. As discussed below, equipment manufactured after September 19, 2001, must comply with the updated provisions of ASME B30.2–2001. Section 1926.1438(b)(2)(ii)(C) is a transitional provision covering equipment manufactured between August 31, 1971 and September 19, 2001. OSHA has made minor grammatical revisions to (b)(2)(ii)(C) for clarity.

Paragraph (b)(2)(iii) incorporates several sections of the 2001 version of ASME B30.2 into this section. Previously, ANSI B30.2.0–1967 applied through subpart N's former § 1926.550(d). The Committee agreed that the 2001 version should be used because it is more comprehensive than the 1967 version and thus more conducive to safety. The following sections are incorporated by reference: 2–1.3.1—Foundations and Anchorages; 2–1.3.2—Crane Runways; 2–1.4.1—Welded Construction; 2–1.6—Lubrication; 2–1.7.2—Ladders and Stairways; 2–1.8.2—Bridge Bumpers; 2–1.9.1—Bridge Rail Sweeps; 2–1.9.2—Trolley Rail Sweeps; 2–1.11—Truck Frame Drop; 2–1.12.2—Hoist Control Braking Means; 2–1.13.7—Lifting Magnets; 2–1.14.2—Drums; 2–1.14.3—Ropes; 2–1.14.5—Hooks; 2–1.15—Warning Devices or Means for a Crane with a Power-Traveling Mechanism; 2–2.2.2—Load Test; 2–3.2.1.1—Planned Engineered Lifts; and 2–3.5—Crane Lockout/Tagout, except that in 2–3.5.1(b), "29 CFR 1910.147," the OSHA general industry Lockout/Tagout standard, is substituted for "ANSI Z244.1."

When C–DAC drafted § 1926.1438(b)(2)(ii)(C), the current version of ASME B30.2 was the 2001 edition. That has since been superseded by a 2005 edition. OSHA notes that, in all material respects, the 2001 and 2005 versions of the provisions listed in § 1926.1438(b)(2)(iii) are the same. Except for sec. 2–1.8.2, the 2001 and 2005 provisions are identical.

Section 2–1.8.2 contains a wording change that does not substantively alter that provision. The 2001 version of sec. 2–1.8.2 contains the following requirement, among others, for bridge bumpers: "energy-absorbing (or -dissipating) capacity to stop the bridge when traveling with power off in either direction at a speed of at least 40% of rated load speed." In the 2005 version "(or -dissipating)" is changed to "(or energy-dissipating)." This is clearly a clarification rather than a substantive change. Accordingly, OSHA has changed § 1926.1438(b)(2)(iii) to refer to the 2005 version of ASME B30.2.

When employers engaged in construction work must lock or tag components of overhead and gantry cranes during maintenance and repair work, § 1926.1438(b)(2)(iii) requires them to comply with OSHA's general industry lockout/tagout standard at § 1910.147 instead of the ANSI lockout/tagout standard (ANSI Z244.1) referenced in sec. 2–3.5.1(b) of ASME B30.2–2005. The Committee determined that the OSHA general industry lockout/tagout standard would be more accessible and familiar to employers in the construction industry than the ANSI standard. Therefore, requiring compliance with the OSHA standard will promote compliance and, as a result, improve worker protection.

One commenter suggested exempting all overhead and gantry cranes from the scope of subpart CC because they are

rarely used in construction. (ID–0178.1.) While OSHA understands they are rarely used in construction, these cranes are at least occasionally used in construction. Were the Agency to delete this section entirely, these cranes (overhead and gantry cranes used in construction) would not be explicitly covered by any OSHA standard.

The same commenter reasoned that, because overhead cranes are primarily used in general industry and § 1910.179 does not require operator certification, an overhead crane operator who performs construction work only occasionally would need to be certified for the occasional construction-related pick, but not for any other part of the job. As explained above, the rule distinguishes between permanently installed overhead and gantry cranes, which are primarily used in general industry, and those that are not permanently installed, which are primarily used in construction work.

The Committee determined that applying the general industry standard (§ 1910.179) to overhead and gantry cranes that are permanently installed in a facility and used for construction would reduce compliance burdens without jeopardizing employee protection. However, the use of overhead and gantry cranes that are not permanently installed in a facility, which are more frequently used for construction, presents concerns about employee safety that are particular to the construction environment. For these overhead and gantry cranes, the Committee applied the safety requirements in § 1910.179, which apply whether the crane is used in general industry or construction, along with portions of subpart CC to address the specific concerns about cranes used in construction. OSHA agrees.

The commenter recognized the Committee's concern when he stated that, unlike operators of rented or subcontracted mobile cranes, employers that deal with overhead cranes are very aware of the qualifications of their operators. (ID–0178.1.) OSHA determines that non-permanently installed overhead and gantry cranes used in construction present the same concerns as rented or subcontracted mobile cranes.

Finally, the commenter suggests that § 1926.1438 requires operator certification for certain classes of lifting equipment—pile drivers, derricks, and service trucks with hoisting devices—for which no certification programs currently exist. These three types of lifting equipment are not covered by § 1926.1438: Dedicated pile drivers are covered by § 1926.1439, which requires qualification or certification; operators of cranes used with a pile-driving attachment must be qualified or certified under § 1926.1427, and derricks are covered by § 1926.1436, which specifically states that § 1926.1427, *Operator qualification and certification,* does not apply. *See* the discussion above of § 1926.1400 regarding service trucks with hoisting devices. As noted in the explanation of § 1926.1427, OSHA has modified its operator certification requirements from the proposed rule to address certification of operators of equipment for which no certification program currently exists.

Another commenter sought clarification on whether § 1926.1438 applies to permanently installed overhead and gantry cranes located in facilities that may also involve construction related activities. (ID–0162.1.) As explained above, this section applies to permanently installed overhead and gantry cranes that are used in construction. Section 1926.1438(a) clearly states that the requirements of § 1910.179, except for § 1910.179(b)(1), apply to these cranes; in these instances, the requirements of subpart CC would not apply. Section 1926.1438 does not apply to permanently installed overhead and gantry cranes that are merely located in a facility that may also be involved in construction activities. The crane itself must be used in construction activities to trigger § 1926.1438.

Except as explained above, the Agency has therefore promulgated this provision as proposed.

Section 1926.1439 Dedicated Pile Drivers

This section covers equipment that is designed to function exclusively as a pile driver, as defined in § 1926.1401. Unlike the other equipment covered by this subpart, dedicated pile drivers are not designed primarily to hoist, lower, and horizontally move suspended loads. However, the Committee decided that the scope of this standard should cover dedicated pile drivers because their functions, and related hazards, are similar to those of cranes. For a complete discussion of the rationale for the coverage of dedicated pile drivers by this standard, *see* the discussion in the proposed rule at § 1926.1400, *Scope* (73 FR 59714, 59727–59728, Oct. 9, 2008).

As discussed below, most of the provisions of this subpart apply to dedicated pile drivers; however, this section includes provisions that address the unique characteristics of such equipment. In addition to the requirements of this subpart, pile driving equipment continues to be covered by § 1926.603, Pile driving equipment.

One commenter expressed support for the inclusion of § 1926.1439. (ID–0158.1.) OSHA received no public comment in opposition.

Paragraph (a)

This paragraph provides that the requirements of subpart CC apply to dedicated pile drivers except as noted elsewhere in this section. The Agency changed the words "this standard" to "Subpart CC" in the final rule. With the exception of the clarification, this provision is promulgated as proposed.

Paragraph (b)

Paragraph (b) of this section provides that the requirements of § 1926.1416(d)(3) do not apply to dedicated pile drivers. Section 1926.1416(d)(3) requires that cranes manufactured after February 28, 1992, be equipped with anti-two-blocking devices. This does not apply to dedicated pile drivers. As explained in the discussion of § 1926.1416(d)(3), anti-two-block devices are not required during pile driving operations because the heavy repetitive forces imposed on such devices during pile driving cause the devices to malfunction.

For discussion of alternative requirements to anti-two-blocking devices when hoisting an employee during pile driving operations, *see* § 1926.1431(p)(2). No comments were received for this paragraph; it is promulgated as proposed.

Paragraph (c)

Paragraph (c) of this section provides that the requirements of § 1926.1416(e)(4) (load weighing and similar devices) are applicable only to dedicated pile drivers manufactured more than one year after the effective date of this final rule. A load weighing and rated capacity device provides the operator of a dedicated pile driver with a reliable load weight prior to each lift to prevent equipment overload. C–DAC found that a phase-in period was necessary because of the technical challenges in designing this device to work consistently and reliably on a dedicated pile driver.

OSHA solicited public comment on the availability of load-weighing or rated capacity devices for dedicated pile drivers and the related issue of whether a date other than one year after the effective date of this standard would be an appropriate date for application of this requirement. OSHA received no public comment regarding the phase-in requirements. The Agency changed the

words "this standard" to "Subpart CC" in the final rule. With the exception of the clarification, this provision is promulgated as proposed.

Paragraph (d)

Paragraph (d) of this section provides that for § 1926.1433, only paragraphs (d) and (e) of § 1926.1433 apply to dedicated pile drivers. Paragraphs (d) and (e) of § 1926.1433, *Design, construction and testing,* are applicable to all equipment covered by this subpart, whereas the other provisions are applicable to specific types of equipment and are not relevant to dedicated pile drivers. (*See* discussion in § 1926.1433 for further explanation.)

In the proposed rule this paragraph referred to §§ 1926.1433(e) and (f); this was a clerical error. For the proposed rule, § 1926.1433 had been renumbered from what was in the C–DAC consensus document, but paragraph (d) did not get updated accordingly. OSHA has made this correction in the final rule. With the exception of the corrected referencing, this provision is promulgated as proposed.

Deletion of Proposed Paragraph (e)

The Committee concluded that there was no reason to exclude dedicated pile drivers from the requirements of § 1926.1427, *Operator qualification and certification.* The Committee was concerned, however, that because of the relatively few dedicated pile drivers in use, there would not be adequate market demand to support the availability of certification testing specific to such equipment. For the same reasons, the Committee was concerned about the availability of auditors for auditing employer qualification programs for dedicated pile driver operators. C–DAC concluded that any lack of qualification or certification services specific to dedicated pile drivers would be alleviated by allowing qualification or certification on similar equipment, so proposed paragraph (e) of this section read:

> Section 1926.1427 (Operator qualification and certification) applies, except that the qualification or certification shall be for operation of either dedicated pile drivers or equipment that is the most similar to dedicated pile drivers.

After reviewing comments regarding § 1926.1427, OSHA decided to add language similar to proposed § 1926.1439(e) to § 1926.1427. *See* discussion of § 1926.1427(b)(2). In light of that change, OSHA has decided that it is not necessary to include proposed § 1926.1439(e) in the dedicated pile driver section of the final rule. The concerns addressed by that paragraph, as proposed, are now dealt with in § 1926.1427(b)(2), which covers dedicated pile drivers as well as other types of equipment covered by subpart CC.

Section 1926.1440 Requirements for Sideboom Cranes

"Sideboom crane" is defined in § 1926.1401 as "a track-type or wheel-type tractor having a boom mounted on the side of the tractor, used for lifting, lowering or transporting a load suspended on the load hook. The boom or hook can be lifted or lowered in a vertical direction only." No comments were submitted on this definition; it is promulgated as proposed. (*See* the discussion in the proposed rule explaining this definition at 73 FR 59868, Oct. 9, 2008.)

This section identifies which of the other sections of the final rule apply to this equipment and sets additional requirements. The limited requirements for sideboom cranes, compared to the requirements for other types of cranes, reflect the particular construction and limited functions of sideboom cranes. Sideboom cranes are of a limited capacity and require a relatively simple operation.

Paragraph (a)

Section 1926.1440(a) of the final rule states that the provisions of this standard apply with the exception of §§ 1926.1402, *Ground conditions,* 1926.1415, *Safety devices,* 1926.1416, *Operational aids,* and 1926.1427, *Operator qualification and certification.* As noted in the preamble to the proposed rule, the Committee exempted sideboom cranes from the requirements of these four sections because the Committee determined that, in light of the limited capacity and relative simplicity of operation of sideboom cranes, these requirements would be unnecessary (73 FR 59868, Oct. 9, 2008).

During the SBREFA process, one Small Entity Representative (SER) raised a question as to whether small sideboom cranes incapable of lifting above the height of a truck bed and with a capacity of not more than 6,000 pounds should be covered by the proposed rule. This SER recommended that these small sideboom cranes be exempted from the scope of subpart CC. Accordingly, OSHA asked for public comment about the appropriateness of such an exemption (*see* 73 FR 59868, Oct. 9, 2008). Two commenters responded to this issue. (ID–0205; –0213.) Both commenters expressed their belief that such equipment should be exempted from the final rule unless the equipment is being used outside the parameters of the equipment's design, but neither commenter provided any explanation as to why the final rule should exempt such equipment. (ID–0205; –0213.) As discussed above, OSHA decided to exempt sideboom cranes from several provisions of the final rule. Absent any justification to provide additional relief for small-capacity sideboom cranes, OSHA concludes that the exemptions already provided in the final rule are appropriate, and will ensure the safety of workers who operate these cranes.

Paragraph (b)

This paragraph addresses the hazards posed by boom free fall (that is, "live" booms). As noted above in the discussion of § 1926.1426 (Free fall and controlled load lowering), in general, the use of equipment with live booms is prohibited. However, equipment manufactured before the ANSI B30.5 series prohibited live booms may use live booms under conditions specified in § 1926.1426(a)(2). The prohibition in § 1926.1426 applies to equipment manufactured on or after October 31, 1984. Equipment manufactured before that date may only use live booms when none of the free fall prohibitions outlined in § 1926.1426(a)(1) are present.

OSHA received no comments on proposed § 1926.1440(b). Therefore, in the final rule, this paragraph will retain the approach to live booms described in the proposal. Accordingly, final paragraph (b) of this section applies an approach to live booms used with sideboom cranes that is similar to the approach discussed above for § 1926.1426. The only difference is the cut-off date of manufacture for sideboom cranes with live booms. As explained above in the discussion of § 1926.1426(a)(2), in light of the history of the ANSI B30.5 prohibition against live booms, most equipment covered by this standard manufactured after October 31, 1984, does not have live booms. In contrast, the ANSI/ASME standards applicable to sideboom cranes (ANSI/ASME B30.14) have never prohibited live booms. As a result, sideboom cranes with live booms continued to be manufactured after 1984. Consequently, under § 1926.1440(b), to avoid undue burden on employers, OSHA is designating the cut-off date of manufacture for sideboom cranes with live booms as the effective date of this final standard. Therefore, employers may continue to use sideboom cranes manufactured prior to this date in which the boom is designed to free fall, except under the conditions specified in § 1926.1426(a)(1). OSHA determines

that these conditions will increase employee safety compared to current practices. No comments were submitted on this paragraph; it is promulgated as proposed.

Paragraph (c)

As drafted by C–DAC, this paragraph would have required that sideboom cranes meet specific requirements of ASME B30.14–1996 ("Side Boom Tractors"), as amended by ASME B30.14a–1997, B30.14b–1999, and B30.14c–2001. After the Committee completed its work, ASME consolidated the requirements of the 1996 standard and the amendments into ASME B30.14–2004. Final § 1926.1440(c) incorporates by reference several sections of ASME B30.14–2004 into the same 12 subparagraphs described in the proposed rule. While OSHA received no comments to proposed § 1926.1440(c), it decided to retain these 12 subparagraphs in the final rule because the Committee determined that these ASME requirements are necessary and appropriate for sideboom cranes, and represent current best practices for the industry.

The 12 subparagraphs retained in § 1926.1440(c) of the final rule refer to the following sections of ASME B30.14–2004: 14–1.1 ("Load Ratings"); 14–1.3 ("Side Boom Tractor Travel"); 14–1.5 ("Ropes and Reeving Accessories"); 14–1.7.1 ("Booms"); 14–1.7.2 ("General Requirements—Exhaust Gases"); 14–1.7.3 ("General Requirements—Stabilizers (Wheel-Type Side Boom Tractors)"); 14–1.7.4 ("General Requirements—Welded Construction"); 14–1.7.6 ("General requirements—Clutch and Brake Protection"); 14–2.2.2 ("Testing—Rated Load Test"), except that it applies only to equipment that has been altered or modified; paragraph (a) of 14–3.1.2 ("Operator Qualifications") except that the phrase "when required by law" is omitted; paragraphs (e), (f)(1)–(f)(4), (f)(6), (f)(7), (h), and (i) of 14–3.1.3 ("Operating Practices"), and paragraphs (j), (l), and (m) of § 1926.14–3.2.3 ("Moving the Load"). Regarding the last four of these sections, OSHA is stipulating exceptions, or requiring employers to comply with only specified provisions. OSHA wanted to avoid any duplication, conflicts or possible confusion, so the final rule does not incorporate provisions of the ASME standard that deal with issues addressed by other provisions of this standard. The incorporated provisions consist of requirements that are specific to sideboom cranes.

Section 1926.1441 "Requirements for Equipment With a Rated Hoisting/Lifting Capacity of 2,000 Pounds or Less

Section 1926.1441 establishes the requirements applicable for equipment with a maximum-rated hoisting/lifting capacity of 2,000 pounds. The section covers equipment designed and built at the jobsite, as well as manufactured equipment. In the proposal, the introductory paragraph used the term "manufacturer-rated" that appeared in the C–DAC Document. OSHA requested public comment on this whether to use the term "rated" instead of "manufacturer-rated" to clarify that the section applied to both jobsite-built and manufactured equipment. OSHA received only two comments, and both commenters supported this revision because it would clarify application of the section. (ID–0205.1; –0213.1.) Therefore, OSHA made the proposed revision in the final rule.

OSHA also solicited public comment on whether the maximum rated capacity for application of this section should be revised because of crane-technology advancements or other considerations. Two commenters, one from the sign-installation industry and the other from the utilities industry, commented that OSHA should increase the maximum rated capacity cut-off for application of this section to not more than 10,000 pounds. (ID–0162.1; –0189.1.) The sign-installation representative commented that the operator-qualification requirements of § 1926.1441 would encourage employers to use smaller cranes at or near their maximum rated capacity. This commenter indicated that using 2,000-pound rated-capacity equipment in such a way is less safe than using higher capacity equipment, which would be operated below its rated capacity, and at a more optimum boom angle. The utilities-industry commenter suggested coupling the 10,000 pound cut-off with a boom length of 25 feet. A representative from the materials-delivery industry testified during the hearing of the proposed rule that OSHA should exempt truck-mounted articulated-boom loaders of 10,000 pounds or less, stating that the State of California has such an exemption. (ID–0343.)

Another commenter, from the home-building industry, believed that OSHA should raise the capacity cut-off to 70,000 pounds and 120 feet of boom because this industry frequently performs light load lifts such as hoisting roofing and framing materials. (ID–0232.) OSHA notes that the ground conditions at residential construction sites are often hazardous to crane operation because the soil at new-home construction sites is often disturbed. In addition, there may be voids, such as conduits and sewers, underneath the soil around existing homes. Power lines also are common at these sites. Furthermore, cranes used in residential construction not only hoist loads to structures, but also hold loads in position during installation activities, often with significant boom extension. A representative from a major crane-rental company shared similar concerns during the public hearing about the hazards of boom trucks used to perform relatively light lifts in support of residential-construction activities. (ID–0344.) This witness stated that boom-truck cranes present greater risk of tip over than larger cranes with wider outrigger bases and greater stability, and that an inexperienced operator with a rented crane (*i.e.,* bare rental) may not have this knowledge. This witness believed that the operators of bare rental cranes do not completely understand how much the capacity of the equipment decreases as the boom extends further. The witness described crane incidents in which operators of small cranes tipped equipment or dropped bundles of roofing materials at residential-construction sites, and provided numerous photographs of crane failures at these sites. (ID–0345.7.)

Two commenters stated that they believe the 2,000-pound limit is appropriate. (ID–0205.1; –0213.1.) Discussion at the hearing also addressed the appropriateness of the 2,000 pound capacity limitation. For example, a representative of a major local government testified about the city's experiences with smaller cranes, and explained that smaller cranes, like some knuckle-boom cranes, lift heavier loads and extend their booms further than older cranes, allowing materials-delivery personnel at construction sites to position and hold materials for contractors during installation and erection activities. (ID–0342.) The city representative stated that, when employers perform these activities with greater capacity equipment, employers typically plan for those operations; however, the same planning is not necessarily done by employers when using smaller capacity equipment for the same activities (*i.e.,* lifting, moving, and landing materials).

After reviewing the comments and testimony received on this issue, OSHA finds no persuasive evidence that justifies revising the capacity cut-off for the application of the requirements § 1926.1441. The record provides no evidence that the hazards are different for equipment in the rated capacity

range from 2,000 to 10,000 pounds than the hazards associated with equipment not covered by § 1926.1441. The myriad hazards addressed by this standard, including, for example, inadequate ground conditions, power lines, ineffective signal communications, overloading, and inadequate operator knowledge/ability, also are applicable to equipment in this capacity range. As noted in the discussion of § 1926.1427, some hazards may be increased because these cranes are often used in tight spaces. Therefore, OSHA determines that the cut-off point of 2,000 pounds or less as proposed is appropriate. This conclusion is consistent with the judgment of the Committee as described in the proposal (73 FR 59869, Oct. 9, 2008).

Paragraph (a) of this section lists the provisions of this subpart that apply to equipment covered by this section. OSHA did not receive any comments on proposed paragraph (a) and is deferring to the Committee's determination that the hazards addressed by these provisions apply irrespective of the equipment's rated capacity. For example, the dangers associated with making electrical contact with a power line do not depend on the lifting capacity of the equipment, so C–DAC determined that §§ 1926.1407–1926.1411 on power line safety should apply to all equipment regardless of rated capacity. Similarly, the other provisions listed in this paragraph apply to equipment with a rated capacity of 2,000 pounds or less to the same extent that those sections apply to that type of equipment with a rated capacity in excess of 2,000 pounds. To avoid confusion, OSHA is including references in this final paragraph (a) to provisions located and required in other paragraphs of proposed § 1926.1441. Therefore, paragraph (a) now also references §§ 1926.1403, 1926.1406, 1926.1412(c), and 1926.1425 (except 1926.1425(c)(3)).

Paragraph (b) of this section sets forth requirements for the assembly/disassembly of cranes covered by this section, and duplicates requirements specified elsewhere in this subpart. In this regard, paragraph (b)(1) requires that equipment covered by this section meet the requirements of §§ 1926.1403 and 1926.1406 for assembly/disassembly, while paragraph (b)(2) consists of requirements for the components and configuration of equipment covered by this section. OSHA received no comments on these two paragraphs. Paragraph (b)(1) refers to §§ 1926.1403 and 1926.1406 of this subpart, and the preamble discussion above provides an explanation of these sections, and OSHA's rationale for including them in the final rule. Because §§ 1926.1403 and 1926.1406 are included in paragraph (a), OSHA has modified the language in paragraph (b)(1) for clarity. The requirements set forth under paragraph (b)(2) duplicate the requirements specified by §§ 1926.1404(m)(1), (m)(1)(i), (m)(1)(ii), (m)(2), and (n) of this subpart; *see* the discussion under § 1926.1404(m) and (n) of this preamble for an explanation of these provisions, and OSHA's rationale for adopting them in the final rule.

Paragraph (b)(3) requires employers to comply with manufacturer prohibitions for equipment covered by this section. The same requirement applies to higher-capacity equipment under § 1926.1404(n). OSHA received no comments on the proposed paragraph and is including the provision in the final rule as proposed because the Committee agreed that manufacturers' prohibitions are designed to prevent hazards that can arise with the use of their products.

Paragraph (c) of this section specifies procedural requirements for operating the equipment. Paragraph (c)(1) requires the employer to comply with all manufacturer procedures applicable to equipment operation, including equipment operation with attachments. The same requirement applies to higher-capacity equipment under § 1926.1417(a). OSHA received no comments on the proposed paragraph and is including the provision in the final rule as proposed because the Committee agreed that manufacturer procedures are designed to prevent hazards that can arise with the use of their products.

The requirements in paragraph (c)(2) apply to equipment for which manufacturer operating procedures are unavailable. Under these conditions, paragraph (c)(2)(i) requires the employer to develop, and ensure compliance with, the procedures necessary for the safe operation of the equipment and its attachments.

Paragraph (c)(2)(ii) specifies that the employer must ensure that a qualified person develops the procedures for operational controls. The Committee concluded that, because these procedures are highly complex and critical to operational control of the equipment, a qualified person has the high degree of expertise necessary to ensure proper development of the control procedures.

When the employer develops the operating procedures for this equipment, paragraph (c)(2)(iii) requires that procedures related to the capacity of the equipment be developed and signed by a professional engineer familiar with the equipment. The Committee concluded that, because the type and complexity of engineering analysis needed to develop safe procedures related to capacity, a registered professional engineer who is familiar with the equipment must perform this task. The Committee also agreed that signing the procedures was necessary to ensure that the engineer performed the task with the requisite level of care.

No commenters responded to the provisions of proposed paragraph (c). OSHA is adopting these provisions in the final rule as proposed because (1) the provisions are consistent with the consensus reached by the Committee, and (2) will ensure that, absent manufacturer procedures, employers develop procedures that will protect workers as effectively as operating procedures developed by the equipment manufacturer when implemented as required.

Paragraph (c)(3) of the final rule addresses the provision of operating information to the equipment operator. Equipment covered by this section may not have an operator's cab; therefore, paragraph (c)(3)(i) requires that the load chart be made available to the operator at the control station rather than in the cab. The Committee developed this provision to prevent cranes from being used to perform operations beyond their rated capacities. The Committee determined that the load chart must be readily available to crane operators since capacity varies according to a variety of factors addressed in such charts, including, for example, boom length, radius, boom angle, and equipment configuration. OSHA received no comments on the proposed paragraph and is including the provision in the final rule as proposed based on the rationale provided by the Committee

Under paragraph (c)(3)(ii), employers must ensure that required procedures, recommendations, warnings, instructions, and operator's manual be readily available for use by the operator. Again, this provision covers equipment with and without a cab. The consensus of the Committee was that operators must have easy access to the information in these materials to operate the equipment safely. No comments were received on this provision and OSHA is including this provision in the final rule as proposed.

When rated capacities are available at the control station only in electronic form and a failure occurs that makes the rated capacities inaccessible, paragraph

(c)(3)(iii) requires employers to ensure that the crane operator immediately ceases operations or follows safe shut-down procedures until the rated capacities become available again. The Committee agreed that it is unsafe to continue to operate the equipment if the rated capacities are inaccessible to the operator. No comments were received on this provision and OSHA is adopting this requirement in the final rule as proposed.

Paragraph (d) of this section specifies requirements for safety devices and operational aids for the equipment. In this regard, paragraph (d)(1) requires that employers maintain safety devices and operational aids that are part of the original equipment in accordance with manufacturer procedures. (**Note:** This requirement applies to anti two-block devices used on equipment covered by this section manufactured before the effective date of this final standard; *see* discussion of anti two-block device under paragraph (d)(3) below.) The Committee determined that the full range of safety devices and operational aids required by §§ 1926.1415 and 1926.1416 of this subpart were not generally needed for the safe operation of this low-capacity equipment. However, the Committee also concluded that, if the manufacturer included such devices or aids, it is probable that the manufacturer's design relies on them working properly for the equipment to operate safely. Therefore, it is appropriate for the standard to require them to be maintained in accordance with the manufacturer's procedures. No comments were received on this provision and OSHA is retaining this paragraph in the final standard as proposed.

Under paragraph (d)(2), employers must ensure that the equipment covered by this section and manufactured more than one year after the effective date of this final standard be equipped either with an anti-two block device that meets the requirements of § 1926.1416(d)(3), or be designed so that no damage or load failure occurs in the event of a two-block situation. The provision also identifies an example of equipment designed to prevent equipment damage load failure, *i.e.,* when the power unit of the machine stalls in the event of a two-block situation. In such a case, the power unit does not have sufficient power to cause the load to fail or to damage the equipment. Instead, when the two-block situation occurs, the power unit stalls, which prevents the load from falling. The purpose of this paragraph is to prevent equipment damage or failure stemming from contact between a component on the hoist line and the boom tip, which occurs during a two-block situation. Such contact can lead to a damaged or severed load line, as well as other types of equipment failure.

The Committee agreed to provide employers with discretion to choose between two options for eliminating two-block hazards. The first option prevents a two-block situation from occurring, while the second option prevents equipment damage and load failure if a two-block situation occurs. The Committee determined that, for the equipment cover by this section, each option protects employees equally well. Regarding the first option, the anti two-block device used must meet the requirements for such devices specified by § 1926.1416(d)(3). Paragraph (d)(3) of § 1926,1416 addresses two types of anti two-block devices: the warning type, and the automatic-prevention type (*see* the discussion of these devices above under § 1926.1416(d)(3) of this preamble). The type required depends on the type of crane and the date of manufacture. However, § 1926.1416(d)(3) requires that employers use the automatic-prevention type on equipment manufactured more than one year after the effective date of this final standard. Therefore, since the requirement in § 1926.1441(d)(2) only applies to equipment manufactured more than one year after the effective date of this final standard, and to remain consistent with § 1926.1416(d)(3), the anti two-block device used on equipment covered by this section must be the automatic-prevention type. The Committee concluded that it would be inappropriate to apply this requirement to equipment manufactured before either a voluntary consensus standard or Federal requirement is in place. Therefore, this paragraph applies to equipment manufactured more than one year after the effective date of this final standard.

OSHA received no comments on any provision of proposed paragraph (c). Based on the Committee's rationale for these provisions, and the increased safety afforded to employees, OSHA is adopting these provisions in the final rule as proposed.

Paragraph (e) of this section requires that, before operating equipment, employers train operators on the safe operation of the type of equipment the operator will be using. OSHA received two comments on the proposed paragraph. The first commenter believed the 2,000 pound cut-off was too low and, because the operators would not have to be certified, employers will use lower-capacity cranes to perform construction jobs that require higher-capacity equipment. (ID–0189.) The second commenter stated that certification of the operators of low-capacity cranes is unnecessary in the home-building industry, but offered no rationale for this position. (ID–0232.)

OSHA notes that the problem of overloading equipment would exist even at a higher cut-off point. The only way to eliminate this problem would be to require operator qualification/certification pursuant to § 1926.1427 for all equipment, including equipment covered by this section. The Committee concluded that it is appropriate to exempt lower-capacity equipment from the operator qualification/certification requirements of § 1926.1427. Consistent with the Committee's consensus, OSHA finds that training operators in the safe operation of the equipment as required by this final standard reduces the likelihood of accidents and injuries by minimizing operator error; therefore, the operator certification/qualification procedures required for higher-capacity equipment under § 1926.1427 are not necessary for this lower-capacity equipment.

Under paragraph (f) of this section, employers must ensure that signal persons are trained in the proper use of signals applicable to the use of equipment covered by this section. Although the equipment covered by this section has a low capacity, in some circumstances its safe operation depends on signals given by a signal person. Accordingly, this paragraph ensures that communication between the crane operator and the signal person is clear and effective. However, the Committee concluded that the comprehensive signal-person qualification procedures required for higher-capacity equipment under § 1926.1428, *Signal person qualifications,* are not needed for this equipment. OSHA received no comments on proposed paragraph (f) and is including the provision in the final rule as proposed based on the rationale provided by the Committee.

Proposed paragraph (g) of this section required that equipment covered by this section comply with § 1926.1425, *Keeping clear of the load,* except for § 1926.1425(c)(3); § 1926.1425(c)(3) specifies that materials be rigged by a qualified rigger. The Committee determined that, in light of the limited capacity of this equipment, it was unnecessary to require a qualified rigger. OSHA received no comments on the proposed provision and is deferring to the Committee's determination. As noted in the discussion of paragraph (a) above, the requirement for the employer

to comply with § 1926.1425 (except for § 1926.1425(c)(3)) has been added to the provisions listed in paragraph (a). Therefore, OSHA is removing and reserving paragraph (g) in this final rule because the requirements proposed in paragraph (g) are now required in final paragraph (a).

According to paragraph (h) of this section, employers must ensure that equipment covered by this section is inspected pursuant to the manufacturer's procedures. The Committee concluded that these inspections are sufficient to detect conditions that could lead to equipment failure because manufacturers typically recommend procedures designed to prevent hazards that can arise during equipment operation. The Committee concluded that the comprehensive inspection procedures required for higher-capacity equipment under § 1926.1412 are not needed for lighter, less complicated, equipment. OSHA received no comments on the proposed paragraph and is adopting this paragraph in the final rule as proposed based on the rationale provided by the Committee.

Paragraph (j) of this section prohibits using equipment covered by this section to hoist personnel. OSHA received no comments on the proposed paragraph and is including it in the final rule as proposed because the Committee determined that the low capacity and light construction of this equipment makes it unsuited for lifting personnel safely.

Under paragraph (k) of this section, employers must ensure that a qualified engineer designs the equipment. The Committee noted that some employers may design and construct this type of equipment themselves, rather than using equipment built by a manufacturer. The Committee developed this provision to ensure that, in such cases, the design of such equipment is sufficient to protect employees exposed to it. OSHA received no comments on the proposed paragraph and is retaining it in the final standard as proposed based on the Committee's rationale.

Section 1926.1442 Severability

The Agency is including a standard severability clause to express the Agency's intent that if any court of competent jurisdiction renders any provision in subpart CC unenforceable, the remaining provisions of the subpart would remain in effect.

V. Procedural Determinations

A. Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* ("the Act"), is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. *See* 29 U.S.C. 654, 655(b), and 658. A safety or health standard "requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." 29 U.S.C. 652(8).

A safety standard is reasonably necessary or appropriate within the meaning of 29 U.S.C. 652(8) if it substantially reduces or eliminates a significant risk of material harm in the workplace; is economically and technologically feasible; uses the most cost effective protective measures; is consistent with or is a justified departure from prior Agency action; is supported by substantial evidence; and is better able to effectuate the Act's purposes than any relevant national consensus standard. *See UAW* v. *OSHA,* 37 F.3d 665, 668 (DC Cir. 1994)("LOTO"). In addition, safety standards must be highly protective. *See id.* at 669.

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *See, e.g., American Iron & Steel Inst., Inc.* v. *OSHA,* 939 F.2d 975, 980 (DC Cir. 1991) (per curiam) ("AISI"). A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. *See, e.g., AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *See LOTO,* 37 F.3d at 668.

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information gathering and transmittal provisions. 29 U.S.C. 655(b)(7). Finally, the OSH Act requires that, when promulgating a rule that differs substantially from a national consensus standard, OSHA must explain why the promulgated rule is a better method for effectuating the purpose of the Act. 29 U.S.C. 655(b)(8). Deviations from relevant consensus standards are explained elsewhere in this preamble.

B. Executive Summary of the Final Economic Analysis; Final Regulatory Flexibility Analysis

1. Introduction and Summary

For the final Cranes and Derricks standard, the Agency is presenting this Executive Summary of the Final Economic Analysis (FEA) in this preamble; while the full FEA will be available in the docket. The complete Final Regulatory Flexibility Analysis is also presented here.

The Occupational Safety and Health Act of 1970 (OSH Act) requires OSHA to demonstrate the technological and economic feasibility of its rules. Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA), as amended in 1996, require Federal agencies to analyze the costs, benefits, and other consequences and impacts, including small business impacts, of their rules.

The final cranes standard is an economically significant action under E.O. 12866 and a major rule under the Congressional Review Act (SBREFA). In addition, as required by the RFA, the Agency has assessed the potential impacts of this final rule on small entities and has prepared a Final Regulatory Flexibility Analysis. This rule is not a significant Federal intergovernmental mandate, and the Agency has no obligations to conduct analyses of this rule under the Unfunded Mandates Reform Act of 1995; however the rule has costs of over $100 million per year on the private sector, and is thus subject to the requirement under UMRA for review of private-sector costs. These requirements are met in this section.

The purpose of the Final Economic Analysis is to identify the establishments and industries affected by the final standard; evaluate the standard's costs, benefits, and economic impacts; assess the technological and economic feasibility of the final standard for affected industries; and evaluate the appropriateness of regulatory and non-regulatory alternatives to the rule. The FEA has been developed according to the requirements of E.O. 12866 and the OSH Act. In addition, in accordance with the RFA as amended by the SBREFA, this analysis identifies and estimates the impacts of the proposal on small businesses, using the Small Business Administration's (SBA's) industry-

specific definitions of small businesses. In addition, OSHA assessed the impacts of the rule on very small businesses; *i.e.,* those with fewer than 20 employees.

The FEA differs in several respects from the preliminary economic analysis (PEA). Several affected general industry sectors have been added to the original analysis, based on comment during the rulemaking—for example, electric utilities, telecommunications, sign manufacturers, natural gas pipelines, and shipyards—an estimated 22,000 potentially affected establishments in all. Costs have been revised for employer duties for assembly/disassembly and ground conditions, power line work, and crane operator certification, as well as inspections (due to an error in the PEA). New costs have been estimated for meeting ground conditions' provisions ($2.3 million annually). Estimated costs for assembly/disassembly have been decreased in this final analysis, from about $33 million annually in the PEA to about $16 million, primarily due to an increase in current compliance (baseline) and estimated costs also fell for inspections (from $21 million annually to $16.5 million). Estimated costs for several provisions have been increased from the PEA: for work near power lines (from $30 million annually to $68 million) and for crane operator certification (from $37 million annually to about $51 million, primarily due to an increase in the unit cost, many more operators potentially needing certification in the affected general industry sectors, but decreased by the higher current baseline). Overall, estimated costs increased from the $83 million annually in the PEA to about $154 million. The final benefits analysis is based on four years' of IMIS fatality reports, rather than BLS's Census of Fatal Occupational Injuries as in the preliminary analysis, as it was not possible to use the CFOI data to estimate the number of fatalities that were occurring due to crane construction activity by employers in general industry sectors. The Agency estimates that compliance with the final standard will prevent 22 fatalities and 175 non-fatal injuries per year, compared to 53 fatalities estimated to be avoided in the PEA.

The Agency also estimates that compliance will result in considerable cost saving by preventing many more accidents that do not result in injury. The Agency has estimated that annual savings from avoiding project delay, damage to cranes and structures, and lost productivity is at least $7 million annually just from one type of crane accident—tipovers. The Agency has not attempted to quantify all of the costs avoided by all crane accidents prevented by the final standard, but concludes these cost savings are also substantial. In addition, the Agency has noted that a significant portion of these benefits will be passed back immediately to employers in the form of $51 million annual savings in liability insurance costs for the affected industries.

OMB requires agencies to monetize benefits where possible. The Agency is revising its estimate of the VSL presented in the PEA, which was based on an EPA estimate from the early 1990s. The VSL is estimated to be about $7 million in terms of 2000 dollars (Viscusi and Aldy, 2003). At the same time the willingness-to-pay to avoid serious injury was estimated to be about $50,000. The Agency is adjusting the values based on the change in the GDP implicit price deflator from 2000 to 2010 of about 25 percent (Bureau of Economic Analysis, "National Economic Accounts," Table 1.1.9 at *http://www.bea.gov/national/nipaweb*). The VSL is then $8.7 million and the monetized value of avoiding a serious, non-fatal injury is $62,500. When fatalities and injuries are monetized, the total monetized benefits of the standard from preventing crane accidents is $202.3 million annually from those sources.

The Agency estimates that the total cost of the final standard is about $154.1 million annually. Based on comment in the record, the Agency increased unit costs for ground conditions and "controlling entity" duties for some sectors, crane operator certification, and power line compliance provisions. The record showed that relatively more crane operators are already certified, and the Agency reduced costs by that factor. The total estimated costs increased due to the inclusion of some general industry sectors which perform construction activities, as well as increases in unit costs. The net benefit of the standard is $55.2 million annually (total benefits of $ 209.3 million less costs of $154.1 million annually).

The economic impact on affected employers, in terms of costs versus revenues, ranged from 0.01 percent to 0.2 percent, for an average-size employer. When annual costs are compared to profits, impacts range from 0.1 percent to 4 percent, for the average employer. Impacts were highest for employers who owned and rented cranes. The final standard is technologically feasible for employers as it does not contain any requirements that are not capable of being done. The Agency also concludes that the final standard is economically feasible, as the highest impacts are on employers who own and rent cranes and even that impact is no more than 4 percent. Cost and impacts of that magnitude are far less than the typical yearly swings in revenues and profits for the construction industry. Economic impacts on small business are presented below in the Final Regulatory Flexibility Analysis.

Based on comment in the record, some employees may bear the cost of crane operator certification (that is, pay for their own certification). The Agency attributes all costs of crane operator certification to employers in the analysis, though. There may also be language and literacy barriers for operator certification that some current operators may not be able to surmount. Table B–1 summarizes the benefits and costs of this final standard.

TABLE B–1—ANNUAL BENEFITS, COSTS, AND NET BENEFITS, 2010 DOLLARS

*Annualized Costs**:	
Crane Assembly/Disassembly	$16.3 million.
Power Line Safety	$68.2 million.
Crane Inspections	$16.5 million.
Ground Conditions	$ 2.3 million.
Operator Qualification and Certification	$50.7 million.
Total Annual Costs:	$154.1 million.
Annual Benefits:	
Number of Injuries Prevented	175.
Number of Fatalities Prevented	22.
Property Damage from Tipovers Prevented	$7 million.

TABLE B–1—ANNUAL BENEFITS, COSTS, AND NET BENEFITS, 2010 DOLLARS—Continued

Total Monetized Benefits	$209.3 million.
Annual Net Benefits (Benefits minus Costs)	$55.2 million.

Source: OSHA Office of Regulatory Analysis.
* Costs with 7% discount rate. Total costs with 3% discount rate: $150.4 million annually.

2. Need for the Rule and Market Failure

Occupational safety problems, such as safety problems associated with cranes and derricks, routinely involve the following characteristics that lead to market failures:

(1) A variety of situations in which one party (employers, fellow employees) take actions that impose risks of death and injuries on other parties (employees);

(2) The risk in question may not be well understood by any party, or also subject to asymmetric information (the employer will typically know more about the risks than employees);

(3) The costs of the risks are routinely transferred to other parties who typically lack the information necessary for a precise estimate of the costs of the transfer, or are not permitted to price transfers appropriately (insurers are routinely forced to use premium systems that do not capture all possible knowledge about risk).

These characteristics mean that markets will not adequately capture the risk involved, and thus regulations are needed. (*See* Chapter 1 of the FEA for more detail.)

3. Industry Profile/Affected Industries

The final standard would affect employers and employees across most construction industry sectors as well as some in some general industry sectors where cranes and derricks are used as part of the performance of work duties. These industries include firms involved in renting cranes for use in construction projects such as: Multi-family housing; industrial buildings and warehouses; other nonresidential buildings; highway and street construction; and water, sewer, power, and communication line construction. As in the preliminary economic analysis (PEA), the Agency has grouped affected establishments, by industry, into the following categories for analyzing the final standard:

- Crane Rental with Operators,
- Crane Rental without Operators,
- Own and Rent Cranes with Operators,
- Own but Do Not Rent, and
- Crane Lessees in the Construction Industry (referred to simply as "Crane Lessees" throughout).

The affected firms and establishments, including information on number of employees, revenues, and profits, are presented below in Table B–2. In some sectors the number of cranes has changed from the PEA because the analysis has been updated with revenue data from the 2006 County Business Patterns (CPB) and Statistics of U.S. Businesses (SUSB), and in those sectors the number of cranes was estimated from revenues.

The PEA accompanying the proposed standard presented an industry profile describing crane use in all sectors of the traditional construction industries, the current NAICS 233–236 (the older SICs 16, 17, and 18) and the crane rental industry sector in general industry, NAICS 53214. There were no comments objecting to the inclusion of these sectors in the economic analysis. However, there was comment from some general industry sectors following publication of the proposal. They noted that the PEA had focused exclusively on the construction industry and had not captured costs or benefits for general industry employers who own equipment covered by the standard and engage in construction activity in addition their primary work in the various general industry sectors.

TABLE B–2—INDUSTRIAL PROFILE OF AFFECTED FIRMS AND ESTABLISHMENTS FOR THE PROPOSED STANDARD

NAIC	Industry	Affected			Profit rate (percent)	Average per estab.	
		Firms	Estabs	Employees		Revenues $1,000	Profits $1,000
Crane Rental with Operators							
238990	All Other Specialty Trade Cont	1,244	1,304	16,244	4.56	$1,918	$88
Crane Rental without Operators (Bare Rentals)							
532412	Const./Min./For. Machine & Equip	2,137	3,702	48,481	6.42	3,427	220
Own and Rent Cranes with Operators							
236115	New Single-Family Housing Const	178	178	261	4.67	220	10
236118	Residential Remodelers	25	25	45	4.67	443	21
236210	Industrial Building Construction	9	12	1,067	4.67	12,213	571
236220	Commercial and Institutional Building.	23	31	757	4.67	4,157	194
237110	Water and Sewer Line and Related Struct.	52	69	1,432	5.22	4,107	214
237120	Oil and Gas Pipeline and Related Struct.	20	26	1,457	5.22	5,510	288
237130	Power and Communication Line and Rel.	34	34	666	5.22	2,880	150
237310	Highway, Street, and Bridge Construction.	80	107	6,456	5.22	11,783	615
237990	Other Heavy and Civil Engineering Const.	76	101	5,857	5.22	10,201	533

TABLE B–2—INDUSTRIAL PROFILE OF AFFECTED FIRMS AND ESTABLISHMENTS FOR THE PROPOSED STANDARD—Continued

NAIC	Industry	Affected			Profit rate (percent)	Average per estab.	
		Firms	Estabs	Employees		Revenues $1,000	Profits $1,000
238110	Poured Concrete Foundation and Struct.	261	261	4,328	4.42	2,273	101
238120	Structural Steel and Precast Concrete.	200	266	7,389	4.42	3,439	152
238130	Framing Contractors	26	26	120	4.42	153	7
238150	Glass and Glazing Contractors	42	42	328	4.42	616	27
238170	Siding Contractors	5	5	18	4.42	496	22
238190	Other Foundation, Structure, and Building.	49	65	1,145	4.42	1,509	67
238210	Electrical Contractors	15	15	176	4.32	1,303	56
238220	Plumbing, Heating, and Air-Conditioning.	2	3	196	3.86	5,835	225
238290	Other Building Equipment Contractors.	113	151	4,076	4.42	3,474	154
238320	Painting and Wall Covering Contractors.	21	21	159	4.42	916	41
238910	Site Preparation Contractors	400	400	4,706	4.56	1,668	76
	Subtotal	1,630	1,838	40,639			
	Own but Do Not Rent						
236115	New Single family housing construction.	3,097	3,097	13,621	4.67	1,520	71
236116	New Multifamily housing construction.	217	217	2,219	4.67	5,477	256
236117	New housing operative builders	1,699	1,699	12,015	4.67	6,021	281
236118	Residential Remodelers	985	985	3,201	4.67	646	30
236210	Industrial building construction	276	325	9,359	4.67	5,931	277
236220	Commercial and Institutional Bldg. Const.	4,141	4,141	71,536	4.67	7,177	335
237110	Water and Sewer Line Const	1,028	1,371	20,306	5.22	3,239	169
237120	Oil and gas pipeline construction	128	171	9,276	5.22	9,189	480
237130	Power and communication line const	213	285	12,600	5.22	5,581	291
237210	Land subdivision	0	0	0	11.04	2,878	318
237310	Highway, street and bridge const	88	118	4,308	5.22	8,279	432
237990	Other heavy and civil eng	273	273	7,564	5.22	3,965	207
238110	Poured Concrete foundation and struct.	267	267	3,070	4.42	1,682	74
238120	Structural steel and precast concrete	334	334	7,250	4.42	2,712	120
238130	Framing Contractors	1,395	1,395	11,834	4.42	936	41
238140	Masonry Contractors	137	137	1,304	4.42	876	39
238150	Glass & Glazing Contractors	54	54	504	4.42	1,470	65
238160	Roofing Contractors	197	197	2,262	4.42	1,390	61
238170	Siding Contractors	53	53	215	4.42	580	26
238190	Other foundation, structure, building, ext.	25	25	158	4.42	1,013	45
238210	Electrical Contractors	78	78	771	4.32	1,321	57
238220	Plumbing, Heating and Air-conditioning Cont.	98	98	974	3.86	1,473	57
238290	Other building equipment cont	49	65	1,237	4.42	2,959	131
238310	Drywall and insulation contractors	0	0	0	4.42	1,751	77
238320	Painting and wall covering contractors.	41	41	234	4.42	530	23
238330	Flooring Contractors	0	0	0	4.42	811	36
238340	Tile and Terrazzo contractors	0	0	0	4.42	698	31
238350	Finish Carpentry contractors	0	0	0	4.42	678	30
238390	Other building finishing contractors	0	0	0	4.42	1,091	48
238910	Site Preparation	389	389	2,825	4.56	1,416	65
221110	Electric Power Generation	524	2,101	117,236	4.44	43,042	1,911
221120	Electric Power Transmission, Control, and Distribution.	1,232	7,393	376,434	4.44	37,443	1,662
221210	Natural Gas Distribution	526	2,458	78,813	2.98	30,459	907
321213	Engineered Wood Member (except Truss) Manufacturing.	132	162	8,499	3.87	19,027	737
321214	Truss Manufacturing	902	1,085	51,270	3.87	5,972	231
336611	Ship Building and Repairing	575	635	87,352	6.09	23,071	1,406
339950	Sign Manufacturing	6,291	6,415	89,360	5.83	1,761	103

TABLE B–2—INDUSTRIAL PROFILE OF AFFECTED FIRMS AND ESTABLISHMENTS FOR THE PROPOSED STANDARD—Continued

NAIC	Industry	Affected			Profit rate (percent)	Average per estab.	
		Firms	Estabs	Employees		Revenues $1,000	Profits $1,000
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.	6,450	8,715	153,761	2.89	14,905	430
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	1,142	2,762	40,643	2.89	8,985	259
423390	Other Construction Material Merchant Wholesalers.	2,363	3,155	36,914	2.89	4,859	140
423730	Warm Air Heating and Air-Cond. Equip. and Supplies.	2,533	5,193	55,606	3.08	5,413	167
444110	Home Centers	2,553	6,749	573,183	7.70	21,816	1,679
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	2,307	5,567	43,583	4.22	1,698	72
482110	Railroads	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas.	127	1,363	22,248	13.24	15,037	1,990
517110	Wired Telecommunications Carriers	2,517	27,159	634,540	7.10	7,294	518
	Subtotal	45,436	96,725	2,568,084			
	Crane Lessees in the Construction Industry						
236115	New Single family housing construction.	31,054	31,054	136,601	4.67	3,040	142
236116	New Multifamily housing construction.	2,173	2,173	22,192	4.67	10,954	512
236117	New housing operative builders	16,989	16,989	120,146	4.67	12,041	563
236118	Residential Remodelers	9,848	9,848	32,021	4.67	6,456	302
236210	Industrial building construction	3,264	3,264	93,931	4.67	5,931	277
236220	Commercial and Institutional Bldg. Construction.	41,438	41,438	715,896	4.67	7,177	335
237110	Water and Sewer Line Const	13,774	13,774	204,085	5.22	3,239	169
237120	Oil and gas pipeline construction	1,301	1,734	94,176	5.22	9,189	480
237130	Power and communication line const	2,147	2,862	126,753	5.22	11,163	583
237210	Land subdivision	0	0	0	11.04	0	0
237310	Highway, street and bridge const	890	1,186	43,471	5.22	82,791	4,323
237990	Other heavy and civil eng	2,781	2,781	77,036	5.22	7,931	414
238110	Poured Concrete foundation and struct.	1,348	1,348	15,498	4.42	33,636	1,487
238120	Structural steel and precast concrete	3,608	3,608	78,266	4.42	2,712	120
238130	Framing Contractors	13,974	13,974	118,502	4.42	1,249	55
238140	Masonry Contractors	1,372	1,372	13,035	4.42	17,527	775
238150	Glass & Glazing Contractors	547	547	5,080	4.42	14,698	650
238160	Roofing Contractors	1,966	1,966	22,620	4.42	13,903	615
238170	Siding Contractors	527	527	2,152	4.42	11,596	513
238190	Other foundation, structure, building, ext.	258	258	1,599	4.42	20,266	896
238210	Electrical Contractors	776	776	7,712	4.32	132,128	5,714
238220	Plumbing, Heating and Air-conditioning Cont.	981	981	9,744	3.86	147,307	5,685
238290	Other building equipment cont	4,997	6,663	126,559	4.42	2,959	131
238310	Drywall and insulation contractors	0	0	0	4.42	0	0
238320	Painting and wall covering contractors.	415	415	2,346	4.42	52,995	2,343
238330	Flooring Contractors	0	0	0	4.42	0	0
238340	Tile and Terrazzo contractors	0	0	0	4.42	0	0
238350	Finish Carpentry contractors	0	0	0	4.42	0	0
238390	Other building finishing contractors	0	0	0	4.42	0	0
238910	Site Preparation	3,927	3,927	28,543	4.56	14,164	647
	Subtotal	160,352	163,463	2,097,963			
	Total	210,800	267,032	4,771,411			

Source: U.S. Census Bureau data; Country Business Patterns, 2006; Statistics of U.S. Businesses 2006; Internal Revenue Service, Source Book, profit rates over 2000–2006.

These employers either routinely have a few tasks that can be considered construction activity or infrequently engage in construction projects with cranes at their own facilities. ("Cranes" will be used throughout this section to refer to all covered equipment by the final standard: Cranes, derricks, pile driving equipment, and so forth.) Comment in the record indicates that the industry sectors in the table below have some construction activity involving cranes within the scope of the final standard, and the Agency has made a determination that their construction activity with cranes does, in fact, fall under the final standard. Table B–3 below identifies the sectors in general industry that were identified during the rulemaking, and the Agency concludes will be affected by the final standard.

TABLE B–3—GENERAL INDUSTRY SECTORS THAT PERFORM CONSTRUCTION WORK INVOLVING CRANES

NAICS	Industry	Exhibits that identify affected general industry sector
221110	Electric Power Generation	ID–0155.1; –0201.1; –0203.1; –0215.1; –0328.1; –0342; –0344; –0367.1; –0369.1; –0408.1
221120	Electric Power Transmission, Control, and Distribution.	
221210	Natural Gas Distribution	ID–0163.1; –0234; –0238.1; –0344
321213	Engineered Wood Member Mfg	ID–0218.1
321214	Truss Mfg	ID–0218.1
336611	Ship Building and Repairing	ID–0195.1
339950	Sign Manufacturing	ID–0189.1; –0344; –0386.1; –0386.2
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant.	
423330	Roofing, Siding, and Insulation Material Merchant W.	ID–0145.1; –0147.1; –0184.1; –0206.1; –0208; –0218.1; –0232.1; –0233.1; –0299.1; –0341; –0343; –0372.1; –0380.1; –0380.2; –0381.1; –0384.1
423390	Other Construction Material Merchant Wholesalers.	
423730	Warm Air Heating and Air-Cond. Equip. and Supplies.	ID–0165.1; –0235.1
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	ID–0198.1
482110	Railroads	ID–0170.1; –0176.1; –0291; –0342
486210	Pipeline Transportation of Natural Gas	ID–0163.1; –0328.1; –0344
517110	Wired Telecommunications Carriers	ID–0155.1; –0234; –0328.1; –0344

Source: Office of Regulatory Analysis.

The Agency concludes that general industry's permanently installed overhead and gantry cranes should be covered under general industry standards rather than the final construction crane standard, even if they perform incidental construction work (*see* discussion of § 1926.1400, *Scope*). However, all other general industry cranes, whether mobile or permanently installed, are covered under the final standard to the extent that they perform construction work.

Several general industry sectors that commented in the rulemaking will not be affected by the final standard because their only interaction with construction consists of making deliveries of materials to the ground at construction sites. Several commenters noted that their industry only made deliveries to the ground. (ID–0236; –0299.1.) The Agency has made clear in the Scope section above that the delivery process from truck to ground is not considered to be a construction activity covered by its construction standards. For that reason, brick manufacturers, pre-cast concrete products manufacturers, and all other distributors of similar supplies are not affected by the standard because they only deliver materials from truck bed to ground.

However, the Agency views deliveries into or onto structures differently—as construction activity within the purview of the standard. Therefore, industries that deliver materials into or onto structures with articulating cranes are included in the industry profile. The final standard exempts such deliveries for articulating cranes with automatic overload protection devices (AOPDs). If all such articulating cranes had these devices, then affected industries (building supply, lumber yards, HVAC distributors, for example) would be exempt. The Agency had comment in the record that newer articulating cranes for building material supply are equipped with AOPDs, but the Agency concludes that there are still older models of articulating cranes making building supply deliveries, and that these affected employers would be covered by the standard—chiefly by the requirement for operator certification.

The electric utility industry made several comments to the record. (ID–0144; –0155.1; –0163.1; –0200; –0203.1; –0213; –0215; –0226; –0345.17; –0408.1.) This industry is affected by the standard both because they have digger derricks and other cranes that perform construction work from time to time, and because utilities must provide voltage information and participate in meetings with contractors to determine power line safety. Although digger derricks are exempted from the final standard for all work on utility poles, several commenters made clear that they are routinely used for lifting in other work settings (ID–0328.1; –0344). For construction crane activities by electric utilities, the main impact of the final standard is to require that operators be certified, as all linemen currently received extensive training in crane safety practices and procedures otherwise (ID–0155.1; –0344; –0345.17). The Agency also learned through comment that the telecommunications industry uses digger derricks and truck-mounted cranes, and this industry is included in the standard's industry profile as well.

The Federal Railroad Agency has jurisdiction over most of the work done by railroads. The Agency has concluded

that railroads will not be affected by the final standard.

All of the affected general industry sectors have been added to the industry profile in the category of employers who "Own but do not Rent." With respect to the industries not included in the PEA, the Agency has taken a conservative approach to not underestimate costs, and therefore economic impacts, on these sectors. The traditional construction industry sectors have remained unchanged. The data for all sectors has been updated with information from the 2007 Economic Census, 2006 County Business Patterns, and 2006 Statistics for U.S. Businesses for number of firms, establishments, and revenues. Table B–2 presents information about the affected industry sectors: the number of affected establishments, employees, industry profit rates, and average revenues and profits for affected establishments.

Estimating the number of establishments and cranes covered by the standard in general industry

To estimate the number of establishments and cranes in general industry sectors affected by the final cranes standard, the Agency relied on: comment in the record; 2006 CPB and SUSB, and occupational data from the Bureau of Labor Statistics' Occupational and Employment Statistics, May, 2008 Occupational Employment and Wage Estimates, extracted from 4-digit NAICS industry-specific estimates (Nov. 4, 2009 from *http://bls.gov/oes/oes_dl.htm*). The Agency's purpose in estimating the number of cranes in the affected general industry sectors is to estimate the costs employers will bear and demonstrate that the standard is economically feasible. For some industries below, the Agency's estimates are certainly high—overestimates, but the ultimate purpose here is not to predict or forecast cost estimates, but to show that even if more cranes are affected and more costs result from the final standard, the standard is still economically feasible. In addition, since economic impacts are measured as the costs for affected employers, the total number of affected cranes in a sector does not alter the measure of impact on an affected employer. Although a higher total number of cranes in a sector obviously changes the estimated total cost of the entire standard. For example, if an average employer in the industry sector has 10 employees and the Agency estimates one crane and one crane operator, it does not affect how economic impact is measured whether there is one crane in the industry or 50. The impact of costs as a fraction of revenues and profits are, on average, the same for each affected employer. As a result, though the Agency will try to estimate the number of affected employers, the exact number is not critical to the economic feasibility finding that is essential for the rule. In addition, although all of the sectors below engage in crane construction activities, some likely may contract such work out and would then only be affected by the final standard indirectly.

Estimating the number of cranes and crane operators in affected general industry sectors

• Electric Power Generation (NAICS 221110) and Electric Power Transmission Control, and Distribution (NAICS 221120). The Agency is basing its estimate of affected cranes and crane operators on the industry profile and cost analysis for subpart V, Table 5.1. (ID–0389.2.) Table 5.1 shows that the two industries had about 114,500 employees working on power lines affected by subpart V in about 7,600 crews for Electric Power Generation and about 12,600 crews in the Transmission, Control, and Distribution sector. Together, in total, the Agency estimated that the industry was using about 20,200 powered vehicles, one for each crew. OSHA concludes that each sector has one piece of equipment, such as a digger derrick, bucket truck, or truck-mounted crane that each crew works with (in crew sizes of 3 or 6). Further, based on several comments in the record that digger derricks perform crane-related work in substations and other locations (ID–0155.1; –0201.1; –0328.1; –0344), the Agency concludes that each digger derrick would need a certified operator to work as the industry customarily has. Other comment in the record suggests that journeymen are often hired as if each is completely trained in all aspects of work (ID–0155.1; –0344); hence the industry has asserted that to maintain this arrangement all linemen would have to receive crane operator certification, which would be prohibitively expensive (ID–0203.1; –0367.1). However, another comment in the record indicated that for each crew, individuals have specific assignments—that not all journeymen are given responsibility for operating lifting devices, whether that be a bucket truck or aerial lift, a crane, or a digger derrick. (ID–0344.) Comment in the record indicates that, roughly, equipment is equally divided between equipment that is covered by the standard (digger derricks and boom trucks) and bucket trucks, which are not. (ID–0344.) The record also indicates that journeymen are extensively trained in apprenticeship programs in the use of their powered equipment, and that the primary cost of meeting the duties of the final standard is certifying crane operators. (ID–0155.1; –0344.) The Agency can also estimate based on comment in the record that there are far more digger derricks than boom trucks, in a ratio of about 85:15, based on reports of 16 of Edison Electric's members who provided information in the record and identified their types of equipment. The PEA in subpart V was based on the 2002 Economic Census. The 2007 Census shows that employment in NAICS 221110 has fallen to 78 percent of the 2002 level and employment in NAICS 221120 has fallen to 90 percent of the 2002 figure. However, there was no information in the record that showed the number of linemen or pieces of equipment had declined; so the Agency is basing its estimate of the number of employees who would be certified to use the equipment covered under the final standard as presented in subpart V's PEA Table 5.1. Neither of the affected industry sectors has objected to certifying operators of their truck-mounted cranes; yet if it were necessary that every lineman perform every function, that would surely also necessitate certifying every journeyman as well. The Agency concludes that it is not necessary to certify every journeyman as a crane operator for the industry to continue to efficiently use their equipment and manpower. If the industries are still operating as many as 20,200 powered vehicles, and about one-half are digger derricks and truck-mounted cranes, then, at the very bare minimum, to have an operator in each piece of equipment potentially covered by the final standard would require certifying 10,100 as crane operators. However, having the bare minimum, the Agency recognizes, would not afford the industries the same flexibility and efficiency as it now has nor is every employee available to work every day of the year. However, the Agency believes that certifying 30,000 journeymen as crane operators would afford a sufficient number that each piece of covered equipment (digger derricks and truck-mounted cranes) would in almost all situations have a journeyman certified as a crane operator available to perform work addressed by the final standard in a crew. Work that is construction work and covered by the final standard, and not subpart V, is not an every day occurrence for the two industry sectors. Indeed, the Agency believes that this estimate is likely higher than the most efficient solution that these two

industries will devise, but, for purposes of showing that the final standard is economically feasible even with this many journeymen certified as crane operators, the Agency believes it is sufficient. Accordingly, the Agency estimates that NAICS 221110 Electric Power Generation will expend resources to certify about 10,000 journeymen as crane operators, and NAICS 221120 Electric Power Transmission, Control, and Distribution about 20,000.

• Two natural gas sectors are potentially affected by the final standard: NAICS 221210 Natural Gas Distribution and 486210 Pipeline Transportation of Natural Gas. Both industries were reported to be impacted by the final standard. (ID–0155.1; –0328.1; –0344.) NAICS 237120 Oil and Gas Pipeline Construction performs much of the construction of new gas pipelines, the Agency concludes. However, the two natural gas sectors likely also perform some pipeline work themselves—or at least some employers in the industries do. Sideboom cranes are commonly used in pipeline construction, but are exempt from the requirement for crane operator certification. The Agency concludes that the major significant cost for these industries is certifying operators for their other, mostly truck-mounted cranes. Power line safety issues occur most often below ground, and the Agency concludes that the industry already addresses these issues, based on comments (ID–0155.1; –0344). The 2006 CPB and SUSB shows that Natural Gas Distribution sector has 2,458 establishments and 78,813 employees; while Pipeline Transportation of Natural Gas has 1,363 establishments with 22,248 employees. According to BLS' 2008 Occupational Employment survey, Natural Gas Distribution has 2,390 employees who are electric line installers, 950 who are operating engineers and other construction equipment operators, 1,180 heavy truck drivers and tractor trailer drivers, and no crane operators. For the Pipeline Transportation of Natural Gas, the employment figures are 50, 130, zero, and also no crane operators, respectively, for the same employment categories. The Agency concludes that the Natural Gas Distribution industry is performing significant pipeline work, mainly with excavation equipment, and each company on average has over 30 employees. The Agency concludes that the average employer in this industry may be using one crane that is not a sideboom crane and needs to certify the operator for new construction work that would be covered by the standard. The Agency also concludes that the Pipeline Transportation of Natural Gas has considerably less construction activity that would involve cranes covered by the final standard and that the average establishment or employer only has about 10 employees. The Agency estimates that as few as 50 employers in this industry sector are using equipment in construction activity that would necessitate certifying crane operators.

• The Structural Building Components Association (SBCA) commented in the record that many of their members use "boom crane trucks to deliver and/or set their products at the jobsite." (ID–0218.1.) Their members manufacture "roof and floor trusses, wall panels, I-joists, engineered wood beams, plywood and oriented strand board * * *. In most instances the components are simply unloaded at the jobsite, using either a custom roll-off trailer, a forklift, or a boom truck crane, and left for the builder to install. It is not uncommon for a component manufacturer who utilizes a boom truck to deliver both in markets that require hoisting and setting of components (thus engaging in construction activity) and those that require delivery of the components and other building materials on the ground (not a construction activity)." (ID–0208.1.) SBCA viewed their crane operations as low risk and asked for an exemption to eliminate training burden. Under the final standard, delivery of materials onto or into the structure, such as setting components, is a construction activity covered under the final standard. SBCA did not mention the use of articulating cranes, which with a lifting movement limiting device, would in fact exempt their equipment from the standard, and thus OSHA concludes that these affected industries are only employing boom trucks. The Agency, based on SBCA's comment, concludes that the primary affected industries are NAICS 321213 Engineered Wood Member (except Truss) Manufacturing and NAICS 321214 Truss Manufacturing. Engineered Wood Member Manufacturing has 162 establishments and 51,270 employees (2006 CPB and SUSB). Truss Manufacturing has 1,085 establishments and 51,270 employees. According to the 2008 Occupational Employment Survey, the four-digit NACIS 32120 Veneer, Plywood, and Engineered Products industry has 120 crane operators, 2,240 drivers of heavy trucks and tractor trailers, and 420 drivers of delivery trucks (total employment of 98,000). The Agency concludes that typical employers in these two sectors, with about 50 employees, likely employ one to two boom trucks for delivery. Truss manufacturers are much more likely to use boom trucks for delivery and placement of components—and therefore fall under the scope of the standard—than manufacturers of engineered wood members, the Agency concludes, because the small equipment typically used by the latter employers would not be capable of lifting heavy members for placement (ID–0208.1). In addition, the relatively few engineered wood member manufacturers produce specialty items and do not simply serve more local or regional markets as do truss manufacturers. The Agency concludes that employers in this latter industry are much more likely to transport their products longer distances and deliver to the ground. These products are also more typically used only in larger residential and commercial applications, where an on-site crane would lift and position them for installation. As SBCA noted in its comment, most deliveries are made to the ground. The Agency concludes that, on average, employers in the Engineered Wood Member industry employ one truck-mounted crane and employers in the Wood Truss manufacturing industry also employ one, on average. According to comments by SBCA, employers are likely already meeting all of the other safety requirements in the final standard save for crane operator certification. (ID–0208.1.)

• A comment by a major shipyard alerted the Agency to the potential impact of the final construction cranes standard on the Shipbuilding and Repair Industry NACIS 336611. (ID–0195.1.) When shipyard cranes perform construction activities, they will be covered by the final standard; although the final standard exempts permanently installed overhead and gantry cranes in general industry. According to the 2008 Occupational Employment Survey, there are 550 crane operators in the shipyard and boatbuilding industries (the four-digit NAICS 33660). Northrup-Grumann in its comment reported that it alone employs 600 cranes throughout its shipyards around the country. (ID–0195.1.) Northrup-Grumann's 40,000 current employees represent about one-half of the employment in the shipbuilding and ship repair industry, and the Agency estimates that: There are about 1,200 cranes in use in shipyards and about one-half would be potentially covered by the standard if construction activities are performed with them, since many large cranes in shipyards are permanently installed. The 1,200 figure is surely not an underestimate as

Northrup-Grumann is the largest shipbuilder in the country and likely the most intense user of cranes for its larger projects. Since construction activities in shipyards are episodic or irregular, the Agency estimates that if shipyard employers provide certification for crane operators for one-half of the number of non-permanent cranes (with 300 certified operators) that would be sufficient to perform their own construction activities without hiring outside construction contractors for their needs.

• The final standard potentially affects the general industry sector NAICS 339950 Sign Manufacturing. In its comment to the record, the International Sign Association reported that it had 2,600 members, most of whom are small businesses. (ID–0247; –0344.) Not all sign manufacturers have cranes or provide installation services, nor does the industry build or erect billboards, which is an industry properly represented among the traditional construction industries. The average employer has about 10 employees, according to the 2006 CPB and SUSB data. Although many manufacturers do not use cranes or install signs, those that do were said to have one or two cranes (ID–0344). A sign manufacturer who participated in the public hearings described his business: Revenues of less than $10 million annually, with 70 employees, nine of whom were in the installation department. (ID–0344.) Gelberg sign has two crane trucks for installation, and one bucket truck for servicing. Sign manufacturers reported that for large projects, employers typically hired crane companies. Based on the comment in the record, the Agency has estimated the number of cranes and operators in the sign manufacturing sector in the table below. The Agency has assumed that the sign making industry has one trained crane operator for each crane it uses for installation.

ESTIMATION OF NUMBER OF CRANES IN NAICS 339950 SIGN MFG

Size class (No. of employees)	Number of estabs	Estabs with cranes	Employees	Avg. number of employees	Cranes per estab.	Total cranes for size class
″1–4	3,308	.....	6,171	2	0	0
″5–9	1,229	.....	8,603	7	0	0
″10–19	854	400	11,586	14	1	400
20–49	646	646	19,246	30	1	646
50–99	229	229	16,053	70	2	458
100–249	124	124	18,540	150	5	577
250–500	24	24	7,618	317	10	246
500–999	0	.....	0	.....	0	0
1000+	1	1	1,543	1,543	51	51
Total	6,415		89,360	.....	.....	2,378

Source: ORA; 2006 County Business Patterns, SUSB.

• Retail and commercial building supply associations and employers provided comment to the record in regard to how the standard would affect their businesses. (ID–0184; –0326.1; –0380.1.) The Agency concludes that commercial and retail building supply dealers are represented in the industries in the table below:

NAICS	Name
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.
423390	Other Construction Material Merchant Wholesalers.
444110	Home Centers.

The building supply dealers provided extensive and detailed comment to the record—both written comment as well as testimony at the public hearings. The key issue for these industries was that their deliveries to construction sites were typically not construction work and about one-half of all deliveries are to the ground. (ID–0341: –0343.) For deliveries onto or into structures, such as drywall into buildings and roofing materials up to roofs, they use articulating cranes which have controls to prevent tipover, called lifting moment limiting devices (LMLD). The Specialty Building Material Distributors and Safety Coalition (SBMDSC) in testimony described truck-mounted cranes used to deliver drywall, for example, and "knuckle" cranes used to deliver roofing materials. The Agency has concluded that these are both versions of articulating cranes. Both SBMDSC and the National Lumber and Building Material Dealers Association repeated several times in written comment and public testimony that their articulating cranes had LMLDs. (ID–0184; –0326.1; –0341; –0344; –0380.1.) Since the truck-mounted cranes in use are articulating cranes with LMLDs, they are exempt from the rule and these industries will not incur any costs of compliance. Although the industries did not report any older truck-mounted cranes used for deliveries without LMLDs, if these do exist, the employer would have the option to use them for deliveries to the ground (and be unaffected by the final standard since this is not a "construction activity") or to deliver materials into or onto structures by complying with the rule, which would essentially be to ensure that their operators are certified, as well as following the final standard's specific safety precautions. In addition, operator certification is required only within four years after the standard is effective, and any older equipment may be replaced in the interim if still extant.

• The Heating and Air Conditioning Equipment Distributors reported that their deliveries to buildings would be affected by the final standard because they often must hoist equipment to the first or second floor of buildings, which would qualify as construction work. (ID–0235.1.) Deliveries are also made to the ground, and some employers do hire crane trucks for some deliveries. The Heating, Air Conditioning, and Refrigeration Distributors International (HARDI) reported that their 450 members who are wholesale distributors in the industry have, on average, 11 branch companies each. According the 2006 CPB and SUSB, there are 5,193 establishments with 55,606 employees, or about 10 to 11 employees per

employer. The Agency estimates that the typical establishment in the industry operates one truck-mounted crane with a single, trained operator who must become a certified crane operator under the final standard to deliver HVAC equipment onto structures.

• Direct-selling propane dealers use cranes to deliver and install LP, or propane, tanks, mostly in rural areas. Installing a new tank would constitute a construction activity, and crane use for that activity would fall under the final crane standard. The affected industry is identified as NAICS 434312 Liquefied Petroleum Gas Dealers. According to the 2006 CPB and SUSB there are 5,567 establishments in the direct selling sector with 43,583 employees. Clearly, the industry is predominantly made up of small businesses, with the average establishment having about eight employees, and this is attested to by the industry's comment (ID–0198.1). The National Propane Gas Association noted that delivering tanks is "one of the most common activities" performed by propane retail marketers and that "to install these tanks, it often requires the need of a truck-mounted crane to lift and/or place the empty ASME tank onto its support or foundation." (ID–0198.1.) The Agency estimates that each of the retail establishments has, on average, a truck-mounted crane that would be engaged occasionally in construction activity covered under the rule.

• Locomotive cranes are listed as one of the types of cranes covered by the final standard, and several railroads participated in the rulemaking. But the Agency has concluded that the Federal Railroad Authority has primary authority over crane activity performed by railroads. The Agency has concluded that no railroad employers will be impacted by the final rule.

• Telecommunications employers were identified by several commenters as an industry that would be affected by final standard. (ID–0155.1; –0234; –0326.1; –0344.) The telecommunications industry is identified as NAICS 517110 Wired Telecommunications Carriers. According to the Economic Census the telecommunications industry has about 2,500 firms, 27,000 establishments and 634,000 employees. There are 89,000 employees in the industry who are "telecommunications line installers and repairers"—as opposed to the electric power industry's journeymen who are "electric power installers and repairers" (2008 Occupational Employment Survey, or OES). OES reports only 50 power line installers are employed in the industry. The telecommunications industry was described in comment as engaged in work similar to that of the electric power industry—using digger derricks and radial boom trucks to install or replace utility poles or in laying underground cable. The Agency concludes that telecommunications workers are not primarily engaged in constructing and replacing structural members, but in running or maintaining communications lines on poles or underground, and therefore are far less intensely engaged in activities that require digger derricks or cranes. In addition, the industry likely also employs construction contractors for its construction work. There is nothing in the record to suggest that digger derricks in the telecommunications industry are used for activities other than utility pole work. For example, they would not be used to hoist transformers or other moderately heavy equipment onto utility poles, or at substations or other facilities, because telecommunications equipment does not consist of such hardware. Digger derricks therefore will largely be exempt from the final standard in the telecommunications industry because they do not perform construction work in which they hoist loads in other construction activities. The Agency estimates that the industry employs about 1 truck-mounted crane per firm (for a total of about 3,000), on average, that will be covered by the final standard.

The self-employed owner-operators of cranes doing construction work would not be required under the standard to be certified crane operators as they do not have employees and are themselves not employees. The Agency estimates that about 5 percent of cranes are owned and operated by the self-employed, based on BLS data (ID–0025).

Table B–2 summarizes the industries affected, and the number of cranes they use. As can be seen from this table, adding the general industry sectors in the manner outlined above results in approximately 35,000 additional cranes and crane operators. Table B–4 presents information about "small entity" establishments, as defined by SBA. Table B–5 presents information about establishments with fewer than 20 employees.

TABLE B–4—INDUSTRIAL PROFILE OF SBA DEFINED SMALL ENTITIES FOR THE PROPOSED STANDARD

NAIC	Industry	SBA size standard (less than)	Affected			Profit rate %	Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)
			Firms	Estabs	Employees			
Crane Rental with Operators								
238990	All Other Specialty Trade Cont.	$13.0 mil	1,231	1,286	13,473	4.56	$1,550	$71
Crane Rental without Operators (Bare Rentals)								
532412	Const./Min./For. Machine & Equip.	$6.5 mil	1,782	3,018	19,423	6.42	482	31
Own and Rent Cranes with Operators								
236115	New Single-Family Housing Const.	$31.0 mil	178	178	261	4.67	220	10
236118	Residential Remodelers.	$31.0 mil	25	25	45	4.67	443	21
236210	Industrial Building Construction.	$31.0 mil	9	12	1,067	4.67	12,213	571
236220	Commercial and Institutional Building.	$31.0 mil	23	31	757	4.67	4,157	194

TABLE B–4—INDUSTRIAL PROFILE OF SBA DEFINED SMALL ENTITIES FOR THE PROPOSED STANDARD—Continued

NAIC	Industry	SBA size standard (less than)	Affected			Profit rate %	Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)
			Firms	Estabs	Employees			
237110	Water and Sewer Line and Related Struct.	$31.0 mil	52	69	1,432	5.22	4,107	214
237120	Oil and Gas Pipeline and Related Struct.	$31.0 mil	20	26	1,457	5.22	5,510	288
237130	Power and Communication Line and Rel.	$31.0 mil	34	34	666	5.22	2,880	150
237310	Highway, Street, and Bridge Construction.	$31.0 mil	80	107	6,456	5.22	11,783	615
237990	Other Heavy and Civil Engineering Const.	$31.0 mil	76	101	5,857	5.22	10,201	533
238110	Poured Concrete Foundation and Struct.	$13.0 mil	261	261	4,328	4.42	2,273	101
238120	Structural Steel and Precast Concrete.	$13.0 mil	200	266	7,389	4.42	3,439	152
238130	Framing Contractors ...	$13.0 mil	26	26	120	4.42	153	7
238150	Glass and Glazing Contractors.	$13.0 mil	42	42	328	4.42	616	27
238170	Siding Contractors	$13.0 mil	5	5	18	4.42	496	22
238190	Other Foundation, Structure, and Building.	$13.0 mil	49	65	1,145	4.42	1,509	67
238210	Electrical Contractors	$13.0 mil	15	15	176	4.32	1,303	56
238220	Plumbing, Heating, and Air-Conditioning.	$13.0 mil	2	3	196	3.86	5,835	225
238290	Other Building Equipment Contractors.	$13.0 mil	113	151	4,076	4.42	3,474	154
238320	Painting and Wall Covering Contract.	$13.0 mil	21	21	159	4.42	916	41
238910	Site Preparation Contractors.	$13.0 mil	400	400	4,706	4.56	1,668	76
	Subtotal	.....	1,630	1,838	40,639			
	Own but Do Not Rent							
236115	New Single family housing construction.	$31.0 mil	2,905	2,905	11,578	4.67	1,000	47
236116	New Multifamily housing construction.	$31.0 mil	213	213	1,886	4.67	3,400	159
236117	New housing operative builders.	$31.0 mil	1,263	1,263	10,212	4.67	5,104	239
236118	Residential Remodelers.	$31.0 mil	825	825	2,721	4.67	543	25
236210	Industrial building construction.	$31.0 mil	223	262	7,955	4.67	2,570	120
236220	Commercial and Institutional Bldg. Const.	$31.0 mil	3,614	3,614	60,806	4.67	3,661	171
237110	Water and Sewer Line Const.	$31.0 mil	917	1,223	17,260	5.22	2,324	121
237120	Oil and gas pipeline construction.	$31.0 mil	98	131	7,885	5.22	3,743	195
237130	Power and communication line const.	$31.0 mil	219	291	10,710	5.22	4,656	243
237210	Land subdivision	$6.0 mil	0	0	0	11.04	0	0
237310	Highway, street and bridge const.	$31.0 mil	69	93	3,662	5.22	3,225	168
237990	Other heavy and civil eng.	$31.0 mil	511	511	6,429	5.22	1,500	78
238110	Poured Concrete foundation and struct.	$13.0 mil	108	108	2,609	4.42	1,000	44
238120	Structural steel and precast concrete.	$13.0 mil	394	394	6,162	4.42	1,425	63
238130	Framing Contractors ...	$13.0 mil	1,060	1,060	10,059	4.42	798	35
238140	Masonry Contractors ..	$13.0 mil	128	128	1,108	4.42	675	30
238150	Glass & Glazing Contractors.	$13.0 mil	48	48	428	4.42	900	40
238160	Roofing Contractors	$13.0 mil	230	230	1,923	4.42	801	35

TABLE B–4—INDUSTRIAL PROFILE OF SBA DEFINED SMALL ENTITIES FOR THE PROPOSED STANDARD—Continued

NAIC	Industry	SBA size standard (less than)	Affected			Profit rate %	Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)
			Firms	Estabs	Employees			
238170	Siding Contractors	$13.0 mil	33	33	183	4.42	600	27
238190	Other foundation, structure, building, ext.	$13.0 mil	7	7	134	4.42	900	40
238210	Electrical Contractors	$13.0 mil	60	60	655	4.32	1,100	48
238220	Plumbing, Heating and Air-conditioning Cont.	$13.0 mil	86	86	828	3.86	1,100	42
238290	Other building equipment cont.	$13.0 mil	33	44	1,051	4.42	1,664	74
238310	Drywall and insulation contractors.	$13.0 mil	0	0	0	4.42	0	0
238320	Painting and wall covering contractors.	$13.0 mil	37	37	199	4.42	419	19
238330	Flooring Contractors ...	$13.0 mil	0	0	0	4.42	0	0
238340	Tile and Terrazzo contractors.	$13.0 mil	0	0	0	4.42	0	0
238350	Finish Carpentry contractors.	$13.0 mil	0	0	0	4.42	0	0
238390	Other building finishing contractors.	$13.0 mil	0	0	0	4.42	0	0
238910	Site Preparation	$13.0 mil	262	262	2,401	4.56	962	44
221110	Electric Power Generation.	4M mwh	293	301	99,651	4.44	7,313	325
221120	Electric Power Transmission, Control, and Distribution.	4M mwh	337	358	319,969	4.44	6,882	306
221210	Natural Gas Distribution.	500	442	591	66,991	2.98	28,428	847
321213	Engineered Wood Member (except Truss) Manufacturing.	500	121	127	7,224	3.87	4,720	183
321214	Truss Manufacturing ...	500	871	914	43,580	3.87	4,706	182
336611	Ship Building and Repairing.	1000	575	635	74,249	6.09	10,204	622
339950	Sign Manufacturing	500	6,261	6,339	75,956	5.83	1,532	89
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.	100	5,971	6,326	130,697	2.89	7,084	204
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	100	1,025	1,173	34,547	2.89	7,159	207
423390	Other Construction Material Merchant Wholesalers.	100	2,181	2,296	31,377	2.89	3,260	94
423730	Warm Air Heating and Air-Cond. Equip. and Supplies.	100	2,364	2,958	47,265	3.08	3,790	117
444110	Home Centers	$7.0 mil	2,409	2,575	487,206	7.70	2,335	180
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	50	2,044	2,317	37,046	4.22	2,415	102
482110	Railroads	NA	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas.	$7.0 mil	65	66	18,911	13.24	8,345	1,105
517110	Wired Telecommunications Carriers.	1500	2,517	27,159	539,359	7.10	7,294	518
	Subtotal	.....	32,430	59,267	2,182,872			
Crane Lessees in the Construction Industry								
236115	New Single family housing construction.	$31.0 mil	31,038	31,038	134,788	4.67	1,480	69
236116	New Multifamily housing construction.	$31.0 mil	2,086	2,086	13,738	4.67	3,085	144

TABLE B–4—INDUSTRIAL PROFILE OF SBA DEFINED SMALL ENTITIES FOR THE PROPOSED STANDARD—Continued

NAIC	Industry	SBA size standard (less than)	Affected			Profit rate %	Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)
			Firms	Estabs	Employees			
236117	New housing operative builders.	$31.0 mil	16,562	16,562	53,224	4.67	2,860	134
236118	Residential Remodelers.	$31.0 mil	9,846	9,846	29,319	4.67	644	30
236210	Industrial building construction.	$31.0 mil	3,000	3,000	21,431	4.67	2,493	117
236220	Commercial and Institutional Bldg. Construction.	$31.0 mil	40,530	40,530	393,560	4.67	4,024	188
237110	Water and Sewer Line Const.	$31.0 mil	13,715	13,715	162,842	5.22	2,863	149
237120	Oil and gas pipeline construction.	$31.0 mil	1,667	1,667	34,584	5.22	4,118	215
237130	Power and communication line const.	$31.0 mil	2,811	2,811	48,229	5.22	2,289	120
237210	Land subdivision	$6.0 mil	0	0	0	11.04	0	0
237310	Highway, street and bridge const.	$31.0 mil	1,114	1,114	14,473	5.22	3,606	188
237990	Other heavy and civil eng.	$31.0 mil	2,760	2,760	67,210	5.22	2,919	152
238110	Poured Concrete foundation and struct.	$13.0 mil	13,273	13,273	10,782	4.42	1,189	53
238120	Structural steel and precast concrete.	$13.0 mil	3,487	3,487	57,764	4.42	1,927	85
238130	Framing Contractors ...	$13.0 mil	13,779	13,779	60,116	4.42	559	25
238140	Masonry Contractors ..	$13.0 mil	1,368	1,368	10,174	4.42	814	36
238150	Glass & Glazing Contractors.	$13.0 mil	542	542	4,397	4.42	1,319	58
238160	Roofing Contractors	$13.0 mil	1,945	1,945	18,573	4.42	1,125	50
238170	Siding Contractors	$13.0 mil	526	526	1,455	4.42	529	23
238190	Other foundation, structure, building, ext.	$13.0 mil	256	256	881	4.42	628	28
238210	Electrical Contractors	$13.0 mil	765	765	4,674	4.32	874	38
238220	Plumbing, Heating and Air-conditioning Cont.	$13.0 mil	970	970	6,803	3.86	1,049	40
238290	Other building equipment cont.	$13.0 mil	644	644	6,996	4.42	2,068	91
238310	Drywall and insulation contractors.	$13.0 mil	0	0	0	4.42	0	0
238320	Painting and wall covering contractors.	$13.0 mil	414	414	2,103	4.42	513	23
238330	Flooring Contractors ...	$13.0 mil	0	0	0	4.42	0	0
238340	Tile and Terrazzo contractors.	$13.0 mil	0	0	0	4.42	0	0
238350	Finish Carpentry contractors.	$13.0 mil	0	0	0	4.42	0	0
238390	Other building finishing contractors.	$13.0 mil	0	0	0	4.42	0	0
238910	Site Preparation	$13.0 mil	3,889	3,889	19,650	4.56	1,101	50
	Subtotal	.....	166,985	166,985	1,177,769			
	Total	.....	204,058	232,394	3,434,175			

Source: U.S. Census Bureau data.
Country Business Patters, 2006; Statistics of U.S. Businesses 2006.
Internal Revenue Service, Source Book, profit rates over 2000–2006.
Statistics of U.S. Business (SUSB).

TABLE B–5—INDUSTRIAL PROFILE OF VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY

NAIC	Industry	Firms	Estabs	Employees	Profit rate %	Avgerage	
						Revenues per estab. ($1,000)	Profits per estab. ($1,000)
Crane Rental with Operators							
238990	All Other Specialty Trade Cont	1,065	1,065	4,824	4.10%	$614	$25

TABLE B–5—INDUSTRIAL PROFILE OF VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY—Continued

NAIC	Industry	Firms	Estabs	Employees	Profit rate %	Avgerage	
						Revenues per estab. ($1,000)	Profits per estab. ($1,000)
Crane Rental without Operators (Bare Rentals)							
532412	Const./Min./For. Machine & Equip	1,782	3,018	19,423	6.42	129	8
Own and Rent Cranes with Operators							
236115	New Single-Family Housing Const	178	178	261	4.67	220	10
236118	Residential Remodelers	25	25	45	4.67	443	21
236210	Industrial Building Construction	9	12	1,067	4.67	12,213	571
236220	Commercial and Institutional Building ...	23	31	757	4.67	4,157	194
237110	Water and Sewer Line and Related Struct.	52	69	1,432	5.22	4,107	214
237120	Oil and Gas Pipeline and Related Struct.	20	26	1,457	5.22	5,510	288
237130	Power and Communication Line and Rel.	34	34	666	5.22	2,880	150
237310	Highway, Street, and Bridge Construction.	80	107	6,456	5.22	11,783	615
237990	Other Heavy and Civil Engineering Const.	76	101	5,857	5.22	10,201	533
238110	Poured Concrete Foundation and Struct.	261	261	4,328	4.42	2,273	101
(All other sectors in this category have no very small affected firms)							
	Subtotal	758	844	22,326			
Own Cranes But Do Not Rent Them							
236115	New Single family housing construction	2,763	2,763	12,155	4.67	823	38
236116	New Multifamily housing construction ...	197	197	2,010	4.67	1,350	63
236117	New housing operative builders	1,206	1,206	8,528	4.67	1,854	87
236118	Residential Remodelers	808	808	2,627	4.67	443	21
236210	Industrial building construction	209	209	6,015	4.67	1,247	58
236220	Commercial and Institutional Bldg. Construction.	2,943	2,943	50,843	4.67	1,526	71
237110	Water and Sewer Line Const	900	900	13,335	5.22	702	37
237120	Oil and gas pipeline construction	63	63	3,416	5.22	708	37
237130	Power and communication line const ...	207	207	9,177	5.22	655	34
237210	Land subdivision	0	0	0	11.04	0	0
237310	Highway, street and bridge const	66	66	2,423	5.22	976	51
237990	Other heavy and civil eng	378	378	10,483	5.22	589	31
238110	Poured Concrete foundation and struct	46	46	531	4.42	494	22
238120	Structural steel and precast concrete ...	90	90	1,954	4.42	659	29
238130	Framing Contractors	981	981	8,322	4.42	374	17
238140	Masonry Contractors	115	115	1,093	4.42	343	15
238150	Glass & Glazing Contractors	44	44	405	4.42	619	27
238160	Roofing Contractors	207	207	2,378	4.42	447	20
238170	Siding Contractors	31	31	127	4.42	408	18
238190	Other foundation, structure, building, ext.	10	10	62	4.42	394	17
238210	Electrical Contractors	54	54	541	4.32	444	19
238220	Plumbing, Heating and Air-conditioning Contractors.	77	77	768	3.86	509	20
238290	Other building equipment cont	30	30	570	4.42	714	32
238310	Drywall and insulation contractors	0	0	0	4.42	0	0
238320	Painting and wall covering contractors	37	37	208	4.42	265	12
238330	Flooring Contractors	0	0	0	4.42	0	0
238340	Tile and Terrazzo contractors	0	0	0	4.42	0	0
238350	Finish Carpentry contractors	0	0	0	4.42	0	0
238390	Other building finishing contractors	0	0	0	4.42	0	0
238910	Site Preparation	271	271	1,970	4.56	497	23
221110	Electric Power Generation	293	301	1,288	4.44	7,513	334
221120	Electric Power Transmission, Control, and Distribution.	337	358	2,272	4.44	7,311	325
221210	Natural Gas Distribution	360	368	1,736	2.98	9,483	283
321213	Engineered Wood Member (except Truss) Manufacturing.	82	82	534	3.87	1,674	65

TABLE B–5—INDUSTRIAL PROFILE OF VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY—Continued

NAIC	Industry	Firms	Estabs	Employees	Profit rate %	Avgerage	
						Revenues per estab. ($1,000)	Profits per estab. ($1,000)
321214	Truss Manufacturing	408	408	3,438	3.87	1,130	44
336611	Ship Building and Repairing	370	371	2,041	6.09	950	58
339950	Sign Manufacturing	5,312	5,316	25,236	5.83	1,303	76
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.	4,774	4,844	24,410	2.89	3,970	115
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	831	857	4,764	2.89	4,461	129
423390	Other Construction Material Merchant Wholesalers.	1,886	1,907	9,298	2.89	2,199	63
423730	Warm Air Heating and Air-Cond. Equip. and Supplies.	1,929	2,017	11,007	3.08	2,537	78
444110	Home Centers	1,879	1,904	12,389	7.70	1,344	103
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	1,881	2,001	11,711	4.22	1,333	56
482110	Railroads	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas	65	66	238	13.24	8,473	1,122
517110	Wired Telecommunications Carriers	1,828	1,882	9,022	7.10	1,431	102
	Subtotal	33,969	11,734	139,941			
	Crane Lessees in the Construction Industry						
236115	New Single family housing construction	29,962	29,962	95,670	4.67	1,192	56
236116	New Multifamily housing construction ...	1,904	1,904	7,946	4.67	1,986	93
236117	New housing operative builders	15,927	15,927	50,782	4.67	2,063	96
236118	Residential Remodelers	9,606	9,606	25,611	4.67	527	25
236210	Industrial building construction	2,669	2,669	13,978	4.67	1,120	52
236220	Commercial and Institutional Bldg. Construction.	33,784	33,784	179,125	4.67	1,649	77
237110	Water and Sewer Line Const	11,306	11,306	59,055	5.22	841	44
237120	Oil and gas pipeline construction	1,083	1,083	4,293	5.22	666	35
237130	Power and communication line const ...	2,149	2,149	8,580	5.22	630	33
237210	Land subdivision	0	0	0	11.04	0	0
237310	Highway, street and bridge const	862	862	4,675	5.22	993	52
237990	Other heavy and civil engg	2,295	2,295	10,166	5.22	1,261	66
238110	Poured Concrete foundation and struct	11,886	11,886	52,606	4.42	677	30
238120	Structural steel and precast concrete ...	2,679	2,679	14,995	4.42	945	42
238130	Framing Contractors	13,043	13,043	48,914	4.42	345	15
238140	Masonry Contractors	1,243	1,243	4,720	4.42	376	17
238150	Glass & Glazing Contractors	485	485	2,457	4.42	758	34
238160	Roofing Contractors	1,722	1,722	7,015	4.42	637	28
238170	Siding Contractors	506	506	1,627	4.42	359	16
238190	Other foundation, structure, building, ext.	237	237	909	4.42	290	13
238210	Electrical Contractors	691	691	2,953	4.32	434	19
238220	Plumbing, Heating and Air-conditioning Contractors.	872	872	3,855	3.86	551	21
238290	Other building equipment cont	524	524	2,726	4.42	868	38
238310	Drywall and insulation contractors	0	0	0	4.42	0	0
238320	Painting and wall covering contractors	392	392	1,267	4.42	326	14
238330	Flooring Contractors	0	0	0	4.42	0	0
238340	Tile and Terrazzo contractors	0	0	0	4.42	0	0
238350	Finish Carpentry contractors	0	0	0	4.42	0	0
238390	Other building finishing contractors	0	0	0	4.42	0	0
238910	Site Preparation	3,579	3,579	13,406	4.56	561	26
	Subtotal	149,403	149,403	617,328			
	Total	186,977	166,064	803,843			

Source: ORA.
U.S. Census Bureau data.
Country Business Patterns, 2006; Statistics of U.S. Businesses 2006.
Internal Revenue Service, Source Book, profit rates over 2000–2006.

4. Benefits

The Agency received several comments in the record on the benefits analysis in the Preliminary Economic Analysis (PEA). For example, the commercial building supply industry noted that their industry had not been included in the economic analysis, nor, consequently, included in the Agency's characterization of risks and benefits. The industry provided 2008 accident data (5 injuries related to work with cranes) to the rulemaking record in their comments. (ID–0184; –0342; –0345.17; –0384.1.) Stephen Yohay, representing Edison Electric Institute noted that there was no explanation of the benefit that would result for the electric utility industry or electric industry employees, and therefore no evaluation of whether the benefit was reasonably related to the cost of compliance. (ID–0203; –0335; –0342; –0345; –0372; –0380; –0381; –0408.) The Agency was also made aware of the potential overlap of costs and benefits of industries affected by both the construction cranes' standard and the Agency's previously proposed standard Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment (subpart V), which essentially resulted in double counting of risk reduction, or benefits, in the electric utility industry as well as the construction industries working for the electric utility industry in the cranes proposed standard. This oversight has been corrected.

The proposed standard's benefits analysis rested upon BLS' Census of Fatal Occupational Injuries (CFOI) data for total annual fatalities in the construction industry, an estimate that eight percent of (CFOI) construction fatalities were crane related, and an analysis of a small sample of fatality reports from OSHA's IMIS data indicating that 58 percent of construction crane-related fatalities could be prevented by the proposed cranes standard. The application of the construction crane standard to general industry sectors and the necessity of disentangling the affect of subpart V required a different approach. The Agency instead is relying on an analysis of four years of IMIS fatality reports across all industries to estimate the risk reduction, or benefits, attributed to the final cranes standard. This method has been used by the Agency to evaluate risk reduction in virtually all of its safety standards. The Agency collected 506 fatality reports from IMIS across all industries for the years 2004–2007. Of these, over 200 were found to be construction related, including some in general industry sectors. One hundred and twenty-six of these (with 132 fatalities) were accidents that the Agency concluded were potentially impacted by the final standard, and the Agency estimates that 88 of these will be prevented by the final standard, or about 22 per year. The Agency also estimated that the final standard would prevent 175 injuries annually. The table below describes the industry sectors with IMIS accident fatalities that the Agency concludes are impacted (*i.e.,* potentially avoided) by the final standard.

TABLE B–6—AVOIDABLE FATALITIES IN THE CONSTRUCTION INDUSTRY, 2004–2007

SIC	Industry name	Fatalities
1521	Single-family housing construction	4
1541	Industrial buildings and warehouses	5
1542	Nonresidential construction, nec	4
1611	Highway and street construction	11
1622	Bridge, tunnel & elevated highway	11
1623	Water, sewer, and utility lines	13
1629	Heavy construction, nec	7
1721	Painting and paper hanging	1
1731	Electrical work	3
1742	Plastering, drywall, and insulation	1
1751	Carpentry work	3
1761	Roofing, siding, and sheet metal work	3
1771	Concrete work	12
1781	Water well drilling	2
1791	Structural steel erection	14
1794	Excavation work	2
1795	Wrecking and demolition work	1
1796	Installing building equipment, nec	3
1799	Special trade contractors, nec	15

The Agency provides a full explanation of its method of evaluating risk reduction in the FEA in the docket, along with an Appendix (Excel spreadsheet) of the IMIS records examined. The Agency evaluated reports from the effect of crane regulations in California as well as the Canadian province of Ontario. The Agency concluded that results from these two regulatory efforts are consistent with OSHA's conclusion that the final standard reduces risk of construction crane accidents and injures; however, the Agency determined that review of IMIS records would provide a better method to quantify benefits.

This same analysis also showed that there is a serious risk of fatalities in General Industry construction work. Table 7 shows the fatalities in construction related work in the General Industry sectors that have been added to the economic analysis.

TABLE B–7—FATALITIES THAT OCCURRED OUTSIDE TRADITIONAL CONSTRUCTION INDUSTRIES THAT COULD BE AVOIDED BY THE FINAL STANDARD, 2004–07

Number of fatalities	SIC	Industry name
1	*3441*	Fabricated metal products.
1	*4789*	Transportation services.

TABLE B–7—FATALITIES THAT OCCURRED OUTSIDE TRADITIONAL CONSTRUCTION INDUSTRIES THAT COULD BE AVOIDED BY THE FINAL STANDARD, 2004–07—Continued

Number of fatalities	SIC	Industry name
1	*4911*	Electric services.
1	*4931*	Elec services and more.
1	*5031*	Lumber, plywood, wholesale.
2	*5211*	Lumber and other bldg. materials dealers.
6	*7353*	Heavy construction equipment rental and leasing.
1	*7389*	Business services, nec.
1	*8731*	Commercial physical and biological research.
1	*9223*	Correctional institutions.
1	*9999*	Non-classifiable establishments.

Source: ORA; IMIS.

Analyzing IMIS Crane Fatality Reports

OSHA typically measures the risk reduction, or benefit, of its safety standards by examining accident reports. Accidents that occur because of a failure to comply with an existing standard are not counted as a benefit, or risk reduction, that is attributed to the effect of the new standard. In addition, the Agency does not try to estimate, or factor in, compliance with the new standard in estimating costs and benefits. It estimates costs as if all employers fully comply, and estimates benefits as if employer efforts prevent all types of accidents, or risks, the standard addresses. The chief purpose of the analysis is to demonstrate feasibility while providing a measure of the size of the rule, its possible impact on industries and the economy, and the ability to weigh and compare its costs and benefits. The analysis is not trying to predict with precision exactly the outcomes under the rule, which depend on employer compliance, changes in technology and the way employers react to the new standard, and many other factors.

The Agency is taking a somewhat different approach to estimating the risk reduction under the crane standard. OSHA's current construction crane standards were adopted in 1972 under the OSH Act's sec. 6(a), permitting the Agency to adopt existing standards and current consensus standards without informal rulemaking. Thus, for example, former § 1926.550(b)(2) referred to the ANSI B30.5–1968 standard (that is, from the year 1968) for requirements for design, inspection, testing, and maintenance of crawler, locomotive, and truck cranes. The current standards were widely believed to be out of date and ineffective; hence, the creation of the Negotiated Rulemaking Committee (C–DAC) from affected industries and labor representatives to address weaknesses.

For example, the former construction crane standard had in former § 1926.550(a)(15)(i) a prohibition from working within 10 feet of any energized overhead power line. Yet power line contact causes more crane-related employee deaths than any other source, and the negotiated rulemaking committee produced provisions that are meant to reduce those fatalities. Technically, however, one could argue that it is a failure to comply with the current standard that results in electrocutions. If the crane, boom, wire, or load were not getting closer than 10 feet to power lines, there would be no electrocutions. The final standard increases the prohibited distance to 20 feet, but also includes a number of other precautions. California recently increased the prohibited distance to 20 feet, and reported that electrocutions due to cranes have fallen from five over a two and one-half year period prior to the regulation to just one in the same period of time afterward. The reduction in the California fatalities also can be attributed to a requirement for operator certification; this final OSHA standard also includes this requirement.

The Agency concludes that its final standard will result in fewer fatalities and injuries due to a number of the provisions in the final standard, even though there are some existing construction crane provisions that address the same risk. This is attributed to more specific precautions in particular sections of the rule as well as the requirement for certifying crane operators, which potentially affects safety in all aspects of crane operations.

Another example where the final standard will be more protective than current standards is in assembly/disassembly operations. Assembly/disassembly operations are, along with power line contact, a leading cause of fatalities in crane work. Technically, one could argue that these fatalities could always be avoided by compliance with the current crane standard—to follow manufacturers' specifications—which is a general, passive, and non-specific duty. The final standard has lengthy provisions in the final standard to prevent these types of accidents.

OSHA believes that these types of accidents will be prevented by compliance with the provisions of this final standard for assembly and disassembly of equipment. Section 1926.1403 requires that equipment be assembled in compliance with manufacturer procedures or with alternative employer procedures designed to prevent the equipment from collapsing. In addition, under § 1926.1404, assembly must be conducted under the supervision of a person who understands the hazards associated with an improperly assembled crane and is well-qualified to understand and comply with the proper assembly procedures. Section 1926.1404(f) would prohibit employees from being under the boom when pins are removed. In situations where site constraints require an employee to be under the boom when pins are removed, the employer must implement other procedures, such as ensuring that the boom sections are adequately supported, to prevent the sections from falling onto the employee. This specific work practice alone will prevent virtually all fatalities associated with assembly/disassembly of lattice boom cranes. Section 1926.1404(q) contains several provisions designed to ensure that outriggers are deployed properly before lifting a load. In addition, the operator qualification and certification requirement of proposed § 1926.1427, which is intended to ensure that operators understand and follow the safety requirements for the equipment they are operating, would help prevent this type of accident.

For informational purposes, as required by E.O. 12866 (also following the guidance of OMB's Circular A–4), OSHA monetizes the safety benefits of standards. OSHA assigns a value of statistical life (VSL) to fatalities prevented by the final standard of $8.7

million per VSL. This estimate is based on the median value found by Viscusi and Aldy in their 2003 review ($7 million in 2000 dollars), adjusted by the GDP implicit price deflator 2000 to 2010). The total monetized value of preventing 22 fatalities annually is about $191.4 million. For accidents, OSHA uses a willingness-to-pay methodology to monetize the value of injuries avoided, of $50,000 in 2000 dollars; which, when adjusted by the GDP deflator is about $62,500 in 2010 dollars. Thus, the monetized annual value of an estimated 175 injuries avoided by the standard annually is about $10.9 million. The total annual monetized value of avoided injuries and fatalities is about $202.3 million.

Costs of Crane Accidents

Several commenters noted that crane accidents represented a substantial cost to employers in the crane industry. (ID–0341; –0342; –0343; –0344.) In the PEA the Agency did not estimate cost savings from avoiding crane accidents, but only estimated monetized benefits for avoiding fatalities (the value of a statistical life, or VSL) or injuries (a value based on willingness to pay). These cost savings do not represent other losses associated with accidents, such as production time lost to provide medical services to injured employees, damage to cranes, damage to the work site or beyond, damage to the load materials or rigging, lost time in cleaning up and repairing damage to the worksite, lost production time while the crane is removed, repaired, or replaced with a substitute. More obviously they do not account for costs of crane accidents where no fatality or injury was recorded. There are many more crane accidents that do not involve any injury than those represented in the IMIS reports, and the Agency concludes that the final standard will avoid these just as effectively as the accidents where injuries occur.

For example, there were ten tipover accidents with fatalities in OSHA's IMIS records for 2008, and data collected in the State of California over a three year period showed that there were 35 (mobile) crane tipovers for the single tipover accident fatality (Op cit. Yow, Philip, "Crane Accidents 1997–1999 * * *."). Since California has about ten percent of the U.S. population and economy, this suggests that there are on the order of 350 crane tipover accidents over a three year period, or about 120 per year. Tipovers typically require crane repair, lost production time for all employees at the site, and schedule delays. Since there are firms that specialize in repairing cranes damaged in accidents, the Agency believes that they are in fact frequent. If the cost of these kinds of accidents are only, on average, $100,000 each, the total annual cost savings from avoiding two-thirds (the fraction of current crane fatalities prevented by the final standard) of them would be about $7 million per year. That represents a cost saving of avoiding accidents from just one cause. Although tipovers and crane or boom collapses are likely the most expensive type of crane accident, they represent only about 10 percent of the types of fatal accidents.

Tower crane collapses in urban areas, while infrequent, are very costly, as the crane is typically lost, considerable damage done to the worksites and structures beyond, and days if not weeks of lost production. The Agency believes that this cost is significant, but has no information in the record with which to estimate this source of cost savings.

Similarly, there are costs associated with all crane accidents, whether or not there is an employee injury. The Agency does not have information in the record upon which to estimate the overall number of crane accidents, or the particular costs of the different types of accidents, such as dropping a load, contact with power lines, and so forth. But the Agency believes that the potential economic benefits from reducing these with compliance with the final standard is likely very substantial.

Insurance Savings

An expert from the insurance industry reported that his company offers a 10 percent reduction in general liability premiums if all an employer's operators are certified. (ID–0343; –0345.34; –0347.) Several commenters confirmed that fact and also said that this saving alone more than paid for the cost of certifying operators. (ID–0343.) There was no information in the record about the cost of general liability insurance to employers with cranes, and so the Agency cannot compute any cost saving based on their cost or prices. However, this possible saving clearly shows that it is not simply OSHA that sees savings associated with operator certification, and that employers can reasonably expect some immediate savings associated with operator certification (projected to cost about $51 million annually).

Net Benefits

The monetized benefits and other benefits of the final standard are estimated by the Agency to be $209.3 million annually ($202.3 million from fatalities and injuries avoided, plus $7 million in avoided tipover accident costs). The Agency has not quantified the cost savings from many accidents which do not involve injury that will be prevented by the final standard.

5. Technological Feasibility

In accordance with the OSH Act, OSHA is required to demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. Accordingly, OSHA reviewed the requirements that would be imposed by the final regulation, and assessed their technological feasibility. As a result of this review, OSHA has determined that compliance with the requirements of the final standard is technologically feasible for all affected industries. The standard would require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standard. Compliance with all of these requirements can be achieved with readily and widely available technologies. Some businesses in the affected industries already implement the requirements of the standard to varying degrees (some states have requirements), as noted during the SBREFA Panel. OSHA believes that there are no technological constraints in complying with any of the proposed requirements, and received no comments that suggested that these standards were technologically infeasible.

6. Costs

The Agency received comment on some unit cost estimates of specific provisions in the PEA: Operator certification, the number of crane jobs involving work near power lines, electric utilities providing voltage information, de-energizing power lines, locking out automatic line re-energizing devices, providing line wraps for power lines, and conducting power line meetings. Based on that comment, the Agency has revised the original cost analysis ($123 million annually), and corrected errors noted below. The Agency estimates that the final construction cranes standard will cost employers $154.1 million annually.

The Agency did not receive comment on its estimate of the number of cranes and crane jobs per year; nor on the time and cost of provisions on assembly/disassembly (except for ground conditions), and inspections. The Agency also did not receive any

comment on its estimates of "baseline" compliance, or the fraction of affected employers who are already performing or providing protections required in the final standard. For example, the Agency had estimated that, as a baseline, 30 percent of affected crane operators are already certified. However, the Agency did receive considerable comment and new information in several areas: the number of operators already certified; the number of cranes, crane jobs, and certified crane operators from individual employers or industries; the extent of current compliance (baseline) with providing safe ground conditions and assembly/disassembly operations; frequency of crane inspections; and the frequency of work close to high-voltage power lines. Based on the new information in the record, the Agency has revised several of its baseline figures, discussed below.

The Agency also received considerable new information about general industry sectors that would be affected by the final standard. The Agency has incorporated that information into its estimates of costs for those sectors. The Agency has also updated its information about wages, establishments, and revenues from the 2006 Statistics for U.S. Business (SUSB) and County Business Patterns. As the number of cranes in the PEA was, for some sectors, based on an estimate of revenues, the number of cranes for some sectors has changed from the PEA based on newer revenue data.

Employers have four years from the publication date of the final rule to comply with the requirements for operator certification. The Agency could assess that cost across the next four years and discount those values back to the present to add to the other annual costs of the standard. However, assessing benefits for only part of the final standard for several years is problematic. The Agency has concluded that the clearest picture of cost, benefits, and impacts will be given as if all costs and benefits of the final standard occur in the first year. This removes the problems of parsing risk reduction from separate provisions of the final standard for several years, in addition to assessing when employers might comply with certification and the resulting effects on discounting. Presenting full benefits and costs side by side also provides the easiest view of the long-run effects of the final standard.

The Agency presents and discusses comment on the PEA, new information in the record, and revisions to cost estimates in the following sections: operator certification, power lines, assembly/disassembly (A/D), inspections, and ground conditions. Unit costs are explained below and presented in Table B–8. Wage rates in the PEA were based on 2003 BLS data. The Agency has increased these base wage rates by 19 percent for the FEA, based on more recent BLS data. Summarized costs by provision are presented in Table B–9.

Cost of Operator Certification

For the FEA, the Agency has increased the estimated cost of test preparation (a course) for a third party operator exam from $500 in the PEA to $1,500, plus, as before, $250 for the exam itself and 18 hours of wages ($31.37/hour, total of $564). When the total initial cost ($2,064) is annualized over 5 years, the annualized amount is about $500. In addition, based on comment in the record the Agency has increased the baseline of current compliance in the traditional construction industries from 30 percent to 60 percent, and assumed that no crane operators in the affected general industry sectors have been certified (ID–0341; –0342; –0343; –0344). The Agency also reduced the turnover rate of crane operators from 23 percent to 5 percent, thus reducing the number of new entrants each year who would require certification. The annualized cost of crane operator certification is estimated to be about $59 million per year.

The PEA had estimated that a two-day preparation and testing would cost employers $750 for each employee taking the operators certification test ($500 for the prep course, and $250 for the written and practical exam). In addition, employers would have to pay the wages of a crane operator ($31.37 per hour with benefits) for 16 hours of his time, plus an additional 2 hours, on average, for travel. The total cost was estimated to be $1,314 per employee taking the crane certification exam. The Agency annualized that one-time figure over 10 years, for an annual per operator costs of $187.

The Agency erred in the PEA in annualizing the cost of the training and testing over 10 years instead of five, since the certification is only good for five years. Although, re-certification does not typically entail the prep course and time, and future costs of certification are therefore probably considerably much lower, the Agency concludes that for purposes of weighing the costs and impact of the final standard, that it will rely on the initial costs annualized over five years. However, because the Agency accounted for turnover of operators and estimated costs for new operators as a result of retirement for the industry, a simple five year annualization would overestimate costs. As a result, the Agency introduced a factor to the formula to assure that no costs were taken for recertification of retired operators. (*See* full formulas in the FEA.)

Operator certification was the primary focus of comments on costs. Many commenters stated that in regard to the means of crane operator certification Option (1), or third-party testing, was the only viable alternative. (*See, e.g.,* ID–0151; –0342.) The Agency agrees that this will be the primary means of certification and notes there are several testing organizations now available, with more reportedly in the process of being accredited. (ID–0341; –0343.)

Michael Eggenberger of Bay Ltd provided several comments on the unit cost of operator certification. (ID–0254.) Mr. Eggenberger provided photocopies of invoices that showed Bay Ltd paying for NCCCO written and practical exams, over two days, for $1,375 each. The invoice does not make clear whether the two days included prep training, but handwritten on each invoice is the additional information that the invoice costs did not include prep training at $500, plus five days' wages for each employee. The Agency concludes that Bay Ltd provided a course of prep training and testing that lasted five days. If Mr. Eggenberger's employees were paid the average wage (including benefits) of $31.36 per hour that OSHA is relying on, based on BLS data, then the total cost per employee would be $3,129 (about $1,250 in wages, $1,375 for prep and the exam, and $500 in prep training.)

Edison Electric Institute, representing the electric utility industry, submitted cost data for certification "utilizing $1,750 as the base cost for a training course and the actual exam. EEI has estimated that it would cost approximately $1,500 for an employee training course, and $250 for the certification program." (ID–0345.17; –0370.1.) EEI did not provide any detail about its figures.

Comment received from James Nevel of the National Utility Training & Safety Education Association (NUTSEA) said that "typical training programs that we have seen run $1200 to $1400 for classroom training and then an additional $450+ or so for the certification testing." (ID–0155.1.) NUTSEA's membership of 250 "provides safety and training services to most of the electric cooperatives in the United States."

California enacted a requirement for crane operator certification which took

effect in June 2005. That State's operator certification requirement did not apply to digger derricks and mobile—usually truck-mounted—cranes with a capacity below 15,000 pounds. The State estimated that there were 5,000 mobile cranes and 700 tower cranes affected and that about 10,000 operators would require certification ("Economic Impact Statement," Attachment #1 for Crane Operator Qualifications/Certification, Economic and Fiscal Impact Statement, STD, 399). California estimated that there were almost 2,000 businesses that owned, operated, or leased cranes affected by the State's regulation. Further, the State's impact report estimated that the cost of certification would include a physical examination ($320), a substance abuse test ($120), and cost of a written and practical exam from a NCCCO testing agent ($550), or a total of $990 per operator.

The Agency received several estimates of the cost of operator certification as part of the Small Business Advocacy Review Panel (SBAR). John Anderson reported that he estimated certification costs at $2,900 per employee, including five days for training, exam, and wages (OSHA–S030A–2006–0064–0019), with the average cost of an exam $382 and with training or prep courses $1,260 on average, and wages $1,255. Mr. Anderson also cited a general contractor's cost of exams and prep class of $1,375. Art Daniels of AR Daniels Construction estimated the cost of certifying one operator to be $6,141.59, but did not provide any detail of how the estimate was determined. Mr. Daniel also commented that the Agency's wage estimate was too low, but his estimate included wages for overtime which accounted for much of the difference. (OSHA–S030A–2006–0064–0019.) Mr. Daniel also stated that no costs were included for re-testing or loss of production. However, the Agency did include costs for re-testing (when an operator initially fails the test) and the value of lost production is accounted for in operator's wages. Several participants in the SBAR panel also noted that they have no turnover among their crane operators.

Current OSHA standards require operators of construction cranes to ensure that operators are trained. The Agency does not agree that the final standard requires a five-day training and prep course for employees to take and pass the crane operator's certification. Five-day courses are designed not just to prepare potential operators for certification, but to train newcomers. For example, Bob Behlman of Behlman Builders in describing the training that he sends his crane operator to, notes that the five-day course by a national consulting firm that specializes in mobile crane training and inspection services is "designed for both newcomers to the crane operators field [and] to those who have years of experience." (ID–0373.1.) Mr. Behlman notes that the current five-day course that he provides for his crane operators as of this time still does not include a written and practical test, such as NCCCO or the International Union of Operating Engineers (IUOE) offers. As Mr. Brent of NCCCO said at the public hearing, "a lot of those costs * * * are not associated with certification at all. They're associated with the training process." (ID–0343.)

Many testing companies provide testing along with a preparation in either two-day or five-day courses, but virtually all commenters on the record note that few certified operators take the preparation course when re-certifying is done, and that re-certification is much less costly. The preparation course is designed not to train operators on cranes, but to help them negotiate the written test. Again, as noted above, the Agency was not including in its estimates of the cost of operator certification any training related to obtaining knowledge about, or operating, a crane, which is already a duty of operators of cranes in construction. Operators have been taking certification exams without benefit of special preparatory courses for many years in cities and states (such as Connecticut and New York City) that perform their own testing of crane operators for licensing or certification. As was pointed out in testimony, part of the resistance to third-party certification may be that current crane operators may lack the requisite training or skills. (ID–0343.)

It was not incumbent upon the Agency to include purchased, preparatory training from third party providers as a cost of the standard. The final standard requires no such purchased training. The Agency concludes that while many employers and crane operators will avail themselves of the test preparation, not all will do so, and this was recognized in comment. (ID–0343.) In terms of estimating the costs of the final standard, it is reasonable that employees and independent crane operators, who have already been sufficiently trained in crane operation and may have many years' experience, certainly need no more than a short preparation to successfully pass the crane operator certification tests. Thus, the Agency has included as part of the cost of the standard, $1,500 as the price of a two-day prep course for taking the operator's written and hands-on exams.

The Agency did not include costs of operator certification for users of sideboom cranes found in pipeline construction (NAICS 237120 Oil and Gas Pipeline Construction) and derricks, found in water tank construction (NAICS Water and Sewer Line Construction). Both types of cranes are exempted from requirements for operator certification in the final standard.

The Agency increased the number of current crane operators in construction who already are certified. NCCCO reported that since 1996 they had provided exams for 65,000 operators who had taken over 365,000 exams. (Operators frequently choose to be certified on several different types of cranes. (ID–0343.)) NCCCO reported that crane certification was primarily sought for construction cranes. The IUOE reported that they have provided 12,000 written and 8,000 practical, or hands-on, exams. (ID–0341.) Sixteen states now have a requirement for operator certification or licensing. (*See, e.g.,* –0347.1.) Four states have their own State licensing programs. In addition, the nation's largest cities also have their own licensing or certification requirements. One commenter noted that in Ohio, which has no requirement for crane operator certification, hiring certified construction crane operators had become the norm for the industry. (ID–0341.) Insurance representatives and other commenters at the public hearings noted that many employers were getting their crane operators certified as the cost was recouped from premium reductions. (ID–0341; –0343; –0344.) Accordingly, the Agency has increased its estimate of the number of construction crane operators who already are certified to 60 percent of current operators.

The Agency is confident that the estimated costs of operator certification are not underestimated. The Agency concludes that at least 5 percent of construction cranes are owner-operated. (ID–0025; –0341.) Since these self-employed individuals or family-owned businesses have no employees, they will not—for purposes of following the standard—have to be certified. In some areas, it is the custom for crane operators to pay for their own certification. (ID–0343.) However, a new provision in the final standard requires employers to pay for certification in any event. NCCCO's Mr. Brent testified that: "There are some candidates who are paying outright. Some employers have instituted a vesting program where some

fees are due to be repaid if the employee leaves in a certain period." (ID–0343.) In addition, in situations where crane operators are union members, who may be hired out of union hiring halls, it is likely that training and certification will be performed through the union rather than an employer. The IUOE pays for their members' crane training and certifications costs out of union dues (ID–0341); so while employers, and ultimately owners of new construction projects, may pay for the cost of union operators' certification via somewhat higher wages, there is no immediate cost to employers or general contractors for operator certification. In addition, many certification prep courses and exams are offered on weekends, and there will not be any lost time of production in such cases. (ID–0343.)

Several small employer representatives on the Small Business Advocacy Review Panel remarked that they had no turnover of crane operators. (OSHA–S030A–2006–0664–0019.) Similarly, employers and associations who provided public testimony at the standard's public hearings also noted little or no turnover among operators. Accordingly, the Agency concludes that although there may be transfer between employers, crane operators are a select and highly paid group who are unlikely to exit their field. Employers who lease cranes with operators, which is the predominant mode of crane jobs, or who hire from union hiring halls would experience no turnover of crane operators at all.

Power Lines

The Agency has revised its estimates in the PEA of the "unit" costs of power line work for: assembly/disassembly; crane operations closer than 20 feet to a power line (§ 1926.1408); and crane operations within the Table A distances (within 10 feet in most instances) (§ 1926.1410). Comment in the record indicated that crane operators routinely assess sites for potential power line risks. (ID–0341; –0344.) Thus the Agency concludes that the current baseline of compliance with assessing power line risks is 100 percent and this provision does not impose new costs on affected employers. The Agency did not estimate costs for work near power lines within Table A distances for the electric utility industries, power line construction, and electric contractors, as these employers work near power lines under subpart V.

The Agency has revised estimates of unit costs for some operations near power lines. There were two primary sources for the revision of some unit costs of power line work: the written submission by Edison Electric Institute (EEI) reporting cost information from 16 members and the testimony and written comment from EEI itself. (ID–0343; –0345.17.) Based on the EEI member's information, the Agency concludes that the cost of providing voltage information is about $200 per occurrence; that the cost of locking out automatic line re-energizing devices is about $320; and that it takes electric "utility owner/operator" or engineers a total of six hours ($360) for travel and for participation in planning meetings, review of procedures, and identification of a person to implement procedures. These figures represent approximately the median or average of estimates provided by EEI members, although each member did not provide information about each operation. In addition, the Agency had estimated the cost of using an insulating link when working very close to power lines as $427 per use. Comment in the record showed that the average cost of these devices is lower than the Agency's estimate in the PEA of $15,000, that their working lifetime is 20 years rather than 10, and that they may require recertification each year. (ID–0085; –0085.1; –0085.2.) Accordingly the Agency has revised its estimated cost per use to $210 (based on the information and model in ID–0085, but with a 7 percent discount rate). Although the final standard may not require the use of NRTL-approved insulating links until up to three years after the standard takes effect, the Agency is including costs for this provision as if employers will replace their inventory by purchasing and beginning use of NRTL-approved insulating links in the first year that these links are available.

The Agency has also revised the costs of planning meetings. In the PEA the Agency concluded that four individuals would participate in such a meeting. That model fits with operations of a traditional lattice-boom crane. However, most cranes jobs today are of short duration by truck-mounted cranes, and the Agency estimates that only three individuals will typically be involved in a planning meeting.

Operations Closer Than Table A Distance

The Agency received comment about work close to power lines that has significantly increased its estimates of costs. (ID–0342; –0345.17.) Unit costs for the time required of electric utilities or professional engineers has been revised to $360 per episode; costs of de-activating or locking automatic line reclosure devices has been increased from about $30 to $320, and the cost of supplying voltage information is $200.

The Agency had estimated that cranes were performing operations closer than 10 feet, or the Table A distance, in about 5 percent of all crane jobs that were not assembled near power lines (which was 75 percent of the total estimated 859,000 cranes jobs per year). In testimony, EEI's David Highland, also from Allegheny Power, referred to the frequency of close-to-power-line work as OSHA's estimate of "50,000 episodes" per year. The 50,000 figure was also noted in EEI's written testimony. (ID–0345.17.) However, OSHA's estimate of the actual number (5 percent of 75 percent of 859,000) was approximately 32,000. Mr. Highland also said, "We thought it would double," in speaking of the number of times construction employers would operate cranes closer than the Table A distances.

The former OSHA standard at former § 1926.550(a)(15) permitted work near power lines no closer than 10 feet except where they are de-energized and grounded or when they have "insulating barriers." If power lines are not de-energized or do not have insulating barriers, all parts of the crane, line and load, must maintain a 10-foot clearance, with a designated person to observe clearance in situations where the crane operator would have difficulty ensuring clearance by visual means; and insulating links may be used as well (former § 1926.550(a)(15(iv)). In oral testimony and written comment, EEI noted that electric utilities provide line covers now for construction crane operations, with practices varying from region to region. All electric utilities make use of line hoses for protection. (ID–0342.) Mr. Highland reported that his company gave "free line hose up to a certain length. * * * After 20 feet, they [crane users] start paying about 10 bucks apiece." (ID–0342.) Earlier in testimony, EEI said, "Currently, many electric utilities also place line hoses on power lines when so requested by non-utility crane contractors who need to work within 10 feet of a power line. Usually the utility owner/operator receives a call from a contractor prior to this work. More often than not, however, the utility discovered that work is being performed close to a power line when it is observed by happenstance, for many contractors simply do not call." (ID–0342.) Although the electric utility industry predicted that the number of these episodes involving construction cranes would double or increase exponentially, and thereby force them to incur greater costs under the standard, the Agency disagrees. The final standard imposes

significant new procedures and costs beyond what current standards require. Generally, one expects crane users in the affected industries to take further steps to avoid working closer than the Table A distances to power lines, rather than more.

The Agency included in its cost estimates for work closer than Table A distances the following:

- A planning meeting (2 hours for three individuals costing about $132);
- Time and costs for the utility owner/operator or engineer for all of their duties (6 hours or $360), *i.e.,* planning, voltage information, determining a minimum clearance distance, reviewing procedures, and identification of an individual to implement procedures;
- Request that electric utilities de-activate the automatic re-energizing devices, which the Agency assumes will cost crane employers $320, on average, to be paid to electric utilities;
- Use a dedicated spotter at all times (average of 4 hours, $64.06);
- Use of an insulating link ($210); and
- Provision of barricades and grounding of equipment ($4.04 and $8.08).

The crane user must also secure voltage information from the electric utility, but the Agency assumes that since the utility's owner/operator or an engineer is present, this information is at hand; therefore, for work within Table A distances, there is no separate, additional cost.

Since line hoses or barriers are already required, and terms are currently arranged between the crane employer and the utility, there is no new cost for line covers under the final standard. The Agency concludes that the crane employer faces, at a minimum, about $800 in new costs under the final standard to work within 10 feet or the Table A distance of a power line. If the employer must also fully compensate the electric utility for the utility owner's or engineer's time, the total cost is estimated at $1,100.

The final standard seems to shift the duty and expense of line covers wholly onto electric utilities, with crane contractors reported as compensating electric utilities to some degree currently. (ID–0342.) However, the limited comment on this issue in the record does not permit an estimate of any effect.

All other provisions of the final standard's § 1926.1410 are already being performed in current construction crane jobs close to power lines, the Agency concludes.

Assembly/Disassembly Near Power Lines

Under the proposed standard, before beginning crane assembly/disassembly, the crane operator or employer must determine if any parts of the crane or equipment may get closer than 20 feet to a power line during A/D. If so, either the employer must have the line de-energized (Option (1)); stay farther than 20 feet from the power line (Option (2)); or follow the procedures in Option (3): determine the line voltage and minimum clearance distance; prevent encroachment by having a planning meeting and use either a dedicated spotter, proximity alarm, a "range control warning device," or an elevated warning line. The Agency believes that by far the most common method will be to provide a dedicated spotter during A/D. There was considerable comment in the record that de-energizing lines was rare, difficult for regulatory reasons, and expensive. (ID–0342.)

The Agency has estimated costs as if A/D operations near power lines follow Option (3) and that crane employers or owners use a spotter to ensure that cranes stay far enough away. In the PEA, the Agency estimated that this happened in 25 percent of crane jobs. There was no comment on that estimate in the rulemaking, and the Agency concludes that A/D near power lines occurs about 200,000 times per year.

The Agency has estimated A/D costs near power lines as follows:

- Crane operators and employers already assess distance to power lines; so the Agency takes this as a baseline and concludes there are no new costs due to this provision in the final standard;
- To determine voltage and the minimum clearance distance, the Agency estimates that A/D will be close enough to the power line to contact the utility about 25 percent of the time, costing about $50 (one-fourth of $200), on average, for each A/D episode. Most crane operations will be near typical residential power lines of less than 50 kV, with a minimum clearance distance from Table A of 10 feet.
- Hold a planning meeting which for the typical crane operation will consist of the crane operator, spotter, and any on-site employer or contractor (for a lattice-boom crane that truly performs A/D operations, many more individuals are involved in the planning meeting as required in § 1926.1407(b)(1);
- Employ a spotter to ensure that the minimum clearance distance is maintained, and provide training for the spotter, if needed (2 hours plus 15 minutes training).

The Agency estimates that the total costs of providing protective procedures during A/D near power lines for a typical crane job will cost less than $100. Table B–9, Cost by Provision, shows that the total costs of these operations for all affected employers is estimated to be about $16 million annually.

Crane Operations Within 20 Feet of Power Lines (§ 1926.1408)

Under the proposed standard, before beginning crane or derrick operations, employers must either: (1) Define a work zone with demarcated boundaries by using flags or a device such as a range-limiting device or range-control warning device that prohibits the operator from operating the crane past those boundaries, or (2) define the work zone as the area 360 degrees around the crane based on the crane's maximum working radius (*see* proposed § 1926.1408(a)(1)). The Agency estimates that, in most cases, the least-cost option would be to mark the zone with flags. Based on the defined work zone, the employer must determine whether the crane, load, or load line, if operated to its maximum working radius, could get closer than 20 feet to a power line.

If the 20-foot determination is positive, then the employer would be required to follow one of three options. If any part of the crane, load, or load line could not come within more than 20 feet of a power line at the crane's maximum radius, the employer would not be required to take any further action. If the crane operations could take the crane closer than 20 feet, the employer must either: (1) De-energize and visibly ground the power line, (2) maintain the 20-foot clearance by employing a spotter or other warning device, after having a planning meeting, or (3) determine the line voltage and minimum clearance distance and maintain that distance between all crane parts and the power line by employing a spotter or other warning device, after having a planning meeting.

If the employer follows Option (2) or (3), the employer must then maintain the appropriate distance by implementing several encroachment-prevention procedures to ensure that the crane does not contact the energized power lines, including: Having a planning meeting with the operator and other workers who will be in the area of the crane, and using either a proximity alarm, operational aids/limiting devices, a dedicated spotter, or an elevated warning line. The Agency estimates that a designated spotter would be used to ensure that the

appropriate distance is maintained between the crane and power line.

In the SBAR panel process, many small entity representatives commented on this provision. The majority believed that, most of the time, a dedicated spotter would be used. For some, work near electric lines was rare; for others, it occurred several times each year. In the PEA, the Agency estimates that work potentially within 20 feet of a power line, occurred on 22.5 percent of all crane jobs. The Agency has simplified this estimate for the final analysis, and estimates that, as for A/D operations near power lines, operations within 20 feet of power lines occur about 200,000 times per year.

Costs for working within 20 feet of power lines thus consists of:

- Identifying and demarcating a work zone and determining the maximum swing radius of the crane (0.5 hours)
- Ensure that the crane does not come within 20 feet of the power line by using a dedicated spotter (2 hours), or
- Determine the line voltage and maintain the minimum Table A clearance distance by using a dedicated spotter (2 hours).
- Seek voltage information.

The Agency estimates that, for operations near power lines, crane employers will do so about half the time ($100, or one-half of $200), on average, for each occurrence.

The Agency estimates the average cost for protective measures in the final standard for cranes to work within 20 feet of a power line is about $160.

Crane Inspections

The Agency received little comment on its estimates of costs of inspections. Inspections were frequently mentioned by commenters as necessary and already being performed. However, the industry consensus standard requires frequent (daily to monthly) inspections and periodic inspections (monthly to annual ones). The final standard requires daily visual inspections, and monthly and annual inspections that must be documented. In addition, the final standard adds more specific checks on more equipment that the consensus standards. Thus, the Agency is keeping its estimate that monthly and annual inspections will take 15 minutes longer than is typically done today. Due to an error in the spreadsheet calculations, in the PEA estimates of the monthly inspections were too high—based on an additional 30 minutes per month rather than 15 minutes. When this error was corrected the annual additional cost for inspections fell from about $21 million per year in the PEA to $16 million annually. The final standard has a new provision requiring written notification when an operational aid is broken or a repair is necessary (§ 1926.1417(j)(1)). The Agency has estimated that condition will occur to 30 percent of (122,091) cranes annually and require 0.17 hours (10 minutes) of a crane operator's time (wage $35.62). This cost of written notification (about $257,000 annually, or $2 per crane, on average) has been added to the inspection costs in the tables. The Agency has also included in the inspection costs the estimated the cost of providing affected employees notice at the beginning of each shift that a crane function or part is broken (§ 1926.1417(j)(2)). The Agency estimates that such notice will take an average of 3 minutes for, on average, 20 days by the crane operator.

Ground Conditions and Assembly/Disassembly

In the PEA the Agency estimated that for each crane job an assembly/disassembly (A/D) supervisor—likely the crane operator in many instances—would assess ground conditions and power line risks. Many commenters reported that these functions were routinely already performed, and the Agency has adopted that practice as its baseline. (ID–0341; –0343.) More pointedly, most crane jobs today are performed by truck-mounted cranes. Several commenters noted in both written comment and oral testimony that these cranes have no assembly or disassembly. While there is a lengthy description in the A/D provision in the final standard, with pictures, of steps and procedures for lattice-boom cranes, these cranes perform relatively few crane jobs. A large lattice-boom crane may be assembled for a job lasting several months—one crane job—while a truck-mounted hydraulic crane may perform three or four jobs in a day. While truck-mounted cranes have safety hazards when extending stabilizers or outriggers, these are not the same hazards associated with lattice-boom cranes—or tower cranes which have their own specific provisions for erection and climbing at § 1926.1435, Tower Cranes. There are also relatively few tower cranes, which also perform a single "crane job" that may last many months.

No commenter denied that current crane operators assess conditions prior to setting up and operating a crane. In addition to comment in the record, several organizations provided training materials that indicated an assessment of conditions was standard operating procedures for crane work. (ID–0345.14; –0345.17; –0380.) The Agency eliminated these assessment costs in the final standard, but still included A/D costs related to work near power lines.

There was considerable comment about ground conditions. The final standard places responsibility for providing sufficient ground conditions on the "controlling entity." Small builders and general contractors objected to this provision. There were several parts to most of the criticisms. First, many builders and contractors now rely on the crane company or the crane operator to assess conditions for safe crane operations, for example, when hiring a crane company to set roof trusses. (ID–0341; –0343.) In addition, many builders or contractors who hire cranes for particular construction jobs have no expertise in ground conditions (ID–0341), which the Agency acknowledged in the proposal's preamble. In response to these comments, the Agency accounted for the new burden which controlling entities will have under the final standard.

These costs fall primarily on the lessees of cranes or of cranes with operators, not employers affected by the crane standard who own their own cranes. The Agency concludes that, for estimating the costs of the ground conditions provision, builders of large commercial, residential, and industrial buildings and contractors do not face a new cost since they are, in general, at the building site. However, small builders and developers, or their supervisors or representative, may not be at one of their sites. (ID–0341.) The Agency estimates that the ground conditions duty will require two hours of employer time to be present at the site to meet their obligations. However, the standard does not require that controlling entities be physically present, and the Agency concludes that in most cases their attendance at the site will not be necessary because, in most situations, the ground conditions will be dry and reasonably level, and the cranes will be lifting materials such as roof trusses and pre-fabricated wall sections—*i.e.,* low-risk ground conditions. Any information that the controlling entity has about underground risks can be communicated by telephone. The Agency concludes that small builders in three industries will, at most, be affected by the ground condition provision at 10 percent of their projects involving crane operations. The Agency concludes that the typical crane job—setting roof trusses—and the fact that these loads are generally not close to the capacity of the truck-mounted cranes that perform the task, means that concern about ground conditions will

not arise often. The three affected industries are: NAICS 236115 New Single Family Housing Construction; NAICS 236117 New Housing Operative Builders; and NAICS 236118 Residential Remodelers.

The Agency has estimated the costs of complying with the controlling entities' duties in regard to ground conditions for SBA-size small entities in the three affected industries. The criterion for "small entity" for these industries by SBA is revenue of less than $31 million. This is roughly comparable to construction of about 100 single family homes, and the Agency concludes that all small builders are certainly captured within this category. Accordingly, the Agency calculated the costs of expending two hours of time by employers for 10 percent of all crane jobs within the industry sectors by small employers. The costs for the affected sectors are presented in Table B–9. Table B–10 presents average annual costs per establishment across the affected sectors. Table B–11 provides the Agency's estimate of the number of cranes and crane jobs.

Language and Literacy

There was also comment in the record about the difficulty some current crane operators may have in achieving crane operator certification due to a language barrier or weak literacy skills, and thus the FEA also describes possible impacts on current and future crane operators. Two testing organizations reported in the public hearings that they neither offer crane operator testing in languages other than English nor had any plans to do so. (ID–0341: –0343.) Testing in other languages would not merely require translating existing written and practical test materials, but developing and evaluating tests as if they were completely original. There was comment in the record that some current crane operators would not be able to read and therefore successfully pass a test in English. (ID–0100.1; –0243.1; –0387.) The Agency is not presenting any quantitative estimate of the impact of the final standard on individuals with language or literacy issues. The final standard has a new provision requiring that certification exams "must be administered in a language understood by the operator candidate" which may alleviate any burden imposed on non-English speaking crane operators.

TABLE B–8—UNIT COST ESTIMATES FOR THE CRANES AND DERRICKS PROPOSED STANDARD

Section	Requirement	Incremental time/cost	Employee type (wage)
Assembly/Disassembly Near Power Lines.	Assess power line hazards		Current practice.
	If w/in 20′, determine voltage	$200	25% of episodes = $50 on avg. per episode.
	Planning meeting	20 mins	Spotter ($18.35); operator or A/D director ($35.62); rigger ($21.12).
	Spotter	1 hour	Spotter/ee ($18.35).
Power Line Safety—Operations within 20 feet.	Demarcate work zone	30 mins/instance	Employee ($18.35).
	Planning Meeting	20 minutes	AD director or operator ($35.62); Rigger ($21.12) Employee ($18.35).
	Voltage information	$200	50% of time = $100 avg.
	A dedicated spotter is needed	2 hours per incident	Employee ($18.35), AD director/operator ($35.62).
	Spotter training	15 minutes (each)	Employee ($18.35).
Power Line Safety—Operations (Closer Than Table A).	Min. clearance determination; voltage information; planning meeting, review procedures, identification of implementer.	6 hours, including travel	Professional engineer (PE) ($72.22) or line owner/operator.
	Planning meeting, review procedures, identify implementer.	2 hours	Rigger ($21.12); spotter ($18.35); A/D director or crane operator ($35.62).
	Dedicated spotter	4 hours	Employee ($18.35).
	Barricades/work zone	15 minutes	Employee ($18.35).
	Equipment grounding	30 minutes	PE ($72.22).
	Insulating Link	$210 per use.	
	Written procedures	Developed during planning meeting.	
	Barricades	15 minutes	Employee ($18.36).
	Limit access	Discussed during instruction/training.	
	Non-conductive rigging	Current practice.	
	Line covers	$400–800	Current practice.
	Deactivate automatic Reclosure devices.	$320	Crane employer.

TABLE B–8—UNIT COST ESTIMATES FOR THE CRANES AND DERRICKS PROPOSED STANDARD—Continued

Section	Requirement	Incremental time/cost	Employee type (wage)
Crane Inspections	Monthly inspection	15 minutes per crane in addition to current time spent (includes 2 minutes per crane for recordkeeping).	Competent person ($22.88).
	Annual inspection	15 minutes per crane in addition to current time spent (includes 2 minutes per crane for recordkeeping).	Qualified person ($41.25).
	Repair inspections	15 minutes per crane (includes 2 minutes per crane for record-keeping).	Qualified person ($41.25).
	Written notification of inoperable operational aid or repair needed.	30% of cranes annually; 0.17 hrs;.	Crane Operator ($35.62).
	Notify affected employees each shift of a broken crane part or operational aid.	30% of cranes annually, notify on avg. for 20 days, 3 minutes each day.	Crane Operator ($35.62).
Operator Training for Certification/ Qualification.	Certify operators	Wages for operator's training time (16 hours) for a 2-day prep course with exams, plus 2 additional hours for travel time. Thus, the total operator's pre-course and exam time is 18 hours. Cost for a 2-day course estimated to be $1,500. Total cost $2,054. Annualized and adjusted for 5 percent turnover. Base line: 60% of construction operators certified; 0% of crane operators in affected gen. indus sectors.	

Source: Office of Regulatory Analysis; BLS 2010 Wages and Earnings.

TABLE B–9—ANNUALIZED COMPLIANCE COST BY SECTOR AND MAJOR PROVISION

NAIC	Industry	Number of affected firms	Number of affected estabs	Ground conds	Crane assembly/disassembly	Power line safety	Crane inspections	Operator qualification certification	Total annualized cost
Crane Rental with Operators									
238990	All Other Specialty Trade Cont.	1,244	1,304				$823,510	$1,689,387	$2,512,898
Crane Rental without Operators (Bare Rentals)									
532412	Const./Min./For. Machine & Equip.	2,137	3,702				6,644,845	3,407,886	10,052,732
Own and Rent Cranes with Operators									
236115	New Single-Family Housing Const.	178	178	0	6,321	26,332	13,337	26,331	72,322
236118	Residential Remodelers	25	25	0	1,786	7,442	3,798	7,441	20,467
236210	Industrial Building Construction.	9	12	0	23,633	98,449	50,242	98,441	270,766
236220	Commercial and Institutional Building.	23	31	0	20,783	86,575	44,183	86,568	238,109
237110	Water and Sewer Line and Related Struct.	52	69	0	45,692	190,340	97,138	190,326	523,496
237120	Oil and Gas Pipeline and Related Struct.	20	26	0	23,103	96,241	49,116	96,233	264,693
237130	Power and Communication Line and Rel.	34	34	0	15,788	65,769	33,565	65,765	180,887
237310	Highway, Street, and Bridge Construction.	80	107	0	0	0	432,238	846,896	1,279,134
237990	Other Heavy and Civil Engineering Const.	76	101	0	166,149	692,126	353,220	692,074	1,903,569
238110	Poured Concrete Foundation and Struct.	261	261	0	95,662	398,499	203,371	398,470	1,096,002
238120	Structural Steel and Precast Concrete.	200	266	0	147,527	614,552	313,631	614,507	1,690,217
238130	Framing Contractors	26	26	0	643	2,680	1,368	2,680	7,372
238150	Glass and Glazing Contractors.	42	42	0	4,174	17,387	8,873	17,386	47,819
238170	Siding Contractors	5	5	0	400	1,667	851	1,666	4,584
238190	Other Foundation, Structure, and Building.	49	65	0	15,817	65,888	33,625	65,883	181,212

TABLE B–9—ANNUALIZED COMPLIANCE COST BY SECTOR AND MAJOR PROVISION—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs	Ground conds	Crane assembly/disassembly	Power line safety	Crane inspections	Operator qualification certification	Total annualized cost
238210	Electrical Contractors	15	15	0	0	0	6,700	13,128	19,828
238220	Plumbing, Heating, and Air-Conditioning.	2	3	0	2,823	11,760	6,001	11,759	32,343
238290	Other Building Equipment Contractors.	113	151	0	84,587	352,364	179,826	352,338	969,116
238320	Painting and Wall Covering Contract.	21	21	0	3,103	12,926	6,597	12,925	35,552
238910	Site Preparation Contractors	400	400	0	107,618	448,301	228,787	448,268	1,232,974
	Subtotal	1,630	1,838	0	765,611	3,189,297	2,066,467	4,049,086	10,070,461
	Own but Do Not Rent								
236115	New Single family housing construction.	3,097	3,097	0	242,637	832,026	424,617	831,965	2,331,245
236116	New Multifamily housing construction.	217	217	0	17,027	58,388	29,798	58,384	163,597
236117	New housing operative builders.	1,699	1,699	0	133,123	456,493	232,967	456,459	1,279,042
236118	Residential Remodelers	985	985	0	77,148	264,548	135,010	264,528	741,233
236210	Industrial building construction.	276	325	0	25,482	87,381	44,594	87,374	244,832
236220	Commercial and Institutional Bldg. Const.	4,141	4,141	0	324,459	1,112,602	567,806	1,112,520	3,117,387
237110	Water and Sewer Line Const.	1,028	1,371	0	107,390	368,252	187,934	231,198	894,775
237120	Oil and gas pipeline construction.	128	171	0	13,384	45,894	23,421	9,178	91,877
237130	Power and communication line const.	213	285	0	0	0	39,013	76,439	115,452
237210	Land subdivision	0	0	0	0	0	0	0	0
237310	Highway, street and bridge const.	88	118	0	9,209	31,580	16,117	31,578	88,484
237990	Other heavy and civil eng	273	273	0	21,392	73,355	37,436	73,349	205,532
238110	Poured Concrete foundation and struct.	267	267	0	20,914	71,716	36,599	71,710	200,940
238120	Structural steel and precast concrete.	334	334	0	26,187	89,799	45,828	89,793	251,607
238130	Framing Contractors	1,395	1,395	0	109,345	374,956	191,355	374,928	1,050,585
238140	Masonry Contractors	137	137	0	10,747	36,852	18,807	36,849	103,255
238150	Glass & Glazing Contractors	54	54	0	4,253	14,582	7,442	14,581	40,858
238160	Roofing Contractors	197	197	0	15,405	52,826	26,959	52,822	148,013
238170	Siding Contractors	53	53	0	4,129	14,158	7,225	14,157	39,668
238190	Other foundation, structure, building, ext.	25	25	0	1,997	6,849	3,495	6,849	19,191
238210	Electrical Contractors	78	78	0	0	0	10,633	20,834	31,468
238220	Plumbing, Heating and Air-conditioning Cont.	98	98	0	7,690	26,371	13,458	26,369	73,889
238290	Other building equipment cont.	49	65	0	5,103	17,498	8,930	17,496	49,027
238310	Drywall and insulation contractors.	0	0	0	0	0	0	0	0
238320	Painting and wall covering contractors.	41	41	0	3,248	11,139	5,685	11,138	31,211
238330	Flooring Contractors	0	0	0	0	0	0	0	0
238340	Tile and Terrazzo contractors.	0	0	0	0	0	0	0	0
238350	Finish Carpentry contractors	0	0	0	0	0	0	0	0
238390	Other building finishing contractors.	0	0	0	0	0	0	0	0
238910	Site Preparation	389	389	0	30,454	104,430	53,295	104,422	292,601
221110	Electric Power Generation	524	2,101	0	0	2,304,000	363,390	4,063,374	6,730,763
221120	Electric Power Transmission, Control, Dist.	1,232	7,393	0	0	9,216,000	777,517	8,694,086	18,687,603
221210	Natural Gas Distribution	526	2,458	0	192,605	660,462	337,061	1,256,324	2,446,452
321213	Engineered Wood Member (exc Truss) Mfg.	132	162	0	12,694	43,529	22,215	82,801	161,239
321214	Truss Manufacturing	902	1,085	0	85,019	291,538	148,784	554,561	1,079,902
336611	Ship Building and Repairing	575	635	0	21,549	73,892	37,710	281,114	414,265
339950	Sign Manufacturing	6,291	6,415	0	186,336	638,966	326,091	1,215,434	2,366,828
423310	Lumbr, Plywd, Millwork, Wd Pnl Mrchnt Whle.	6,450	8,715	0	0	0	0	0	0
423330	Roofing, Siding, and Insul Material Merch Whle.	1,142	2,762	0	0	0	0	0	0
423390	Other Construction Material Merchant Whle.	2,363	3,155	0	0	0	0	0	0
423730	Warm Air Heating and Air-Cond. Equip. & Suppl.	2,533	5,193	0	813,831	2,790,707	1,424,213	5,308,453	10,337,204
444110	Home Centers	2,553	6,749	0	0	0	0	0	0

TABLE B–9—ANNUALIZED COMPLIANCE COST BY SECTOR AND MAJOR PROVISION—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs	Ground conds	Crane assembly/disassembly	Power line safety	Crane inspections	Operator qualification certification	Total annualized cost
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	2,307	5,567	0	436,222	1,495,847	763,392	2,845,384	5,540,845
482110	Railroads	NA	NA	NA	NA	NA	NA	NA	0
486210	Pipeline Transportation of Natural Gas.	127	1,363	0	106,803	366,237	186,906	696,651	1,356,596
517110	Wired Telecommunications Carriers.	2,517	27,159	0	0	0	411,384	1,533,349	1,944,733
	Subtotal	45,436	96,725	0	3,065,783	22,032,873	6,967,089	30,606,452	62,672,198
Crane Lessees in the Construction Industry									
236115	New Single family housing construction.	31,054	31,054	1,276,695	2,433,344	8,344,177		2,085,890	14,140,107
236116	New Multifamily housing construction.	2,173	2,173	0	170,273	583,883		145,960	900,116
236117	New housing operative builders.	16,989	16,989	681,229	1,331,232	4,564,926		1,141,147	7,718,535
236118	Residential Remodelers	9,848	9,848	404,986	771,674	2,646,147		661,488	4,484,296
236210	Industrial building construction.	3,264	3,264	0	255,762	877,033		219,242	1,352,038
236220	Commercial and Institutional Bldg. Construction.	41,438	41,438	0	3,247,019	11,134,347		2,783,381	17,164,747
237110	Water and Sewer Line Const.	13,774	13,774	0	1,079,310	3,701,059		925,197	5,705,566
237120	Oil and gas pipeline construction.	1,301	1,734	0	135,874	465,924		116,472	718,270
237130	Power and communication line const.	2,147	2,862	0	0	0		192,240	192,240
237210	Land subdivision	0	0	0	0	0		0	0
237310	Highway, street and bridge const.	890	1,186	0	92,933	318,677		79,663	491,273
237990	Other heavy and civil eng	2,781	2,781	0	217,876	747,117		186,766	1,151,759
238110	Poured Concrete foundation and struct.	1,348	1,348	0	105,592	362,085		90,515	558,192
238120	Structural steel and precast concrete.	3,608	3,608	0	282,717	969,466		242,349	1,494,532
238130	Framing Contractors	13,974	13,974	0	1,094,981	3,754,799		938,630	5,788,411
238140	Masonry Contractors	1,372	1,372	0	107,469	368,521		92,123	568,113
238150	Glass & Glazing Contractors	547	547	0	42,854	146,951		36,735	226,541
238160	Roofing Contractors	1,966	1,966	0	154,053	528,262		132,056	814,371
238170	Siding Contractors	527	527	0	41,307	141,645		35,409	218,360
238190	Other foundation, structure, building, ext.	258	258	0	20,228	69,365		17,340	106,933
238210	Electrical Contractors	776	776	0	0	0		52,096	52,096
238220	Plumbing, Heating and Air-conditioning Cont.	981	981	0	76,906	263,720		65,925	406,552
238290	Other building equipment cont.	4,997	6,663	0	522,103	1,790,341		447,552	2,759,996
238310	Drywall and insulation contractors.	0	0	0	0	0		0	0
238320	Painting and wall covering contractors.	415	415	0	32,501	111,448		27,860	171,809
238330	Flooring Contractors	0	0	0	0	0		0	0
238340	Tile and Terrazzo contractors.	0	0	0	0	0		0	0
238350	Finish Carpentry contractors	0	0	0	0	0		0	0
238390	Other building finishing contractors.	0	0	0	0	0		0	0
238910	Site Preparation	3,927	3,927	0	307,675	1,055,046		263,742	1,626,463
	Subtotal	160,352	163,463	2,362,911	12,523,682	42,944,942		10,979,778	68,811,312
	Total	210,800	267,032	2,362,911	16,355,077	68,167,112	16,501,911	50,732,589	154,119,600

Source: ORA.

TABLE B–10—ANNUALIZED COMPLIANCE COSTS PER ESTABLISHMENTS BY SECTOR

NAIC	Industry	Number of affected firms	Number of affected estabs.	Annualized compliance cost	Cost per estab.
Crane Rental With Operators					
238990	All Other Specialty Trade Cont	1,244	1,304	$2,512,898	$1,927

TABLE B–10—ANNUALIZED COMPLIANCE COSTS PER ESTABLISHMENTS BY SECTOR—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs.	Annualized compliance cost	Cost per estab.
	Crane Rental Without Operators (Bare Rentals)				
532412	Const./Min./For. Machine & Equip	2,137	3,702	10,052,732	2,934
	Own and Rent Cranes With Operators				
236115	New Single-Family Housing Const	178	178	72,322	406
236118	Residential Remodelers	25	25	20,467	819
236210	Industrial Building Construction	9	12	270,766	22,564
236220	Commercial and Institutional Building	23	31	238,109	7,681
237110	Water and Sewer Line and Related Struct	52	69	523,496	7,587
237120	Oil and Gas Pipeline and Related Struct	20	26	264,693	10,180
237130	Power and Communication Line and Rel	34	34	180,887	5,320
237310	Highway, Street, and Bridge Construction	80	107	1,279,134	11,955
237990	Other Heavy and Civil Engineering Const	76	101	1,903,569	18,847
238110	Poured Concrete Foundation and Struct	261	261	1,096,002	4,199
238120	Structural Steel and Precast Concrete	200	266	1,690,217	6,354
238130	Framing Contractors	26	26	7,372	284
238150	Glass and Glazing Contractors	42	42	47,819	1,139
238170	Siding Contractors	5	5	4,584	917
238190	Other Foundation, Structure, and Building	49	65	181,212	2,788
238210	Electrical Contractors	15	15	19,828	1,322
238220	Plumbing, Heating, and Air-Conditioning	2	3	32,343	10,781
238290	Other Building Equipment Contractors	113	151	969,116	6,418
238320	Painting and Wall Covering Contract	21	21	35,552	1,693
238910	Site Preparation Contractors	400	400	1,232,974	3,082
	Subtotal	1,630	1,838	10,070,461	.....
	Own but Do Not Rent				
236115	New Single family housing construction	3,097	3,097	2,331,245	753
236116	New Multifamily housing construction	217	217	163,597	753
236117	New housing operative builders	1,699	1,699	1,279,042	753
236118	Residential Remodelers	985	985	741,233	753
236210	Industrial building construction	276	325	244,832	753
236220	Commercial and Institutional Bldg. Const	4,141	4,141	3,117,387	753
237110	Water and Sewer Line Const	1,028	1,371	894,775	653
237120	Oil and gas pipeline construction	128	171	91,877	538
237130	Power and communication line const	213	285	115,452	406
237210	Land subdivision	0	0	0	0
237310	Highway, street and bridge const	88	118	88,484	753
237990	Other heavy and civil eng	273	273	205,532	753
238110	Poured Concrete foundation and struct	267	267	200,940	753
238120	Structural steel and precast concrete	334	334	251,607	753
238130	Framing Contractors	1,395	1,395	1,050,585	753
238140	Masonry Contractors	137	137	103,255	753
238150	Glass & Glazing Contractors	54	54	40,858	753
238160	Roofing Contractors	197	197	148,013	753
238170	Siding Contractors	53	53	39,668	753
238190	Other foundation, structure, building, ext	25	25	19,191	753
238210	Electrical Contractors	78	78	31,468	406
238220	Plumbing, Heating and Air-conditioning Cont	98	98	73,889	753
238290	Other building equipment cont	49	65	49,027	753
238310	Drywall and insulation contractors	0	0	0	0
238320	Painting and wall covering contractors	41	41	31,211	753
238330	Flooring Contractors	0	0	0	0
238340	Tile and Terrazzo contractors	0	0	0	0
238350	Finish Carpentry contractors	0	0	0	0
238390	Other building finishing contractors	0	0	0	0
238910	Site Preparation	389	389	292,601	753
221110	Electric Power Generation	524	2,101	6,730,763	3,204
221120	Electric Power Transmission, Control, Dist	1,232	7,393	18,687,603	2,528
221210	Natural Gas Distribution	526	2,458	2,446,452	995
321213	Engineered Wood Member (exc Truss) Mfg	132	162	161,239	995
321214	Truss Manufacturing	902	1,085	1,079,902	995
336611	Ship Building and Repairing	575	635	414,265	652
339950	Sign Manufacturing	6,291	6,415	2,366,828	369
423310	Lumbr, Plywd, Millwork, Wd Pnl Mrchnt Whle	6,450	8,715	0	0
423330	Roofing, Siding, and Insul Material Merch Whle	1,142	2,762	0	0
423390	Other Construction Material Merchant Whle	2,363	3,155	0	0

TABLE B–10—ANNUALIZED COMPLIANCE COSTS PER ESTABLISHMENTS BY SECTOR—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs.	Annualized compliance cost	Cost per estab.
423730	Warm Air Heating and Air-Cond. Equip. & Suppl	2,533	5,193	10,337,204	1,991
444110	Home Centers	2,553	6,749	0	0
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	2,307	5,567	5,540,845	995
482110	Railroads	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas	127	1,363	1,356,596	995
517110	Wired Telecommunications Carriers	2,517	27,159	1,944,733	72
	Subtotal	45,436	96,725	62,672,198	.....
	Crane Lessees in the Construction Industry				
236115	New Single family housing construction	31,054	31,054	14,140,107	455
236116	New Multifamily housing construction	2,173	2,173	900,116	414
236117	New housing operative builders	16,989	16,989	7,718,535	454
236118	Residential Remodelers	9,848	9,848	4,484,296	455
236210	Industrial building construction	3,264	3,264	1,352,038	414
236220	Commercial and Institutional Bldg. Construction	41,438	41,438	17,164,747	414
237110	Water and Sewer Line Const	13,774	13,774	5,705,566	414
237120	Oil and gas pipeline construction	1,301	1,734	718,270	552
237130	Power and communication line const	2,147	2,862	192,240	90
237210	Land subdivision	0	0	0	NA
237310	Highway, street and bridge const	890	1,186	491,273	552
237990	Other heavy and civil eng	2,781	2,781	1,151,759	414
238110	Poured Concrete foundation and struct	1,348	1,348	558,192	414
238120	Structural steel and precast concrete	3,608	3,608	1,494,532	414
238130	Framing Contractors	13,974	13,974	5,788,411	414
238140	Masonry Contractors	1,372	1,372	568,113	414
238150	Glass & Glazing Contractors	547	547	226,541	414
238160	Roofing Contractors	1,966	1,966	814,371	414
238170	Siding Contractors	527	527	218,360	414
238190	Other foundation, structure, building, ext	258	258	106,933	414
238210	Electrical Contractors	776	776	52,096	67
238220	Plumbing, Heating and Air-conditioning Cont	981	981	406,552	414
238290	Other building equipment cont	4,997	6,663	2,759,996	552
238310	Drywall and insulation contractors	0	0	0	NA
238320	Painting and wall covering contractors	415	415	171,809	414
238330	Flooring Contractors	0	0	0	NA
238340	Tile and Terrazzo contractors	0	0	0	NA
238350	Finish Carpentry contractors	0	0	0	NA
238390	Other building finishing contractors	0	0	0	NA
238910	Site Preparation	3,927	3,927	1,626,463	414
	Subtotal	160,352	163,463	68,811,312	.....
	Total	210,800	267,032	154,119,600	.....

Source: ORA.

TABLE B–11—ESTIMATES OF CRANES, CRANE JOBS, AND AFFECTED CRANE OPERATORS FOR ALL ESTABLISHMENTS

NAIC	Industry	Number of affected firms	Number of affected estabs.	Total cranes	Crane jobs	Affected operators
	Crane Rental With Operators					
238990	All Other Specialty Trade Cont	1,244	1,304	6,288	.....	6,288
	Crane Rental Without Operators (Bare Rentals)					
532412	Const./Min./For. Machine & Equip	2,137	3,702	50,735	.....	12,684
	Own and Rent Cranes With Operators					
236115	New Single-Family Housing Const	178	178	98	490	98
236118	Residential Remodelers	25	25	28	138	28
236210	Industrial Building Construction	9	12	366	1,832	366
236220	Commercial and Institutional Building	23	31	322	1,611	322
237110	Water and Sewer Line and Related Struct	52	69	708	3,542	708
237120	Oil and Gas Pipeline and Related Struct	20	26	358	1,791	358
237130	Power and Communication Line and Rel	34	34	245	1,224	245

TABLE B–11—ESTIMATES OF CRANES, CRANE JOBS, AND AFFECTED CRANE OPERATORS FOR ALL ESTABLISHMENTS—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs.	Total cranes	Crane jobs	Affected operators
237310	Highway, Street, and Bridge Construction	80	107	3,152	15,760	3,152
237990	Other Heavy and Civil Engineering Const	76	101	2,576	12,879	2,576
238110	Poured Concrete Foundation and Struct	261	261	1,483	7,415	1,483
238120	Structural Steel and Precast Concrete	200	266	2,287	11,436	2,287
238130	Framing Contractors	26	26	10	50	10
238150	Glass and Glazing Contractors	42	42	65	324	65
238170	Siding Contractors	5	5	6	31	6
238190	Other Foundation, Structure, and Building	49	65	245	1,226	245
238210	Electrical Contractors	15	15	49	244	49
238220	Plumbing, Heating, and Air-Conditioning	2	3	44	219	44
238290	Other Building Equipment Contractors	113	151	1,311	6,557	1,311
238320	Painting and Wall Covering Contract	21	21	48	241	48
238910	Site Preparation Contractors	400	400	1,668	8,342	1,668
	Subtotal	1,630	1,838	15,070	75,352	15,070
	Own But Do Not Rent					
236115	New Single family housing construction	3,097	3,097	3,097	15,483	3,097
236116	New Multifamily housing construction	217	217	217	1,087	217
236117	New housing operative builders	1,699	1,699	1,699	8,495	1,699
236118	Residential Remodelers	985	985	985	4,923	985
236210	Industrial building construction	276	325	325	1,626	325
236220	Commercial and Institutional Bldg. Const	4,141	4,141	4,141	20,704	4,141
237110	Water and Sewer Line Const	1,028	1,371	1,371	6,853	1,371
237120	Oil and gas pipeline construction	128	171	171	854	171
237130	Power and communication line const	213	285	285	1,423	285
237210	Land subdivision	0	0	0	0	0
237310	Highway, street and bridge const	88	118	118	588	118
237990	Other heavy and civil eng	273	273	273	1,365	273
238110	Poured Concrete foundation and struct	267	267	267	1,335	267
238120	Structural steel and precast concrete	334	334	334	1,671	334
238130	Framing Contractors	1,395	1,395	1,395	6,977	1,395
238140	Masonry Contractors	137	137	137	686	137
238150	Glass & Glazing Contractors	54	54	54	271	54
238160	Roofing Contractors	197	197	197	983	197
238170	Siding Contractors	53	53	53	263	53
238190	Other foundation, structure, building, ext	25	25	25	127	25
238210	Electrical Contractors	78	78	78	388	78
238220	Plumbing, Heating and Air-Conditioning Cont	98	98	98	491	98
238290	Other building equipment cont	49	65	65	326	65
238310	Drywall and insulation contractors	0	0	0	0	0
238320	Painting and wall covering contractors	41	41	41	207	41
238330	Flooring Contractors	0	0	0	0	0
238340	Tile and Terrazzo contractors	0	0	0	0	0
238350	Finish Carpentry contractors	0	0	0	0	0
238390	Other building finishing contractors	0	0	0	0	0
238910	Site Preparation	389	389	389	1,943	389
221110	Electric Power Generation	524	2,101	2,650	13,250	7,950
221120	Electric Power Transmission, Control, and Distribution	1,232	7,393	5,670	28,350	17,010
221210	Natural Gas Distribution	526	2,458	2,458	12,290	2,458
321213	Engineered Wood Member (except Truss) Manufacturing.	132	162	162	810	162
321214	Truss Manufacturing	902	1,085	1,085	5,425	1,085
336611	Ship Building and Repairing	575	635	275	1,375	550
339950	Sign Manufacturing	6,291	6,415	2,378	11,890	2,378
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers+B42.	6,450	8,715	0	0	0
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	1,142	2,762	0	0	0
423390	Other Construction Material Merchant Wholesalers	2,363	3,155	0	0	0
423730	Warm Air Heating and Air-Cond. Equip. and Supplies	2,533	5,193	10,386	51,930	10,386
444110	Home Centers	2,553	6,749	0	0	0
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	2,307	5,567	5,567	27,835	5,567
482110	Railroads	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas	127	1,363	1,363	6,815	1,363
517110	Wired Telecommunications Carriers	2,517	27,159	3,000	15,000	3,000
	Subtotal	45,436	96,725	50,807	254,036	67,722

TABLE B–11—ESTIMATES OF CRANES, CRANE JOBS, AND AFFECTED CRANE OPERATORS FOR ALL ESTABLISHMENTS—Continued

NAIC	Industry	Number of affected firms	Number of affected estabs.	Total cranes	Crane jobs	Affected operators
	Crane Lessees in the Construction Industry					
236115	New Single family housing construction	31,054	31,054		155,270	7,764
236116	New Multifamily housing construction	2,173	2,173		10,865	543
236117	New housing operative builders	16,989	16,989		84,945	4,247
236118	Residential Remodelers	9,848	9,848		49,240	2,462
236210	Industrial building construction	3,264	3,264		16,320	816
236220	Commercial and Institutional Bldg. Construction	41,438	41,438		207,190	10,360
237110	Water and Sewer Line Const	13,774	13,774		68,870	3,444
237120	Oil and gas pipeline construction	1,301	1,734		8,670	434
237130	Power and communication line const	2,147	2,862		14,310	716
237210	Land subdivision	0	0		0	0
237310	Highway, street and bridge const	890	1,186		5,930	297
237990	Other heavy and civil eng	2,781	2,781		13,903	695
238110	Poured Concrete foundation and struct	1,348	1,348		6,738	337
238120	Structural steel and precast concrete	3,608	3,608		18,040	902
238130	Framing Contractors	13,974	13,974		69,870	3,494
238140	Masonry Contractors	1,372	1,372		6,858	343
238150	Glass & Glazing Contractors	547	547		2,735	137
238160	Roofing Contractors	1,966	1,966		9,830	492
238170	Siding Contractors	527	527		2,636	132
238190	Other foundation, structure, building, ext	258	258		1,291	65
238210	Electrical Contractors	776	776		3,878	194
238220	Plumbing, Heating and Air-Conditioning Cont	981	981		4,907	245
238290	Other building equipment cont	4,997	6,663		33,315	1,666
238310	Drywall and insulation contractors	0	0		0	0
238320	Painting and wall covering contractors	415	415		2,074	104
238330	Flooring Contractors	0	0		0	0
238340	Tile and Terrazzo contractors	0	0		0	0
238350	Finish Carpentry contractors	0	0		0	0
238390	Other building finishing contractors	0	0		0	0
238910	Site Preparation	3,927	3,927		19,633	982
	Subtotal	160,352	163,463	.....	817,315	40,866
	Total	210,800	267,032	122,901	1,146,703	142,630

Source: ORA.
U.S. Census Bureau data.

7. Economic Feasibility and Impacts

This section presents OSHA's analysis of the potential economic impacts of the final standard and an assessment of its economic feasibility. A separate analysis of the potential economic impacts on small entities (as defined by the Small Business Administration) and on very small entities (employers with fewer than 20 employees) is presented in the following section as part of the Final Regulatory Flexibility Analysis, conducted in accordance with the Regulatory Flexibility Act.

A standard is economically feasible if it does not threaten massive dislocation to an industry or imperil its existence. (*See United Steelworkers* v. *Marshall,* 647 F.2d 1189 (DC Cit. 1980).) The court also found that a standard that is financially burdensome or threatens the survival of some companies in an industry is not sufficient to render it infeasible. Further, the cost of compliance with an OSHA standard must be analyzed "in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices." *Id.* The court also found that "the practical question is whether the standard threatens the competitive stability of an industry, or whether any intra-industry or inter-industry discrimination in the standard might wreck such stability or lead to undue concentration." *Id.*

To assess the potential economic impacts of the final rule, OSHA compared the anticipated costs of achieving compliance against revenues and profits of establishments affected by the rule. This screening analysis is presented in Table B–12. This table is considered a screening analysis because it measures costs as a percent of pre-tax profits and revenues, but does not predict impacts on pre-tax profits and sales. This screening analysis is used to determine whether the compliance costs potentially associated with the standard would lead to significant impacts on establishments in the affected industries. The actual impact of the standard on the profits and revenues of establishments in a given industry will depend on the price elasticity of demand for the services sold by establishments in that industry.

Price elasticity refers to the relationship between the price charged for a service and the demand for that service; the more elastic the relationship, the less able an establishment is to pass the costs of compliance through to its customers in the form of a price increase, and the more it will have to absorb the costs of compliance in the form of reduced profits. In general, "when an industry is subject to a higher cost, it does not simply swallow it, it raises its price and reduces its output, and in this way shifts a part of the cost to its consumers and a part to its suppliers." *American*

Dental Association v. *Secretary of Labor,* 984 F.2d 823, 829 (7th Cir. 1993).

TABLE B–12—ESTIMATES OF ECONOMIC IMPACTS FOR AFFECTED ESTABLISHMENTS ACROSS INDUSTRY SECTORS

NAIC	Industry	Affected		Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
		Firms	Estabs.					
Crane Rental With Operators								
238990	All Other Specialty Trade Cont.	1,244	1,304	1,918	79	1,927	0.10	2.45
Crane Rental Without Operators (Bare Rentals)								
532412	Const./Min./For. Machine & Equip.	2,137	3,702	2,258	145	2,934	0.13	2.02
Own and Rent Cranes With Operators								
236115	New Single-Family Housing Const.	178	178	220	10	406	0.18	3.95
236118	Residential Remodelers	25	25	443	21	819	0.18	3.95
236210	Industrial Building Construction.	9	12	12,213	571	22,564	0.18	3.95
236220	Commercial and Institutional Building.	23	31	4,157	194	7,681	0.18	3.95
237110	Water and Sewer Line and Related Struct.	52	69	4,107	214	7,587	0.18	3.54
237120	Oil and Gas Pipeline and Related Struct.	20	26	5,510	288	10,180	0.18	3.54
237130	Power and Communication Line and Rel.	34	34	2,880	150	5,320	0.18	3.54
237310	Highway, Street, and Bridge Construction.	80	107	11,783	615	11,955	0.10	1.94
237990	Other Heavy and Civil Engineering Const.	76	101	10,201	533	18,847	0.18	3.54
238110	Poured Concrete Foundation and Struct.	261	261	2,273	101	4,199	0.18	4.18
238120	Structural Steel and Precast Concrete.	200	266	3,439	152	6,354	0.18	4.18
238130	Framing Contractors	26	26	153	7	284	0.18	4.18
238150	Glass and Glazing Contractors.	42	42	616	27	1,139	0.18	4.18
238170	Siding Contractors	5	5	496	22	917	0.18	4.18
238190	Other Foundation, Structure, and Building.	49	65	1,509	67	2,788	0.18	4.18
238210	Electrical Contractors ..	15	15	1,303	56	1,322	0.10	2.35
238220	Plumbing, Heating, and Air-Conditioning.	2	3	5,835	225	10,781	0.18	4.79
238290	Other Building Equipment Contractors.	113	151	3,474	154	6,418	0.18	4.18
238320	Painting and Wall Covering Contract.	21	21	916	41	1,693	0.18	4.18
238910	Site Preparation Contractors.	400	400	1,668	76	3,082	0.18	4.05
	Subtotal	1,630	1,838	.....	.....	.....	.....	.....
Own but Do Not Rent								
236115	New Single family housing construction.	3,097	3,097	1,520	71	753	0.05	1.06
236116	New Multifamily housing construction.	217	217	5,477	256	753	0.01	0.29
236117	New housing operative builders.	1,699	1,699	6,021	281	753	0.01	0.27
236118	Residential Remodelers	985	985	646	30	753	0.12	2.49
236210	Industrial building construction.	276	325	5,931	277	753	0.01	0.27
236220	Commercial and Institutional Bldg. Const.	4,141	4,141	7,177	335	753	0.01	0.22
237110	Water and Sewer Line Const.	1,028	1,371	3,239	169	653	0.02	0.39

TABLE B–12—ESTIMATES OF ECONOMIC IMPACTS FOR AFFECTED ESTABLISHMENTS ACROSS INDUSTRY SECTORS—Continued

NAIC	Industry	Affected		Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
		Firms	Estabs.					
237120	Oil and gas pipeline construction.	128	171	9,189	480	538	0.01	0.11
237130	Power and communication line const.	213	285	5,581	291	406	0.01	0.14
237210	Land subdivision	0	0	2,878	318	0	0.00	0.00
237310	Highway, street and bridge const.	88	118	8,279	432	753	0.01	0.17
237990	Other heavy and civil eng.	273	273	3,965	207	753	0.02	0.36
238110	Poured Concrete foundation and struct.	267	267	1,682	74	753	0.04	1.01
238120	Structural steel and precast concrete.	334	334	2,712	120	753	0.03	0.63
238130	Framing Contractors	1,395	1,395	936	41	753	0.08	1.82
238140	Masonry Contractors ...	137	137	876	39	753	0.09	1.94
238150	Glass & Glazing Contractors.	54	54	1,470	65	753	0.05	1.16
238160	Roofing Contractors	197	197	1,390	61	753	0.05	1.22
238170	Siding Contractors	53	53	580	26	753	0.13	2.94
238190	Other foundation, structure, building, ext.	25	25	1,013	45	753	0.07	1.68
238210	Electrical Contractors ..	78	78	1,321	57	406	0.03	0.71
238220	Plumbing, Heating and Air-conditioning Cont.	98	98	1,473	57	753	0.05	1.32
238290	Other building equipment cont.	49	65	2,959	131	753	0.03	0.58
238310	Drywall and insulation contractors.	0	0	1,751	77	0	0.00	0.00
238320	Painting and wall covering contractors.	41	41	530	23	753	0.14	3.21
238330	Flooring Contractors	0	0	811	36	0	0.00	0.00
238340	Tile and Terrazzo contractors.	0	0	698	31	0	0.00	0.00
238350	Finish Carpentry contractors.	0	0	678	30	0	0.00	0.00
238390	Other building finishing contractors.	0	0	1,091	48	0	0.00	0.00
238910	Site Preparation	389	389	1,416	65	753	0.05	1.16
221110	Electric Power Generation.	524	2,101	43,042	1,911	3,204	0.01	0.17
221120	Electric Power Transmission, Control, Dist.	1,232	7,393	37,443	1,662	2,528	0.01	0.15
221210	Natural Gas Distribution.	526	2,458	30,459	907	995	0.00	0.11
321213	Engineered Wood Member (exc Truss) Mfg.	132	162	19,027	737	995	0.01	0.14
321214	Truss Manufacturing	902	1,085	5,972	231	995	0.02	0.43
336611	Ship Building and Repairing.	575	635	23,071	1,406	652	0.00	0.05
339950	Sign Manufacturing	6,291	6,415	1,761	103	369	0.02	0.36
423310	Lumbr, Plywd, Millwork, Wd Pnl Mrchnt Whle.	6,450	8,715	14,905	430	0	0.00	0.00
423330	Roofing, Siding, and Insul Material Merch Whle.	1,142	2,762	8,985	259	0	0.00	0.00
423390	Other Construction Material Merchant Whle.	2,363	3,155	4,859	140	0	0.00	0.00
423730	Warm Air Heating and Air-Cond. Equip. & Suppl.	2,533	5,193	5,413	167	1,991	0.04	1.19
444110	Home Centers	2,553	6,749	21,816	1,679	0	0.00	0.00
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	2,307	5,567	1,698	72	995	0.06	1.39
482110	Railroads	NA	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas.	127	1,363	15,037	1,990	995	0.01	0.05

TABLE B–12—ESTIMATES OF ECONOMIC IMPACTS FOR AFFECTED ESTABLISHMENTS ACROSS INDUSTRY SECTORS—Continued

NAIC	Industry	Affected		Avg. revenues per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
		Firms	Estabs.					
517110	Wired Telecommunications Carriers.	2,517	27,159	7,294	518	72	0.00	0.01
	Subtotal	45,436	96,725	.....	.....	.....	.....	.....
Crane Lessees in the Construction Industry								
236115	New Single family housing construction.	31,054	31,054	3,040	142	455	0.01	0.32
236116	New Multifamily housing construction.	2,173	2,173	10,954	512	414	0.00	0.08
236117	New housing operative builders.	16,989	16,989	12,041	563	454	0.00	0.08
236118	Residential Remodelers	9,848	9,848	6,456	302	455	0.01	0.15
236210	Industrial building construction.	3,264	3,264	5,931	277	414	0.01	0.15
236220	Commercial and Institutional Bldg. Construction.	41,438	41,438	7,177	335	414	0.01	0.12
237110	Water and Sewer Line Const.	13,774	13,774	3,239	169	414	0.01	0.24
237120	Oil and gas pipeline construction.	1,301	1,734	9,189	480	552	0.01	0.12
237130	Power and communication line const.	2,147	2,862	11,163	583	90	0.00	0.02
237210	Land subdivision	0	0	0	0	NA	0.00	0.00
237310	Highway, street and bridge const.	890	1,186	82,791	4,323	552	0.00	0.01
237990	Other heavy and civil eng.	2,781	2,781	7,931	414	414	0.01	0.10
238110	Poured Concrete foundation and struct.	1,348	1,348	33,636	1,487	414	0.00	0.03
238120	Structural steel and precast concrete.	3,608	3,608	2,712	120	414	0.02	0.35
238130	Framing Contractors	13,974	13,974	1,249	55	414	0.03	0.75
238140	Masonry Contractors ...	1,372	1,372	17,527	775	414	0.00	0.05
238150	Glass & Glazing Contractors.	547	547	14,698	650	414	0.00	0.06
238160	Roofing Contractors	1,966	1,966	13,903	615	414	0.00	0.07
238170	Siding Contractors	527	527	11,596	513	414	0.00	0.08
238190	Other foundation, structure, building, ext.	258	258	20,266	896	414	0.00	0.05
238210	Electrical Contractors ..	776	776	132,128	5,714	67	0.00	0.00
238220	Plumbing, Heating and Air-conditioning Cont.	981	981	147,307	5,685	414	0.00	0.01
238290	Other building equipment cont.	4,997	6,663	2,959	131	552	0.02	0.42
238310	Drywall and insulation contractors.	0	0	0	0	NA	0.00	0.00
238320	Painting and wall covering contractors.	415	415	52,995	2,343	414	0.00	0.02
238330	Flooring Contractors	0	0	0	0	NA	0.00	0.00
238340	Tile and Terrazzo contractors.	0	0	0	0	NA	0.00	0.00
238350	Finish Carpentry contractors.	0	0	0	0	NA	0.00	0.00
238390	Other building finishing contractors.	0	0	0	0	NA	0.00	0.00
238910	Site Preparation	3,927	3,927	14,164	647	414	0.003	0.06
	Subtotal	160,352	163,463	.....	.....	.....	0.05	1.17
	Total	210,800	267,032	.....	.....	.....	.....	.....

Source: U.S. Census Bureau data.
Country Business Patters, 2006; Statistics of U.S. Businesses 2006.
Internal Revenue Service, Source Book, profit rates over 2000–2006.

In the extreme, if demand is perfectly inelastic (*i.e.,* the price elasticity is 0), then the expected impact of compliance costs equal to 1 percent of revenues would be a 1 percent increase in the price of the product or service, with no decline in demand or profit. Such a situation would be most likely when there are few, if any, substitutes for the product or service offered by the affected sector or if the products or services of the affected sector account only for a small portion of the income of its consumers. On the other hand, if demand is perfectly elastic (*i.e.,* the price elasticity is infinitely large), then no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance (minus any cost savings resulting from compliance, such as improved worker health and reduced insurance costs). Under this scenario, if the costs of compliance represent a large percentage of the sector's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other goods and services that are, in the eye of the consumer, perfect substitutes for the goods and services the affected establishments produce or provide.

A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. The sector would be expected to remain in business and maintain a comparable profit rate as before implementation of the standard, but would produce 1 percent less of its services. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA* v. *Secretary of Labor,* is the more typical case.

Table B–12 presents estimates for the number of affected establishments, average establishment revenues and profits, and average establishment costs for each affected industry sector. Economic impacts in the table (the two right-most columns) are represented by two ratios: Of average establishment costs to revenues, and of costs to profits.

The average (unweighted) cost of the final standard per establishment is about $560 annually. As is evident from the data and estimates in Table B–12, average establishment costs of compliance for the final standard are not large in relation to the corresponding average establishment revenues and profits in each of the industry sectors. The estimated per establishment cost of compliance represents less than 0.2 percent (or 0.002) of average establishment revenues for all affected sectors. In most sectors it is lower. The average cost as a percentage of revenues across all sectors is 0.05 percent (0.0005).

The impact of the final standard measured by the ratio of costs to profits varies across the affected sectors. Among the sectors in the Crane Lessees sector, which includes about 163,000 of the 267,000 affected establishments; in this sector, employers, on average, are expected to have costs that represent about 1 percent of profits. Within the sector of employers Own but Do Not Rent, affected establishments in 14 of the 46 sectors have average costs as a percent of profits of 1 percent or higher (from 1 to 3 percent); this impact of costs as a percentage of profits is relatively low.

In the two sectors that are most intensively involved in crane use, Crane Rental with Operators (employers primarily in the crane rental business) and Crane Rental without Operators (bare rentals), estimated costs are about 2 percent of profits. In the Own and Rent Cranes with Operators sectors, costs as a percentage of profits are estimated at about 4 percent. Because these employers both own and use cranes, as well as rent them, the cost model estimates significantly higher average establishment costs for them—even in relation to the sectors involved primarily in crane rentals. In addition, as noted above for the Own but Do Not Rent sector, most employers in these sectors are quite small, with only a few employees, and a relatively small fraction of employers in the sectors that own cranes. Consequently, average establishment revenues and profits may be lower for the average establishment than for establishments that own cranes. If so, the cost as a percentage of profits overestimates that impact for affected establishments.

The Agency concludes that the final standard is economically feasible for the affected industries. As described above, a standard is economically feasible if there is a reasonable likelihood that the estimated costs of compliance "will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms." *United Steelworkers of America* v. *Marshall,* 647 F.2d 1189, 1272 (DC Cir. 1980). The potential impacts on employer costs associated with achieving compliance with the final standard fall well within the bounds of economic feasibility in each industry sector. Costs of 0.2 percent of revenues and 4 percent of profits will not threaten the existence of the construction industry, affected general industry sectors, or the use of cranes in affected industry sectors. OSHA does not expect compliance with the requirements of the final standard to threaten the viability of employers or the competitive structure of any of the affected industry sectors. When viewed in the larger context of the construction sector, an increase in costs of $148.2 million a year is effectively negligible, and will have no noticeable effect on the demand for construction services. Even when viewed as an increase in the costs of using cranes, an increase in the cost of rentals services of 0.2 percent will not cause the construction industry to forego the use of cranes and, thus, put crane leasing firms out of business.

For several reasons, the Agency believes that the impact of compliance costs will be less than estimates in Table B–12. For the affected construction sectors, the economic impact of the final standard is most likely to consist of a very small increase in prices for construction projects involving work with cranes (0.2 percent or less, depending on the sector). Crane rental companies, all of which must incur the costs of compliance unless they are already in compliance, should be able to pass through costs to lessees. The additional costs of crane safety measures are extremely small in relation to the value of construction, and there are no economic substitutes, or alternatives, to the use of cranes in construction. It is unlikely that a price increase of this magnitude would significantly alter the services demanded by the public or any other affected customers or intermediaries. If the compliance costs of the final standard are substantially recouped with an increase in rental prices, there would be little effect on profits. Impacts on all affected general industry sectors are slight, and far below any test of economic feasibility.

Given the small incremental increases in prices potentially resulting from compliance with the final standard, and the lack of readily available substitutes for the products and services provided by the covered construction and general industry sectors, demand is expected to be sufficiently inelastic in each affected industry to enable entities to substantially offset compliance costs through minor price increases without experiencing any significant reduction in revenues or profits.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996, requires the preparation of a Final Regulatory

Flexibility Analysis (FRFA) for specified proposed rules (5 U.S.C. 601–612). Under the provisions of the law, each such analysis must contain:

(1) A description of the impact of the rule on small entities;

(2) A succinct statement of the need for, and objectives of, the rule;

(3) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; and

(5) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

1. Impact of the Final Rule on Small Entities

OSHA has analyzed the potential impact of the final standard on small entities. The total annual cost of compliance with the final for small entities is estimated to be $101 million, as shown by industry in Table B–13. The costs per establishment in the table are identical in several sectors because the cost model assumed that, on average, the number of cranes, operators, and crane jobs were the same for each affected establishment. In the crane-rental sectors, the Agency had rental income data for each sector and estimated the number of cranes owned per establishment for each sector. Different sizes of firms with different numbers of cranes in the rental sectors resulted in per establishment (average) costs varying by industry NAICS.

TABLE B–13—ANNUALIZED COMPLIANCE COSTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORY

	Industry	Firms	Estabs.	Annualized compliance costs	Cost per estab.
	Crane Rental With Operators				
238990	All Other Specialty Trade Cont	1,231	1,286	$1,991,485	$1,618
	Crane Rental Without Operators (Bare Rentals)				
532412	Const./Min./For. Machine & Equip	1,782	3,018	309,609	103
	Own and Rent Cranes With Operators				
236115	New Single-Family Housing Const	178	178	72,322	406
236118	Residential Remodelers	25	25	20,467	819
236210	Industrial Building Construction	9	12	270,766	22,564
236220	Commercial and Institutional Building	23	31	238,109	7,681
237110	Water and Sewer Line and Related Struct	52	69	523,496	7,587
237120	Oil and Gas Pipeline and Related Struct	20	26	264,693	10,180
237130	Power and Communication Line and Rel	34	34	180,887	5,320
237310	Highway, Street, and Bridge Construction	80	107	1,279,134	11,955
237990	Other Heavy and Civil Engineering Const	76	101	1,903,569	18,847
238110	Poured Concrete Foundation and Struct	261	261	1,096,002	4,199
238120	Structural Steel and Precast Concrete	200	266	1,690,217	6,354
238130	Framing Contractors	26	26	7,372	284
238150	Glass and Glazing Contractors	42	42	47,819	1,139
238170	Siding Contractors	5	5	4,584	917
238190	Other Foundation, Structure, and Building	49	65	181,212	2,788
238210	Electrical Contractors	15	15	19,828	1,322
238220	Plumbing, Heating, and Air-Conditioning	2	3	32,343	10,781
238290	Other Building Equipment Contractors	113	151	969,116	6,418
238320	Painting and Wall Covering Contract	21	21	35,552	1,693
238910	Site Preparation Contractors	400	400	1,232,974	3,082
	Subtotal	1,630	1,838	10,070,461	.....
	Own but Do Not Rent				
236115	New Single family housing construction	2,905	2,905	2,151,333	741
236116	New Multifamily housing construction	213	213	157,700	741
236117	New housing operative builders	1,263	1,263	935,573	741
236118	Residential Remodelers	825	825	610,894	741
236210	Industrial building construction	223	262	194,098	741
236220	Commercial and Institutional Bldg. Const	3,614	3,614	2,676,568	741
237110	Water and Sewer Line Const	917	1,223	905,470	741
237120	Oil and gas pipeline construction	98	131	96,790	741
237130	Power and communication line const	219	291	114,664	393
237210	Land subdivision	0	0	0	0
237310	Highway, street and bridge const	69	93	68,575	741
237990	Other heavy and civil eng	511	511	378,643	741
238110	Poured Concrete foundation and struct	108	108	79,805	741
238120	Structural steel and precast concrete	394	394	291,554	741
238130	Framing Contractors	1,060	1,060	785,316	741

TABLE B–13—ANNUALIZED COMPLIANCE COSTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORY—Continued

	Industry	Firms	Estabs.	Annualized compliance costs	Cost per estab.
238140	Masonry Contractors	128	128	94,975	741
238150	Glass & Glazing Contractors	48	48	35,872	741
238160	Roofing Contractors	230	230	170,275	741
238170	Siding Contractors	33	33	24,105	741
238190	Other foundation, structure, building, ext	7	7	5,273	741
238210	Electrical Contractors	60	60	23,612	393
238220	Plumbing, Heating and Air-conditioning Cont	86	86	63,721	741
238290	Other building equipment cont	33	44	32,355	741
238310	Drywall and insulation contractors	0	0	0	0
238320	Painting and wall covering contractors	37	37	27,267	741
238330	Flooring Contractors	0	0	0	0
238340	Tile and Terrazzo contractors	0	0	0	0
238350	Finish Carpentry contractors	0	0	0	0
238390	Other building finishing contractors	0	0	0	0
238910	Site Preparation	262	262	194,105	741
221110	Electric Power Generation	293	301	73,588	244
221120	Electric Power Transmission, Control, and Distribution	337	358	112,369	314
221210	Natural Gas Distribution	442	591	255,619	433
321213	Engineered Wood Member (except Truss) Manufacturing	121	127	59,770	471
321214	Truss Manufacturing	871	914	744,121	814
336611	Ship Building and Repairing	575	635	410,878	647
339950	Sign Manufacturing	6,261	6,339	245,747	39
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.	5,971	6,326	0	0
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	1,025	1,173	0	0
423390	Other Construction Material Merchant Wholesalers	2,181	2,296	0	0
423730	Warm Air Heating and Air-Cond. Equip. and Supplies	2,364	2,958	4,851,281	1,640
444110	Home Centers	2,409	2,575	0	0
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	2,044	2,317	2,460,790	1,062
482110	Railroads	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas	65	66	14,333	217
517110	Wired Telecommunications Carriers	2,517	27,159	1,907,788	70
	Subtotal	32,430	59,267	21,254,828	.....
	Crane Lessees in the Construction Industry				
236115	New Single family housing construction	31,038	31,038	14,133,479	455
236116	New Multifamily housing construction	2,086	2,086	864,078	414
236117	New housing operative builders	16,562	16,562	7,541,453	455
236118	Residential Remodelers	9,846	9,846	4,483,343	455
236210	Industrial building construction	3,000	3,000	1,242,682	414
236220	Commercial and Institutional Bldg. Construction	40,530	40,530	16,788,629	414
237110	Water and Sewer Line Const	13,715	13,715	5,681,126	414
237120	Oil and gas pipeline construction	1,667	1,667	690,517	414
237130	Power and communication line const	2,811	2,811	188,781	67
237210	Land subdivision	0	0	0	NA
237310	Highway, street and bridge const	1,114	1,114	461,532	414
237990	Other heavy and civil eng	2,760	2,760	1,143,060	414
238110	Poured Concrete foundation and struct	13,273	13,273	5,498,038	414
238120	Structural steel and precast concrete	3,487	3,487	1,444,410	414
238130	Framing Contractors	13,779	13,779	5,707,637	414
238140	Masonry Contractors	1,368	1,368	566,539	414
238150	Glass & Glazing Contractors	542	542	224,387	414
238160	Roofing Contractors	1,945	1,945	805,589	414
238170	Siding Contractors	526	526	217,821	414
238190	Other foundation, structure, building, ext	256	256	106,104	414
238210	Electrical Contractors	765	765	51,356	67
238220	Plumbing, Heating and Air-conditioning Cont	970	970	401,941	414
238290	Other building equipment cont	644	644	266,845	414
238310	Drywall and insulation contractors	0	0	0	NA
238320	Painting and wall covering contractors	414	414	171,627	414
238330	Flooring Contractors	0	0	0	NA
238340	Tile and Terrazzo contractors	0	0	0	NA
238350	Finish Carpentry contractors	0	0	0	NA
238390	Other building finishing contractors	0	0	0	NA
238910	Site Preparation	3,889	3,889	1,610,805	414
	Subtotal	166,985	166,985	70,291,778	

TABLE B–13—ANNUALIZED COMPLIANCE COSTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORY—Continued

	Industry	Firms	Estabs.	Annualized compliance costs	Cost per estab.
	Total	204,058	232,394	103,918,161	

Source: ORA.
U.S. Census Bureau data.
Country Business Patters, 2006; Statistics of U.S. Businesses 2006.
Statistics of U.S. Business (SUSB).

To assess the potential economic impact of the proposal on small entities, OSHA calculated the ratios of compliance costs to profits and to revenues. These impacts are presented for each affected industry in Table B–14. OSHA expects that, among small entities potentially affected by the proposal, the average increase in prices necessary to completely offset the compliance costs is 0.06 percent. The average price increase necessary to completely offset compliance costs would not exceed 0.18 percent among small entities in any industry. Only to the extent that such price increases are not possible would there be any effect on the average profits of small entities. Even in the unlikely event that no costs could be passed through, the compliance costs could be completely absorbed through an average reduction in profits of 1.2 percent. In most affected industries, the compliance costs, without any pass-through, could be completely absorbed through an average reduction in profits of less than 1 percent; the reduction would be no more than 5.0 percent in any of the affected industries.

To further ensure that potential impacts on small entities were fully analyzed and considered, OSHA also separately examined the potential impacts of the final standard on very small entities, defined as employers with fewer than 20 employees. To assess the potential economic impact of the final standard on very small entities, OSHA calculated the ratios of compliance costs to profits and to revenues. These ratios are presented for each affected industry in Table B–15. OSHA expects that among very small entities potentially affected by the final standard, the average increase in prices necessary to completely offset the compliance costs would be 0.08 percent (less than 1 percent). Only to the extent that such price increases are not possible, would there be any effect on the average profits of very small entities. Even in the unlikely event that no costs could be passed through, the compliance costs could be completely absorbed through an average reduction in profits of 1.68 percent among affected very small entities.

TABLE B–14—ECONOMIC IMPACTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORIES

0	Industry	Firms	Estabs.	Avg. rev's per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
Crane Rental with Operators								
238990	All Other Specialty Trade Cont.	1,231	1,286	1,550	71	1,618	0.10	2.29
Crane Rental without Operators (Bare Rentals)								
532412	Const./Min./For. Machine & Equip.	1,782	3,018	482	31	103	0.13	2.02
Own and Rent Cranes with Operators								
236115	New Single-Family Housing Const.	178	178	220	10	406	0.18	3.95
236118	Residential Remodelers	25	25	443	21	819	0.18	3.95
236210	Industrial Building Construction.	9	12	12,213	571	22,564	0.18	3.95
236220	Commercial and Institutional Building.	23	31	4,157	194	7,681	0.18	3.95
237110	Water and Sewer Line and Related Struct.	52	69	4,107	214	7,587	0.18	3.54
237120	Oil and Gas Pipeline and Related Struct.	20	26	5,510	288	10,180	0.18	3.54
237130	Power and Communication Line and Rel.	34	34	2,880	150	5,320	0.18	3.54
237310	Highway, Street, and Bridge Construction.	80	107	11,783	615	11,955	0.10	1.94
237990	Other Heavy and Civil Engineering Const.	76	101	10,201	533	18,847	0.18	3.54
238110	Poured Concrete Foundation and Struct.	261	261	2,273	101	4,199	0.18	4.18
238120	Structural Steel and Precast Concrete.	200	266	3,439	152	6,354	0.18	4.18
238130	Framing Contractors	26	26	153	7	284	0.18	4.18

TABLE B–14—ECONOMIC IMPACTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORIES—Continued

0	Industry	Firms	Estabs.	Avg. rev's per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
238150	Glass and Glazing Contractors.	42	42	616	27	1,139	0.18	4.18
238170	Siding Contractors	5	5	496	22	917	0.18	4.18
238190	Other Foundation, Structure, and Building.	49	65	1,509	67	2,788	0.18	4.18
238210	Electrical Contractors	15	15	1,303	56	1,322	0.10	2.35
238220	Plumbing, Heating, and Air-Conditioning.	2	3	5,835	225	10,781	0.18	4.79
238290	Other Building Equipment Contractors.	113	151	3,474	154	6,418	0.18	4.18
238320	Painting and Wall Covering Contract.	21	21	916	41	1,693	0.18	4.18
238910	Site Preparation Contractors.	400	400	1,668	76	3,082	0.18	4.05
	Subtotal	1,630	1,838	.....	.....	.....	.....	.....
	Own but Do Not Rent							
236115	New Single family housing construction.	2,905	2,905	1,000	47	741	0.07	1.58
236116	New Multifamily housing construction.	213	213	3,400	159	741	0.02	0.47
236117	New housing operative builders.	1,263	1,263	5,104	239	741	0.01	0.31
236118	Residential Remodelers	825	825	543	25	741	0.14	2.92
236210	Industrial building construction.	223	262	2,570	120	741	0.03	0.62
236220	Commercial and Institutional Bldg. Const.	3,614	3,614	3,661	171	741	0.02	0.43
237110	Water and Sewer Line Const.	917	1,223	2,324	121	741	0.03	0.61
237120	Oil and gas pipeline construction.	98	131	3,743	195	741	0.02	0.38
237130	Power and communication line const.	219	291	4,656	243	393	0.01	0.16
237210	Land subdivision	0	0	0	0	0	0.00	0.00
237310	Highway, street and bridge const.	69	93	3,225	168	741	0.02	0.44
237990	Other heavy and civil eng.	511	511	1,500	78	741	0.05	0.95
238110	Poured Concrete foundation and struct.	108	108	1,000	44	741	0.07	1.67
238120	Structural steel and precast concrete.	394	394	1,425	63	741	0.05	1.18
238130	Framing Contractors	1,060	1,060	798	35	741	0.09	2.10
238140	Masonry Contractors	128	128	675	30	741	0.11	2.48
238150	Glass & Glazing Contractors.	48	48	900	40	741	0.08	1.86
238160	Roofing Contractors	230	230	801	35	741	0.09	2.09
238170	Siding Contractors	33	33	600	27	741	0.12	2.79
238190	Other foundation, structure, building, ext.	7	7	900	40	741	0.08	1.86
238210	Electrical Contractors	60	60	1,100	48	393	0.04	0.83
238220	Plumbing, Heating and Air-conditioning Cont.	86	86	1,100	42	741	0.07	1.74
238290	Other building equipment cont.	33	44	1,664	74	741	0.04	1.01
238310	Drywall and insulation contractors.	0	0	0	0	0	0.00	0.00
238320	Painting and wall covering contractors.	37	37	419	19	741	0.18	4.00
238330	Flooring Contractors	0	0	0	0	0	0.00	0.00
238340	Tile and Terrazzo contractors.	0	0	0	0	0	0.00	0.00
238350	Finish Carpentry contractors.	0	0	0	0	0	0.00	0.00
238390	Other building finishing contractors.	0	0	0	0	0	0.00	0.00
238910	Site Preparation	262	262	962	44	741	0.08	1.69

TABLE B–14—ECONOMIC IMPACTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORIES—Continued

0	Industry	Firms	Estabs.	Avg. rev's per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
221110	Electric Power Generation.	293	301	7,313	325	244	0.00	0.08
221120	Electric Power Trans, Control, Dist.	337	358	6,882	306	314	0.00	0.10
221210	Natural Gas Distribution	442	591	28,428	847	433	0.00	0.05
321213	Engineered Wd Member (exct Truss) Mfg.	121	127	4,720	183	471	0.01	0.26
321214	Truss Manufacturing	871	914	4,706	182	814	0.02	0.45
336611	Ship Building and Repairing.	575	635	10,204	622	647	0.01	0.10
339950	Sign Manufacturing	6,261	6,339	1,532	89	39	0.00	0.04
423310	Lumber, Plywd, Millwork, Wood Panel Whle.	5,971	6,326	7,084	204	0	0.00	0.00
423330	Roofing, Siding, and Insulation Merch Whle.	1,025	1,173	7,159	207	0	0.00	0.00
423390	Other Construction Material Merch Whle.	2,181	2,296	3,260	94	0	0.00	0.00
423730	Warm Air Heating and A–C Equip & Supplies.	2,364	2,958	3,790	117	1,640	0.04	1.41
444110	Home Centers	2,409	2,575	2,335	180	0	0.00	0.00
454312	Liquefied Petroleum Gas (Bottled Gas) Dlrs.	2,044	2,317	2,415	102	1,062	0.04	1.04
482110	Railroads	NA	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas.	65	66	8,345	1,105	217	0.00	0.02
517110	Wired Telecommunications Carriers.	2,517	27,159	7,294	518	70	0.00	0.01
	Subtotal	32,430	59,267	.....	.....	.....	.....	.....
	Crane Lessees in the Construction Industry							
236115	New Single family housing construction.	31,038	31,038	1,480	69	455	0.03	0.32
236116	New Multifamily housing construction.	2,086	2,086	3,085	144	414	0.01	0.08
236117	New housing operative builders.	16,562	16,562	2,860	134	455	0.02	0.08
236118	Residential Remodelers	9,846	9,846	644	30	455	0.07	0.15
236210	Industrial building construction.	3,000	3,000	2,493	117	414	0.02	0.15
236220	Commercial and Institutional Bldg. Construction.	40,530	40,530	4,024	188	414	0.01	0.12
237110	Water and Sewer Line Const.	13,715	13,715	2,863	149	414	0.01	0.24
237120	Oil and gas pipeline construction.	1,667	1,667	4,118	215	414	0.01	0.09
237130	Power and communication line const.	2,811	2,811	2,289	120	67	0.00	0.01
237210	Land subdivision	0	0	0	0	NA	0.00	0.00
237310	Highway, street and bridge const.	1,114	1,114	3,606	188	414	0.01	0.01
237990	Other heavy and civil eng.	2,760	2,760	2,919	152	414	0.01	0.10
238110	Poured Concrete foundation and struct.	13,273	13,273	1,189	53	414	0.03	0.03
238120	Structural steel and precast concrete.	3,487	3,487	1,927	85	414	0.02	0.35
238130	Framing Contractors	13,779	13,779	559	25	414	0.07	0.75
238140	Masonry Contractors	1,368	1,368	814	36	414	0.05	0.05
238150	Glass & Glazing Contractors.	542	542	1,319	58	414	0.03	0.06
238160	Roofing Contractors	1,945	1,945	1,125	50	414	0.04	0.07
238170	Siding Contractors	526	526	529	23	414	0.08	0.08
238190	Other foundation, structure, building, ext.	256	256	628	28	414	0.07	0.05
238210	Electrical Contractors	765	765	874	38	67	0.01	0.00
238220	Plumbing, Heating and Air-conditioning Cont.	970	970	1,049	40	414	0.04	0.01

TABLE B–14—ECONOMIC IMPACTS FOR SBA DEFINED SMALL ENTITIES BY MAJOR CATEGORIES—Continued

0	Industry	Firms	Estabs.	Avg. rev's per estab. ($1,000)	Avg. profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
238290	Other building equipment cont.	644	644	2,068	91	414	0.02	0.32
238310	Drywall and insulation contractors.	0	0	0	0	NA	0.00	0.00
238320	Painting and wall covering contractors.	414	414	513	23	414	0.08	0.02
238330	Flooring Contractors	0	0	0	0	NA	0.00	0.00
238340	Tile and Terrazzo contractors.	0	0	0	0	NA	0.00	0.00
238350	Finish Carpentry contractors.	0	0	0	0	NA	0.00	0.00
238390	Other building finishing contractors.	0	0	0	0	NA	0.00	0.00
238910	Site Preparation	3,889	3,889	1,101	50	414	0.04	0.06
	Subtotal	166,985	166,985	.....	.....	.....	.....	.....
	Total	204,058	232,394	.....	.....	.....	.....	.....
				Simple Average of impacts:			0.06	1.25

Source: ORA.
U.S. Census Bureau data.
Country Business Patters, 2006; Statistics of U.S. Businesses 2006.
Internal Revenue Service, Source Book, profit rates over 2000–2006.
Statistics of U.S. Business (SUSB).

TABLE B–15—ECONOMIC IMPACTS FOR VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY

	Industry	Firms	Estabs.	Employees	Profit rate (percent)	Revenues per estab. ($1,000)	Profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
Crane Rental With Operators										
238990	All Other Specialty Trade Cont.	1,065	1,065	4,824	4.10	$614	$25	$614	0.10	2.44
Crane Rental Without Operators (Bare Rentals)										
532412	Const./Min./For. Machine & Equip.	1,782	3,018	19,423	6.42	129	8	103	0.08	1.23
Own and Rent Cranes With Operators										
236115	New Single-Family Housing Const.	178	178	261	4.67	220	10	407	0.18	4.19
236118	Residential Remodelers	25	25	45	4.67	443	21	819	0.18	4.19
236210	Industrial Building Construction.	9	12	1,067	4.67	12,213	571	22,564	0.18	4.19
236220	Commercial and Institutional Building.	23	31	757	4.67	4,157	194	7,681	0.18	4.19
237110	Water and Sewer Line and Related Struct.	52	69	1,432	5.22	4,107	214	7,587	0.18	3.97
237120	Oil and Gas Pipeline and Related Struct.	20	26	1,457	5.22	5,510	288	10,180	0.18	3.97
237130	Power and Communication Line and Rel.	34	34	666	5.22	2,880	150	5,320	0.18	3.97
237310	Highway, Street, and Bridge Construction.	80	107	6,456	5.22	11,783	615	21,770	0.18	3.97
237990	Other Heavy and Civil Engineering Const.	76	101	5,857	5.22	10,201	533	18,847	0.18	3.97
238110	Poured Concrete Foundation and Struct.	261	261	4,328	4.42	2,273	101	4,199	0.18	4.18
	Subtotal	.....	758	844	22,326	.....	.....	.....	.....	.....

TABLE B–15—ECONOMIC IMPACTS FOR VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY—Continued

	Industry	Firms	Estabs.	Employees	Profit rate (percent)	Revenues per estab. ($1,000)	Profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
Own Cranes but Do Not Rent Them										
236115	New Single family housing construction.	2,763	2,763	12,155	4.67	823	38	628	0.08	1.63
236116	New Multifamily housing construction.	197	197	2,010	4.67	1,350	63	628	0.05	1.00
236117	New housing operative builders.	1,206	1,206	8,528	4.67	1,854	87	628	0.03	0.73
236118	Residential Remodelers	808	808	2,627	4.67	443	21	628	0.14	3.03
236210	Industrial building construction.	209	209	6,015	4.67	1,247	58	628	0.05	1.08
236220	Commercial and Institutional Bldg. Construc.	2,943	2,943	50,843	4.67	1,526	71	628	0.04	0.88
237110	Water and Sewer Line Const.	900	900	13,335	5.22	702	37	628	0.09	1.71
237120	Oil and gas pipeline construction.	63	63	3,416	5.22	708	37	628	0.09	1.70
237130	Power and communication line const.	207	207	9,177	5.22	655	34	281	0.04	0.82
237210	Land subdivision	0	0	0	11.04	0	0	0	NA	NA
237310	Highway, street and bridge const.	66	66	2,423	5.22	976	51	628	0.06	1.23
237990	Other heavy and civil eng.	378	378	10,483	5.22	589	31	628	0.11	2.04
238110	Poured Concrete foundation and struct.	46	46	531	4.42	494	22	628	0.13	2.87
238120	Structural steel and precast concrete.	90	90	1,954	4.42	659	29	628	0.10	2.16
238130	Framing Contractors	981	981	8,322	4.42	374	17	628	0.17	3.80
238140	Masonry Contractors	115	115	1,093	4.42	343	15	628	0.18	4.14
238150	Glass & Glazing Contractors.	44	44	405	4.42	619	27	628	0.10	2.29
238160	Roofing Contractors	207	207	2,378	4.42	447	20	628	0.14	3.18
238170	Siding Contractors	31	31	127	4.42	408	18	628	0.15	3.48
238190	Other foundation, structure, building, ext.	10	10	62	4.42	394	17	628	0.16	3.60
238210	Electrical Contractors	54	54	541	4.32	444	19	281	0.06	1.47
238220	Plumbing, Heating and Air-conditioning Contractors.	77	77	768	3.86	509	20	628	0.12	3.20
238290	Other building equipment cont.	30	30	570	4.42	714	32	628	0.09	1.99
238310	Drywall and insulation contractors.	0	0	0	4.42	0	0	0	NA	NA
238320	Painting and wall covering contractors.	37	37	208	4.42	265	12	628	0.24	5.36
238330	Flooring Contractors	0	0	0	4.42	0	0	0	NA	NA
238340	Tile and Terrazzo contractors.	0	0	0	4.42	0	0	0	NA	NA
238350	Finish Carpentry contractors.	0	0	0	4.42	0	0	0	NA	NA
238390	Other building finishing contractors.	0	0	0	4.42	0	0	0	NA	NA
238910	Site Preparation	271	271	1,970	4.56	497	23	628	0.13	2.77
221110	Electric Power Generation.	293	301	1,288	4.44	7,513	334	234	0.00	0.07
221120	Electric Power Trans, Control, and Dist.	337	358	2,272	4.44	7,311	325	303	0.00	0.09
221210	Natural Gas Distribution	360	368	1,736	2.98	9,483	283	128	0.00	0.05
321213	Engineered Wood Member (except Truss) Mfg.	82	82	534	3.87	1,674	65	108	0.01	0.17
321214	Truss Manufacturing	408	408	3,438	3.87	1,130	44	156	0.01	0.36
336611	Ship Building and Repairing.	370	371	2,041	6.09	950	58	24	0.00	0.04
339950	Sign Manufacturing	5,312	5,316	25,236	5.83	1,303	76	66	0.01	0.09
423310	Lumber, Plywd, Millwork, & Panel Merch Whl.	4,774	4,844	24,410	2.89	3,970	115	0	0.00	0.00

TABLE B–15—ECONOMIC IMPACTS FOR VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY—Continued

	Industry	Firms	Estabs.	Employees	Profit rate (percent)	Revenues per estab. ($1,000)	Profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
423330	Roofing, Siding, and Insul Merchant Wholes.	831	857	4,764	2.89	4,461	129	0	0.00	0.00
423390	Other Construction Material Merch Whlesirs.	1,886	1,907	9,298	2.89	2,199	63	0	0.00	0.00
423730	Warm Air Heating and A–C Equip. & Supplies.	1,929	2,017	11,007	3.08	2,537	78	888	0.03	1.14
444110	Home Centers	1,879	1,904	12,389	7.70	1,344	103	0	0.00	0.00
454312	Liquefied Petroleum Gas (Bottled Gas) Dlrs.	1,881	2,001	11,711	4.22	1,333	56	651	0.05	1.16
482110	Railroads	NA	NA	NA	NA	NA	NA	NA	NA	NA
486210	Pipeline Transportation of Natural Gas.	65	66	238	13.24	8,473	1,122	192	0.00	0.02
517110	Wired Telecommunications Carriers.	1,828	1,882	9,022	7.10	1,431	102	12	0.00	0.01
	Subtotal	33,969	11,734	139,941	.....	.....	.....	.....	.....	.....
	Crane Lessees in the Construction Industry									
236115	New Single family housing construction.	29,962	29,962	95,670	4.67	1,192	56	455	0.04	0.82
236116	New Multifamily housing construction.	1,904	1,904	7,946	4.67	1,986	93	414	0.02	0.45
236117	New housing operative builders.	15,927	15,927	50,782	4.67	2,063	96	455	0.02	0.47
236118	Residential Remodelers	9,606	9,606	25,611	4.67	527	25	455	0.09	1.85
236210	Industrial building construction.	2,669	2,669	13,978	4.67	1,120	52	414	0.04	0.79
236220	Commercial and Institutional Bldg. Construction.	33,784	33,784	179,125	4.67	1,649	77	414	0.03	0.54
237110	Water and Sewer Line Const.	11,306	11,306	59,055	5.22	841	44	414	0.05	0.94
237120	Oil and gas pipeline construction.	1,083	1,083	4,293	5.22	666	35	414	0.06	1.19
237130	Power and communication line const.	2,149	2,149	8,580	5.22	630	33	67	0.01	0.20
237210	Land subdivision	0	0	0	11.04	0	0	0	0.00	0.00
237310	Highway, street and bridge const.	862	862	4,675	5.22	993	52	414	0.04	0.80
237990	Other heavy and civil engg.	2,295	2,295	10,166	5.22	1,261	66	414	0.03	0.63
238110	Poured Concrete foundation and struct.	11,886	11,886	52,606	4.42	677	30	414	0.06	1.38
238120	Structural steel and precast concrete.	2,679	2,679	14,995	4.42	945	42	414	0.04	0.99
238130	Framing Contractors	13,043	13,043	48,914	4.42	345	15	414	0.12	2.72
238140	Masonry Contractors	1,243	1,243	4,720	4.42	376	17	414	0.11	2.49
238150	Glass & Glazing Contractors.	485	485	2,457	4.42	758	34	414	0.05	1.24
238160	Roofing Contractors	1,722	1,722	7,015	4.42	637	28	414	0.07	1.47
238170	Siding Contractors	506	506	1,627	4.42	359	16	414	0.12	2.61
238190	Other foundation, structure, building, ext.	237	237	909	4.42	290	13	414	0.14	3.24
238210	Electrical Contractors	691	691	2,953	4.32	434	19	67	0.02	0.36
238220	Plumbing, Heating and Air-conditioning Contractors.	872	872	3,855	3.86	551	21	414	0.08	1.95
238290	Other building equipment cont.	524	524	2,726	4.42	868	38	414	0.05	1.08
238310	Drywall and insulation contractors.	0	0	0	4.42	0	0	0	0.00	0.00
238320	Painting and wall covering contractors.	392	392	1,267	4.42	326	14	414	0.13	2.87
238330	Flooring Contractors	0	0	0	4.42	0	0	0	0.00	0.00
238340	Tile and Terrazzo contractors.	0	0	0	4.42	0	0	0	0.00	0.00

TABLE B–15—ECONOMIC IMPACTS FOR VERY SMALL ENTITIES (LESS THAN 20 EMPLOYEES) BY MAJOR CATEGORY—Continued

	Industry	Firms	Estabs.	Employees	Profit rate (percent)	Revenues per estab. ($1,000)	Profits per estab. ($1,000)	Cost per estab.	Cost as a percent of revenues	Cost as a percent of profits
238350	Finish Carpentry contractors.	0	0	0	4.42	0	0	0	0.00	0.00
238390	Other building finishing contractors.	0	0	0	4.42	0	0	0	0.00	0.00
238910	Site Preparation	3,579	3,579	13,406	4.56	561	26	414	0.07	1.62
	Subtotal	149,403	149,403	617,328	.....	.....	.....	.....	.....	.....
	Total	186,977	166,064	803,843	.....	.....	.....	.....	0.08	1.69

Source: ORA.
U.S. Census Bureau data.
Country Business Patterns, 2006; Statistics of U.S. Businesses 2006.
Internal Revenue Service, Source Book, profit rates over 2000–2006.

2. A Succinct Statement of the Need for, and Objectives of, the Rule

The primary objective of the proposed standard is to provide an increased degree of occupational safety for employees performing construction work involving cranes/derricks. As stated above, an estimated 157 injuries and 21 fatalities would be prevented annually through compliance with this standard. Another objective of the rulemaking is to provide employers and employees updated and more complete safety standards for construction work involving cranes/derricks.

The legal basis for the rule is the Occupational Safety and Health (OSH) Act of 1970. The OSH Act authorizes and obligates the Secretary of Labor to promulgate mandatory occupational safety and health standards as necessary "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b).

3. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

On August 18, 2006, OSHA convened a Small Business Advocacy Review Panel (the Panel) for this rulemaking in accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as codified at 5 U.S.C. 601 *et seq.* The Panel consisted of representatives of OSHA, the Office of Information and Regulatory Affairs in the Office of Management and Budget, and of the Office of Advocacy within the U.S. Small Business Administration. The Panel received oral and written comments on a draft proposal and a draft economic analysis from small entities (businesses) that would potentially be affected by the rule. The Panel, in turn, prepared a written report which was delivered to the Assistant Secretary for Occupational Safety and Health (which can be found in the docket for this rulemaking). The report summarized the comments received from the small entities, and included recommendations from the Panel to OSHA regarding the proposal and the associated analysis of compliance costs. OSHA sought comment on a variety of issues of particular interest to small businesses as a result of the recommendations of the SBREFA Panel. Table B–16 below summarizes the responses to these Panel recommendations.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS

SBREFA panel recommendation	OSHA response
The Panel recommends that OSHA provide full documentation for how it estimated the number of affected small entities and all other calculations and estimates provided in the PIRFA.	OSHA has developed a full preliminary economic analysis (PEA) for the proposal which explains all assumptions used in estimating the costs and benefits of the proposed standard. The Final Economic Analysis (FEA) also explains the changes made to the analysis as a result of comments on the proposed rule, and OSHA's responses to these comments.
The Panel recommends that OSHA reexamine its estimate of crane use in home building, the coverage of crane trucks used for loading and unloading, and the estimates of the number of jobs per crane. Changes in these estimates should be incorporated into the estimates of costs and economic impacts.	OSHA included homebuilding industries in the "Own but Do Not Rent "and "Crane Lessees" industrial profile categories. OSHA has also made a number of additions to the industrial profile to cover firms in general industry that sometimes use cranes for construction work, and has added costs for these sectors.
The Panel recommends that OSHA review its estimates for the direct costs of operator certification and seek comment on these cost estimates.	OSHA sought comments on the estimates and methodology. As a result of these comments, OSHA has increased its estimate of the unit costs of certification.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS—Continued

SBREFA panel recommendation	OSHA response
The Panel recommends that OSHA carefully examine certain types of impact that could result from an operator certification requirement, including reports of substantial increases in the wages of operators; the possibility of increased market power for firms renting out cranes; and loss of jobs for existing operators due to language, literacy, or knowledge problems; and seek comment on these types of impacts. The Panel also recommends studying the impacts of the implementation of operator certification in CA.	OSHA sought public comment on all aspects (including economic impacts, wages, number of operators, demand, *etc.*) of the operator certification requirements, specifically as it pertains to the State of California. OSHA has included 2 hours of travel time per operator into the unit costs for operator certification. OSHA also increased the unit costs of operator certification as a result of comments. However, based on comments, OSHA also reduced the OSHA percentage of crane operators still needing certification. The Agency reviewed data on wage rates for operators in California immediately before and after operator certification was required (Employment Development Department, Labor Market Information Division, State of California, 2007). The data did not show much change in operators' wages. OSHA also evaluated the changes in crane related fatality rates in California and found these had significantly declined after the California certification requirements were put into place.
The Panel recommends that OSHA reexamine its estimates for the amount of time required to assess ground conditions, the number of persons involved in the assessment, and the amount of coordination involved; clarify the extent to which such assessments are currently being conducted and what OSHA estimates as new costs for this rule represent; and seek comments on OSHA's cost estimates.	OSHA sought comment on the methodology used to calculate all of the costs in the PEA, which includes the costs for assessing ground conditions. As a result of these comments, OSHA has added costs for examination of ground conditions. This addition of costs does not change OSHA's conclusion that this standard is economically feasible.
The Panel recommends that OSHA carefully review the documentation requirements of the standard, including documentation that employers may consider it prudent to maintain; estimate the costs of such requirements; seek ways of minimizing these costs consistent with the goals of the OSH Act; and solicit comment on these costs and ways of minimizing these costs.	The Agency describes the documentation requirements, along with cost estimates, in the section of this preamble entitled "OMB Review Under the Paperwork Reduction Act of 1995."
The Panel recommends that OSHA examine whether the inspection requirements of the proposed rule require procedures not normally conducted currently, such as lowering and fully extending the boom before the crane can be used, and removing non-hinged inspection plates during the shift inspection, estimate the costs of any such requirements, and seek comment on these issues.	As explained in the discussion of § 1926.1412, *Inspections,* OSHA's former standard at former § 1926.550 required inspections each time the equipment is used, as well as thorough annual inspections. In addition, national consensus standards that are incorporated by reference include additional inspection requirements. This final standard would list the inspection requirements in one place rather than rely on incorporated consensus standards. This final standard does not impose significant new requirements for inspections. OSHA received comments on the issue of lowering and fully extending the boom before the crane can be used. However, OSHA concludes that the comments were based on a general misunderstanding of the requirements. Section 1926.1413(a) explicitly says that booming down is not required for shift (and therefore monthly) inspections. Similarly, OSHA stated in the proposed preamble (73 FR 59770, Oct. 9, 2008) that it does not believe inspection of any of those items would require removal of non-hinged inspection plates. In the discussion of proposed § 1926.1412, OSHA requested public comment on this point. OSHA finalized § 1926.1412 as proposed because comments did not confirm that non-hinged plates needed to be removed to meet the requirements of a shift inspection.
The Panel recommends that OSHA consider the costs of meeting the requirements for original load charts and full manuals, and solicit comments on such costs.	Previous subpart N, at former § 1926.550(a)(2), required load charts; this is not a new cost. Subpart N did not require manuals. OSHA concludes that most crane owners and operators have and maintain crane manuals, which contain the load charts and other critical technical information about crane operations and maintenance. The Agency determined that the cost of obtaining a copy of a manual should be modest and solicited comment on how many owners or operators do not have full manuals for their cranes or derricks. Few commenters saw this as a major problem.
The Panel recommends that OSHA provide full documentation for its analysis of the benefits the proposed rule are expected to produce and assure that the benefits analysis is reproducible by others.	The Agency placed additional materials in the rulemaking docket to aid in the reproduction of the benefits analysis. The Agency also developed a full benefits analysis (sec. 4 of the FEA) which includes the methodology and data sources for the calculations.
The Panel recommends that OSHA consider and solicit public comment on whether the scope language should be clarified to explicitly state whether forklifts that are modified to perform tasks similar to equipment (cranes and derricks) modified in that manner would be covered.	In the discussion of proposed § 1926.1400(c)(8), OSHA requested public comment on this issue.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS—Continued

SBREFA panel recommendation	OSHA response
The Panel recommends that there be a full explanation in the preamble of how responsibility for ensuring adequate ground conditions is shared between the controlling entity, and the employer of the individual supervising assembly/disassembly and/or the operator.	OSHA explained in the discussion of proposed § 1926.1402(e) how the various employers, including the controlling entity, the employer whose employees operate the equipment, and the employer of the A/D director share responsibility for ensuring adequate ground conditions. OSHA did not receive any significant comments on this issue and, therefore, considers this matter resolved.
The Panel recommends that OSHA restate the applicable corrective action provisions (which are set forth in the shift inspection) in the monthly inspection section.	OSHA addressed this recommendation in the discussion of proposed § 1926.1412(e) and requested public comment on the issue. Based on these comments, OSHA concludes that the requirements were clear as proposed, and repeating the provisions will create confusion. Therefore, OSHA did not restate the corrective actions in § 1926.1412(e).
The Panel recommends that OSHA solicit public comment on whether, and under what circumstances, booming down should be specifically excluded as a part of the shift inspection, and whether the removal of non-hinged inspection plates should be required during the shift inspection.	OSHA addressed this recommendation in the discussion of proposed § 1926.1412(d) and requested public comment on the issues raised in the recommendation.
The Panel recommends that OSHA solicit public comment on whether to include an exception for transportation systems in proposed § 1926.1412(a), which requires an inspection of equipment that has had modifications or additions that affect its safe operation, and, if so, what the appropriate terminology for such an exception would be.	OSHA solicited comments on this issue, but the Agency did not receive any significant comments supporting an exception for transportation systems. Based on the analysis of comments received about § 1926.1412(a), OSHA concludes that the inspections of modifications as required by the final rule are sufficient to ensure that safe equipment is used. Therefore, OSHA did include the recommended exclusion in the final rule.
The Panel recommends that OSHA explain in the preamble that the shift inspection does not need to be completed prior to each shift but may be completed during the shift.	In the explanation of § 1926.1412(d)(1) of the proposed rule, OSHA explained that the shift inspection may be completed during the shift. OSHA finalized § 1926.1412(d)(1) as proposed because the comments did not demonstrate how it was safer to deviate from the rule as proposed.
The Panel recommends that OSHA solicit public comment about whether it is necessary to clarify the requirement of proposed § 1926.1412(d)(1)(xi) that the equipment be inspected for "level position."	OSHA requested public comment on this issue and revised the regulatory text of § 1926.1412(d)(1)(xi) to provide more clarity, in response to the comments the Agency received.
The Panel recommends that OSHA solicit comment on whether proposed § 1926.1412(f)(2)(xii)(D) should be changed to require that pressure be inspected "at the end of the line," as distinguished from "at each and every line," and if so, what the best terminology would be to meet this purpose. (An SER indicated that proposed § 1926.1412(f)(2)(xiv)(D) should be modified to "checking pressure setting," in part to avoid having to check the pressure at "each and every line" as opposed to "at the end of the line.")	There is no requirement to check the pressure "at each and every line." The provision simply states that relief valves should be checked for failure to reach correct pressure. If this can be done at one point for the entire system, then that would satisfy the requirement.
The Panel recommends that OSHA solicit public comment on whether proposed § 1926.1412(f)(2)(xx) should be deleted because an SER believes that it is not always appropriate to retain originally-equipped steps and ladders, such as in instances where they are replaced with "attaching dollies."	Section 1926.1412(f)(2)(xx) of the final rule does not require the corrective action to which the SER refers. If an inspection under § 1926.1412(f) reveals a deficiency, a qualified person must determine whether that deficiency is a safety hazard requiring immediate correction. If the inspection reveals that original equipment, such as stairs and ladders, have been replaced with something equally safe, there would be no safety hazard and no requirement for corrective action.
The Panel recommends that OSHA solicit public comment on the extent of documentation of monthly and annual/comprehensive inspections the rule should require.	In the discussion of proposed § 1926.1412(f)(7), OSHA requested public comment on this issue. OSHA finalized § 1926.1412(f)(7) as proposed because the comments did not demonstrate a need to modify the extent of required documentation.
The Panel recommends that OSHA solicit public comment on whether the provision for monthly inspections should, like the provision for annual inspections, specify who must keep the documentation associated with monthly inspections.	In the discussion of proposed § 1926.1412(e), OSHA requested public comment on this issue. In response to these comments, OSHA has explained in the final preamble that the employer who performs the inspection must maintain documentation. If another employer wants to rely on this inspection, but cannot ensure completion and documentation of the inspection, then that employer must conduct a monthly inspection.
The Panel recommends that OSHA consider ways to account for the possibility that there may sometimes be an extended delay in obtaining the part number for an operational aid for older equipment and solicit public comment on the extent to which this is a problem.	OSHA addressed this recommendation in the discussion of proposed § 1926.1416(d), and requested public comment on the issue. The Agency did not receive any significant comments.
The Panel recommends that the provision on fall protection (proposed § 1926.1423) be finalized as written and that OSHA explain in the preamble how and why the Committee arrived at this provision.	Except for a minor change to § 1926.1423(h), which was made for clarity purposes, OSHA has finalized § 1926.1423 as proposed. OSHA explained the Committee's rationale in the proposed preamble discussion of § 1926.1423.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS—Continued

SBREFA panel recommendation	OSHA response
The Panel recommends that OSHA consider the potential advantages of and solicit public comment on adding provisions to proposed § 1926.1427 that would allow an operator to be certified on a particular model of crane; allow tests to be administered by an accredited educational institution; and allow employers to use manuals that have been re-written to accommodate the literacy level and English proficiency of operators.	OSHA addressed these recommendations in the discussion of proposed § 1926.1427, and requested public comment on the issues raised by the Panel. Based on these comments, OSHA is not permitting certification on a particular crane model because the body of knowledge and skills required to be qualified/certified on a particular model of crane is not less than that needed to be qualified/certified for that model's type and capacity. OSHA is not allowing an institution accredited by the Department of Education (DOE) to certify crane operators solely on the basis of DOE accreditation; such institutions would, like other operator-certification entities used to fulfill Option (1), be accredited by a "nationally recognized" accrediting body. Finally, OSHA is permitting employers to re-write manuals to accommodate the literacy level and English proficiency of operators.
The Panel recommends that OSHA clarify in the preamble how the proposed rule addresses an SER's concern that his crane operator would not be able to pass a written qualification/certification exam because the operator has difficulty in taking written exams.	In the discussion of proposed § 1926.1427(h), OSHA proposed to allow the oral administration of tests if two prerequisites are met. None of the comments explained why the rule as proposed was not effective for evaluating the knowledge of the candidate.
The Panel recommends soliciting public comment on whether the phrase "equipment capacity and type" in proposed § 1926.1427(b)(1)(ii)(B) needs clarification, suggestions on how to accomplish this, and whether the categories represented in Figures 1 through 10 contained in ANSI B30.5–2000 (*i.e.,* commercial truck-mounted crane—telescoping boom; commercial truck-mounted crane—non-telescoping boom; crawler crane; crawler crane—telescoping boom; locomotive crane; wheel-mounted crane (multiple control station); wheel-mounted crane—telescoping boom (multiple control station); wheel-mounted crane (single control station); wheel-mounted crane—telescoping boom (single control station)) should be used.	OSHA received public comments on this issue. In the final preamble discussion of § 1926.1427(b)(1)(ii)(B), OSHA explains that the Agency added a definition of "type" in response to public comment. The Agency also references ANSI crane categories to illustrate the meaning of "type" in this standard.
The Panel recommends that OSHA ask for public comment on whether the rule needs to state more clearly that § 1926.1427(j)(1)(i) requires more limited training for operators of smaller capacity equipment used in less complex operations as compared with operators of higher capacity, more complex equipment used in more complex situations.	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c), and explained that § 1926.1427(j)(1)'s requirement for operator training in "the information necessary for safe operation of the specific type of equipment the individual will operate" addressed the SERs' concern. However, the Agency sought public comment on this issue. OSHA finalized § 1926.1427(j)(1) as proposed because the comments failed to explain how the hazards related to the operation of smaller equipment differed from larger equipment. OSHA then concluded that the comments also were not persuasive as to why operators of smaller capacity equipment should be allowed limited training.
The Panel recommends that OSHA consider and ask for public comment on whether a more limited training program would be appropriate for operations based on the capacity and type of equipment and nature of operations.	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c) requested public comment on the issue. The comments failed to explain how the hazards related to smaller equipment were any different from larger equipment. OSHA then concluded that the comments also were not persuasive as to why operators of smaller capacity equipment should be allowed limited training.
The Panel recommends that OSHA consider and ask for public comment as to whether the supervisor responsible for oversight for an operator in the pre-qualification period (§ 1926.1427(f)) should have additional training beyond that required in the C–DAC document at § 1926.1427(f)(2)(iii)(B).	OSHA addressed this recommendation in the discussion of proposed § 1926.1430(c). and requested public comment on the issue. In the proposed preamble, OSHA stated that, where a supervisor is not a certified operator, "he/she must be certified on the written portion of the test and be familiar with the proper use of the equipment's controls; the supervisor is not required to have passed a practical operating test." OSHA finalized this requirement without substantive change in § 1926.1427(f)(3)(ii) as proposed because none of the comments demonstrated a need to require additional training for this qualified individual.
The Panel recommends OSHA solicit comment on whether there are qualified persons in the field with the necessary expertise to assess how the rated capacity for land cranes and derricks used on barges and other flotation devices needs to be modified as required by proposed § 1926.1437(n)(2). The Panel also recommends that OSHA solicit comment on whether it is necessary, from a safety standpoint, to apply this provision to cranes used only for duty cycle work, and if so, why that is the case, and how "duty cycle work" should be defined.	In the discussion of proposed § 1926.1437(n)(2), OSHA requested public comment on this issue. Based on these comments, OSHA has concluded that there are qualified persons with dual expertise, and that the requirement in § 1926.1437(n)(2) is necessary for safety when equipment is engaged in duty cycle work.
The Panel recommends that OSHA consider and ask for comment on whether it would be appropriate to exempt from the rule small sideboom cranes incapable of lifting above the height of a truck bed and with a capacity of not more than 6,000 pounds.	In the discussion of proposed § 1926.1440(a), OSHA requested public comment on this issue. These comments did not provide any specific reason for exempting these small sideboom cranes and, therefore, OSHA has not provided a small capacity sideboom crane exemption from this standard.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS—Continued

SBREFA panel recommendation	OSHA response
The Panel recommends that OSHA solicit public comment on how the proposed rule could be simplified (without creating ambiguities) and made easier to understand. (Several SERs believed that the C–DAC document was so long and complex that small businesses would have difficulty understanding it and complying with it.)	The length and comprehensiveness of the standard is an issue for this rulemaking. In the proposed preamble Introduction, OSHA requested public comment on this issue; however, the Agency did not receive any comments objecting to the length or clarity of the overall rule or offer any suggestions as to how it could be simplified.
The Panel recommends that OSHA consider outlining the inspection requirements in spreadsheet form in an Appendix or developing some other means to help employers understand what inspections are needed and when they must be done.	OSHA will consider developing such an aid as a separate guidance document.
The Panel recommends that OSHA consider whether use of the words "determine" and "demonstrate" would mandate that the employer keep records of such determinations and if records would be required to make such demonstrations.	Some SERs requested clarification as to when documentation was required, believing that the document implicitly requires documentation when it states that the employer must "determine" or "demonstrate" certain actions or conditions. OSHA notes that it cannot cite an employer for failing to have documentation not explicitly required by a standard. *See also* the discussion under proposed § 1926.1402(e).
The Panel recommends soliciting public comment on whether the word "days" as used in §§ 1926.1416(d) and 1926.1416(e) should be clarified to mean calendar days or business days.	In the discussion of proposed § 1926.1416(d), OSHA requested public comment on this issue. As a clarification in response to the comments received, OSHA determines that the term "days" refers to calendar days.
The Panel recommends that OSHA carefully discuss what is included and excluded from the scope of this standard.	OSHA proposed a scope section, § 1926.1400, and discussed in detail the types of machinery proposed to be included and excluded under this standard. OSHA received public comments on this proposed scope, analyzed the comments, and provided more discussion of the scope section in the final preamble.
The Panel recommends that OSHA gather data and analyze the effects of already existing certification requirements.	OSHA obtained and evaluated a study by the Construction Safety Association of Ontario showing that Ontario's certification requirement led to a substantial decrease in crane-related fatalities there. OSHA also examined both economic data of crane operator wage rates before and after the certification requirements, and fatality rates before and after the certification requirements. This data shows that costs disruptions were minimal, and that crane fatalities were significantly reduced as a result of the California certification standard.
The Panel recommends that OSHA consider excluding and soliciting comment on whether equipment used solely to deliver materials to a construction site by placing/stacking the materials on the ground should be explicitly excluded from the proposed standard's scope.	In the discussion of proposed § 1926.1400(c), OSHA requested public comment on this issue. Based on the analysis of the comments received, OSHA recognized an exclusion for delivery materials that should exclude most true deliveries, while avoiding creating a loophole to the standard that would allow materials-delivery firms to engage in extensive construction activities
The Panel recommends that OSHA should consider the information and range of opinions that were presented by the SERs on the issue of operator qualification/certification when analyzing the public comments on this issue.	The information and opinions submitted by the SERs are part of the record for this rulemaking, and OSHA considered them along with the other public comments on the proposed rule.
The Panel recommends that OSHA consider and solicit public comment on expanding the levels of certification so as to allow an operator to be certified on a specific brand's model of crane.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427, and requested public comment on the issue. Based on these comments, OSHA is not permitting certification on a particular crane model because the body of knowledge and skills required to be qualified/certified on a particular model of crane is not less than that needed to be qualified/certified for that model's type and capacity.
The Panel recommends that OSHA consider and solicit public comment on expanding the levels of operator qualification/certification to allow an operator to be certified for a specific, limited type of circumstance. Such a circumstance would be defined by a set of parameters that, taken together, would describe an operation characterized by simplicity and relatively low risk. The Agency should consider and solicit comment on whether such parameters could be identified in a way that would result in a clear, easily understood provision that could be effectively enforced.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427(j)(1), and requested public comment on this issue. Though several commenters were in favor of this option, they did not explain how these lifts could objectively be distinguished from lifts generally. Several other commenters indicated that the types of hazards present and the knowledge needed to address those hazards, remained the same, regardless of the capacity of the crane involved or the "routine" nature of the lift (*see* discussion of § 1926.1427(a)). Based on these comments, the Agency has not promulgated such a provision.
The Panel recommends that OSHA consider and solicit public comment on allowing the written and practical tests described in Option (1) to be administered by an accredited educational institution.	OSHA addressed this recommendation in the discussion of proposed § 1926.1427(b)(3), and requested public comment on the issue. Several comments were submitted in favor of allowing this option; however, they did not establish that Department of Education (DOE) accreditation would guarantee the same efficacy in certification as accreditation as a personnel certification entity. The hearing testimony of Dr. Roy Swift explained the difference in the types of accreditation and the reasons why DOE accreditation would not adequately address operator certification issues. Therefore, OSHA has finalized this provision as it was proposed.

TABLE B–16—RESPONSE TO SBREFA PANEL RECOMMENDATIONS—Continued

SBREFA panel recommendation	OSHA response
The Panel recommends that OSHA solicit public comment on making it clear that: (1) An employer is permitted to equip its cranes with manuals re-written in a way that would allow an operator with a low literacy level to understand the material (such as substituting some text with pictures and illustrations), and (2) making it clear that, when the cranes are equipped with such re-written manuals and materials, the "manuals" and "materials" referred to in these literacy provisions would be the re-written manuals.	In the discussion of proposed § 1926.1427(h)(1), OSHA requested public comment on this issue. Based on the analysis of the comments received, OSHA concludes that these manuals may not be re-written as recommended because it could cause information important for safety to be omitted.
The Panel recommends that OSHA explain in a Small Business Compliance Guide that the certification/qualification test does not need to be administered in English but can be administered in a language that the candidate can read; and that while the employee would also need to have a sufficient level of literacy to read and understand the relevant information in the equipment manual, that requirement would be satisfied if the material is written in a language that the employee can read and understand.	OSHA will issue a Small Business Compliance Guide after the final rule is issued, and will explain these points in the Guide.

In addition to these issues brought up by the SBREFA panel, SBA's office of Advocacy provided a set of recommendations for OSHA to consider. (ID–0147.) These recommendations and OSHA's responses to them are summarized as follows:

1. "*OSHA should consider eliminating the requirement for third-party certification of crane operators—at least for some small cranes or routine lifts.*" OSHA carefully examined this requirement. As noted in the benefits sections, broadly speaking, such a requirement resulted in major reductions in crane fatalities in both Ontario and California. Further, as discussed in the preamble sections, there is no easy way, beyond that already allowed, to eliminate third-party certification.

2. "*OSHA should exempt equipment used solely to deliver materials to a construction site by placing or staking the materials on the ground.*" OSHA has clearly exempted such activities from the scope of the final standard.

3. "*OSHA should clarify the meaning of 'construction'.*" As noted above, OSHA has added material designed to aid in this distinction. However, the definition of construction is not an issue in this rulemaking, but is instead an issue for all construction rules.

4. "*OSHA should further limit the 'controlling entity' provisions in the proposed rule.*" Advocacy was concerned that small businesses may not be onsite, or may not have suitable expertise to meet the requirements for controlling entities. However, the fact remains that only the controlling entity can do what this section of the standard requires: (1) Transfer any information they know of to the crane operator; and (2) authorize action that will change ground conditions to assure they are suitable for crane operations. The controlling entity could, of course, authorize the crane operator to alter site conditions as they wished to assure adequate safety—but it is the controlling entity and not the crane operator that inevitably has responsibility for site conditions.

5. "*OSHA should not mandate that employers follow manufacturers' recommendations.*" Advocacy's concern here was that manufacturers may unduly limit crane operations out of liability concerns. However, only the manufacturers know the limitations of the cranes they produce. As a result, OSHA has retained these provisions. If Advocacy had provided examples of clearly unnecessary provisions in manuals, their argument might have been more convincing. In the absence of even a single example, there seems no reason to reject this provision or provide costs for it.

6. "*OSHA should consider and document any 'significant alternatives' to the proposed rule.*" Advocacy was concerned that some possible alternatives were not fully analyzed "because OSHA had committed to publishing the draft rule developed by C–DAC as the proposed rule, [and did not give] full consideration [to] significant alternatives that would specifically reduce the burden on small businesses have not been documented in the proposed rule." OSHA believes that reliance on the work of C–DAC was and remains, appropriate. The two largest sources of costs in the rule are operator certification and rules covering operations close to power lines. The experience of Ontario and California shows that operator certification can make a major difference to crane fatalities. Additional work done for this final rule shows that construction crane fatalities also occur in general industry sectors where construction work is performed. As a result, and as more fully discussed in the scope and operator certification sections of this preamble, OSHA continues to believe that operator certification for cranes doing construction work is necessary to prevent crane-related deaths and injury. OSHA also believes that the power line rules developed through the expertise of C–DAC remain necessary to address the largest single source of crane-related construction fatalities—fatalities due to power line contact.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply

OSHA completed an analysis of the economic impacts associated with this final rule, including an analysis of the type and number of small entities to which the rule would apply, as described above. To determine the number of small entities potentially affected by this rulemaking, OSHA used the definitions of small entities developed by the Small Business Administration (SBA) for each industry.

For the construction industry generally, SBA defines small businesses using revenue-based criteria. For most of the affected construction industries, including those industries that are mostly comprised of general contractors, firms with annual revenues of less than $31 million are classified as small businesses. For specialty contractors, such as structural-steel erection contractors, firms with annual revenues of less than $13 million are considered to be small businesses. Based on the definitions of small entities developed by SBA for each industry, the final rule is estimated to potentially affect a total of 204,000 small entities, as shown in Tables B–13 and B–14. Included in this number are an estimated 187,000

entities with fewer than 20 employees (Table B–15).

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The final rule addresses the work practices used, as well as other requirements, for performing construction work involving cranes/derricks. Employers are required to keep specified records associated with inspections and operator certification/qualification.

Other compliance requirements in the standard include the assembly and disassembly requirements, encroachment-prevention precautions when working near power lines, and ground condition and power line assessments.

The preamble to the standard provides a comprehensive description of the standard's requirements. The final economic analysis located in the preamble provides a description of the types of business entities subject to these requirements, and the types of professional skills necessary to comply with the requirements.

Regulatory Alternatives

The Agency considered alternatives to the many provisions in the proposed standard, and these are presented and discussed in the Final Regulatory Flexibility Analysis below, as well as throughout the Preamble. Crane operator certification was one of the main issues in the rulemaking, and the Agency concludes that provisions for certification offer the most prominent way to consider both a more stringent standard (requiring certification of inspectors, riggers, and signal persons in addition to crane operators) as well as less stringent option of dropping the requirement of crane operator certification altogether.

The Agency has estimated the additional annualized costs for crane operator certification to be about $51 million annually—about one-third of the estimated total costs of the final standard. Dropping this requirement would reduce costs and impacts by that amount, roughly. Without a Federal regulatory requirement, the level of operator certification would be uncertain. A substantial percentage of operators have already been certified. The Agency is convinced that certification significantly improves the safe practices of crane operators, and that increased protection has been the experience in several venues where certification has been required. Liability insurers have reduced the premium rates on employers who use certified operators. Some states and cities also currently require crane operators to be certified. It is likely that crane services in construction work would be divided into two separate worlds without a Federal regulatory requirement: One with certified operators, perhaps slightly more expensive but safer, and one where operators are not certified but employers still have a requirement to adequately train them. As it is difficult to predict what the relative size of the market would be, it is not possible to predict or estimate what the effect would be in terms of future crane safety. The Agency did have substantial evidence in the record that operator certification, although costly, sharply reduces crane accidents, and did not adopt this alternative of dropping the operator certification requirement.

Several commenters in the rulemaking recommended that riggers, crane inspectors, and signal persons also be certified. The final standard requires riggers who perform tasks such as assembly/disassembly be qualified, as defined in the construction standards' definitions. The annualized cost of certifying a crane operator is about $400 (spread over 5 years, 7 percent discount rate). The Agency estimates that certifying a rigger would cost much less, about $100 per year; a signal person, on average, $50 per year; and inspectors as much as a crane operator. The Agency estimates that there needs to be, at most, on average, one certified rigger per crane; one signal person for every 3 cranes; and about 1,000 certified inspectors to conduct annual inspections of all the estimated 123,000 construction cranes. The Agency estimates that certification will annually cost about $100 for a rigger, $50 for a signal person, and $400 for an inspector (as much as a for a crane operator). The Agency estimates the total annual cost of certifying will be $14.5 million ($12.3 million for riggers, $2 million for signal persons, and $0.4 million for inspectors). The cost of crane inspection is likely to increase since many employers will no longer be able to have an employee perform an inspection, but the Agency is not estimating that increased cost.

Riggers are injured and killed more frequently than workers in any other occupation during construction crane activities. They are injured when cranes tip over or booms fall, by falling loads, by electrical shock from power line contact, and through falls. The Negotiated Rulemaking Committee focused on the safety of the crane itself (capacity or loading limits, for example), crane movement or operations, assembly/disassembly, and power line risk rather than risks faced by riggers and signal persons who work with them. The Agency concludes that more training and certification for riggers could provide greater safety for them, but information in IMIS did not permit a separate analysis of the role of riggers in crane safety. No commenter who advocated certification for riggers provided more than a qualitative assertion that increased crane safety would result. There was similarly no information in the record that inspection failures had resulted in accidents, save for one accident in New York City that resulted from an inadequate repair to a tower crane part. The Agency did not have enough information in the record to recommend or support this alternative of requiring certification for riggers, signal persons, or inspectors.

C. OMB Review Under the Paperwork Reduction Act of 1995

The final Cranes and Derricks Standard contains collection of information requirements (paperwork) that are subject to review by the Office of Management and Budget (OMB). In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)), the proposed regulation solicited comments on the information collection included in the proposal. The Department also submitted an information collection request (ICR), titled "Cranes and Derricks in Construction (29 CFR part 1926 subpart CC)," to OMB for review in accordance with 44 U.S.C. 3507(d) on the date the proposed regulation was published. On January 8, 2009, OMB informed the Department of Labor to use OMB control number 1218–0261 in future submissions involving this rulemaking. OMB also commented, "This OMB action is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995."

OSHA received no public comments that addressed specifically the paperwork burden analysis of the information collections. A number of comments, described earlier in this preamble, contained information relevant to the costs and burden hours attendant to the non-paperwork provisions of the proposal, which OSHA considered when it developed the revised burden analysis for the ICR associated with this final rule.

Prior to publishing this final rulemaking, the Department of Labor submitted the Cranes and Derricks ICR to OMB for OMB approval. OSHA will publish a separate notice in the **Federal Register** that will announce the results of that review and include any applicable OMB control number. That notice also will include a summary of the information collection requirements and burdens imposed by the new standard. A copy of the ICR is available as an exhibit at *http://www.regulations.gov.* The Department of Labor notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

The final Cranes and Derricks standard imposes new information-collection requirements for purposes of PRA–95. These provisions are necessary to protect the health and safety of employees who work with equipment at construction worksites. The paperwork requirements impose on employers a duty to produce and maintain records when they implement controls and take other measures to protect workers from hazards related to cranes and derricks used in construction. For example, each construction business that has workers who operate or are in the vicinity of cranes and derricks must have, as applicable, the following documents on file and available at the job site: Equipment ratings, employee training records, written authorizations from qualified individuals, and qualification program audits. During an inspection, OSHA must have access to these records to determine compliance under conditions specified by the final standard. An employer's failure to generate and disclose the information required by this standard will have a substantial affect on the Agency's effort to control and reduce injuries and fatalities related to the use of cranes and derricks in construction.

D. Federalism

The Agency reviewed this final rule according to the most recent Executive Order ("E.O.") on Federalism (E.O. 13132, 64 FR 43225, Aug. 10, 1994). This E.O. requires that Federal agencies, to the extent possible, refrain from limiting State or local policy options, consult with States before taking actions that restrict State or local policy options, and take such actions only when clear constitutional authority exists, and the problem is national in scope. The E.O. allows Federal agencies to preempt State and local law only with the expressed consent of Congress. In such cases, Federal agencies must limit preemption of State and local law to the extent possible.

Under section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act"; 29 U.S.C. 667), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as "State-Plan States." (29 U.S.C. 667.) Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce under State law their own requirements for occupational safety and health standards.

OSHA has authority under E.O. 13132 to promulgate the final rule in 29 CFR part 1926 because the employee exposures related to cranes and derricks used in construction addressed by the requirements of the final standard are national in scope. The Agency concludes that the requirements in this final rule will provide employers in every State with critical information to use when protecting their employees from the hazards presented when working with cranes and derricks.

A number of commenters were concerned with the preemptive effect of the final rule in jurisdictions not covered by an approved State plan. Representatives of New York City urged OSHA to make clear that the new standard will not preempt the City's ordinances governing the erection, dismantling, and operation of cranes, including crane operator licensing requirements, that protect the public in general. (ID–0342; –0404.1.)[142] The Allied Building Metal Industries Association, on the other hand, stated that preemption of local crane laws is not only preferable, but is mandated by the OSH Act. (ID–0344.)

The OSH Act does not contain an express preemption provision.[143] However, in accordance with ordinary conflict preemption principles, preemption may be implied where the State law conflicts with Federal law or is an impediment to full accomplishment of the Federal purpose. *Gade* v. *National Solid Wastes Management Ass'n,* 505 U.S. 88, 100 (1992). The determination whether, under *Gade,* a State or local law is impliedly preempted by a Federal occupational safety or health standard involves a detailed examination of the specific provisions and purposes of the law. The Secretary previously examined New York City's crane ordinances and concluded that they were not preempted by the prior crane standard. OSHA has placed the Secretary's amicus brief in *Steel Institute of New York* v. *The City of New York,* No. 09–CV–6539 (CM) (JCF) on the record. (ID–0419.1.) This brief presents the agency's interpretation of the preemptive effect of the prior rule on New York City's crane ordinances. For the same reasons set forth in the amicus brief—which are summarized below—New York City's crane ordinances are not preempted by this final rule.

In the *Steel Institute* case, the Secretary concluded that the OSH Act does not preempt municipal building codes like New York City's crane ordinances, which are designed to protect the public and neighboring structures from the hazards of cranes and do not conflict with OSHA standards. In *Gade,* a plurality read the provisions of sec. 18 of the Act to preempt supplementary State laws that are not part of an approved State plan. 505 U.S. at 100–108. However, sec. 18 refers to states, not localities, and does not evince a clear intention to preempt local building codes. The *Gade* decision did not address local building codes, and the plurality's rationale for concluding that State laws may be preempted does not apply with equal measure to municipal building codes. The plurality relied chiefly on the availability of sec. 18's State plan mechanism for states that wish to supplement Federal requirements, and Congress's intent to encourage states to assume full responsibility for safety and health through the State plan process. (ID–0419.1.) Cities and localities, however, have no authority under the Act to submit a State plan. Only a State

[142] The City of Chicago Department of Buildings submitted a late comment expressing the same concerns as those of New York City. (ID–0348.1.) The concerns expressed by Chicago are mainly the same as those of New York, and are addressed in the discussion of the New York laws.

[143] The proposed rule incorrectly stated that sec. 18 of the Act expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a permanent Federal standard (73 FR 59913, Oct. 9, 2008).

itself may submit a plan and that plan must apply throughout the State. (ID–0419.1.) There was no majority consensus in *Gade* as to the preemptive effect of an OSHA standard on supplementary laws not addressed by sec. 18.

A variety of factors support the view that building codes are not the type of laws Congress intended to preempt in enacting sec. 18. There is legislative history supporting this conclusion. Representative Steiger, a primary sponsor of the Act, indicated that the Act would not be preemptive in the event of an overlap between an OSHA standard and a local building code. (ID–0419.1.) The Secretary has interpreted the Act as not preempting laws such as building codes and OSHA rulemaking has long proceeded on the assumption that local building codes exist in parallel to OSHA regulations and are not preempted by them. For example, in the preamble to the final rule on Exit Routes, Emergency Action Plans, and Fire Prevention Plans, OSHA commended the effectiveness of building codes while declining to recognize compliance with building codes as compliance with the OSHA standard (67 FR 67950, 67954, Nov. 7, 2002). Strong policy considerations bolster this understanding. Work practices and conditions pose a variety of serious hazards to the public, and local jurisdictions have enacted a network of industrial codes, such as building and electrical codes, that touch on issues for which there are OSHA standards. If New York City's crane ordinances are preempted because of their incidental impact on worker safety, building and electrical codes, and many other types of local regulation will also be in jeopardy. The text and history of the Act give no indication that Congress intended such a sweeping preemptive effect. (ID–0419.1.)

A separate reason for concluding that New York City's crane laws are not preempted is that they are laws of general applicability. The *Gade* plurality stated that laws of general applicability, such as traffic or fire safety laws, that regulate the conduct of workers and nonworkers as members of the general public would not be preempted regardless of their substantial effect on worker safety. 505 U.S. at 107.

The New York City crane ordinances are not designed to protect workers as a class; they regulate crane operations only to the extent they pose a hazard to the public. The effect of the ordinances is to protect a group far larger than employees on a construction site. Cranes operate in some of the most densely populated areas of the city. (ID–0404.1; –0342.) This density makes it generally impossible to locate a crane or derrick so that it will not operate over or adjacent to crowded streets, sidewalks and occupied buildings. *Id.* For the same reason, mobile cranes, which can have booms hundreds of feet in length, must park on and operate from, the street. *Id.* On any given day, more than 300 cranes, including 30–40 tower cranes, operate in New York City.[144] *Id.* A recent study concluded that a tower crane operating in NYC poses a risk to 12 to 15 surrounding buildings, several streets, and 1,000–1,500 people. *Id.* A crane accident on March 15, 2008 killed a woman in a brownstone one block away, destroyed eighteen buildings and damaged many more within a several-block radius, and forced hundreds of people from their homes. *Id.* Twelve members of the public were injured in crane accidents between 2006 and 2008. *Id.* Although compliance with the City's ordinances will unquestionably protect workers, such protection is incidental to protection of all persons in the vicinity regardless of their status as employees or non-employees.

The City's crane laws are analogous to fire and safety laws in that they comprehensively address a public hazard by imposing obligations on a wide variety of persons without regard to the existence of an employment relationship. Many of these duties are imposed on manufacturers, owners, engineers, designated representatives and others who need not be employers or employees. By contrast, this final rule, like the prior crane rule, applies only to construction work as defined in OSHA regulations, which relates to the performance of physical trade labor on site and does not generally include engineers, who are the subject of several of the City's ordinances.

Comparison of the City's crane ordinances to fire safety laws—a category of laws expressly recognized in *Gade* as being "generally applicable"—further bolsters the argument that the City's laws are not preempted. 505 U.S. at 107. Fire safety laws impose requirements that directly and substantially regulate workplace conduct to protect the public and property from fire. (ID–0419.1.) For example, both the International Fire Code, on which many local codes are based, and the New York City Fire Code, contain provisions applicable to specific workplaces, such as Aviation Facilities and Operations, and Semiconductor Fabrication Facilities, and specific work operations, such as Combustible Dust-Producing Operations and Welding and Other Hot Work. *Id.* The New York and International Fire Codes also contain requirements applicable during the construction of buildings, including requirements for daily disposal of waste and limitations on the use of portable oxygen containers and internal-combustion-powered equipment at the construction site. *Id.* Like the City's crane safety laws, these work-related fire safety laws include training, certification and recordkeeping requirements. *Id.* The fact that New York City's crane ordinances similarly regulate workplace conduct is therefore fully consistent with the City ordinances being laws of general applicability.

Although the interpretation outlined above was developed based on consideration of the specific provisions of New York City's crane ordinances, the preemption principles set forth are generally applicable. The agency does not believe that this final rule preempts any non-conflicting local or municipal building code designed to protect the public from the hazards of cranes.

E. State-Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 27 States and U.S. Territories with their own OSHA-approved occupational safety and health plans ("State-Plan States") must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.,* because an existing State standard covering this area is "at least as effective" as the new Federal standard or amendment. 29 CFR 1953.5(a). The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and must be completed within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State-Plan States are not required to amend their standards, although the Agency may encourage them to do so. The 27 States and U.S. Territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont,

[144] This means that tower cranes pose a risk to upwards of 60,000 people on any given day (40 × 1,500 = 60,000).

Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

This final rule results in more stringent requirements for the work it covers. Therefore, States and Territories with approved State Plans must adopt comparable amendments to their standards within six months of the promulgation date of this rule unless they demonstrate that such amendments are not necessary because their existing standards are at least as effective in protecting workers as this final rule.

F. Unfunded Mandates Reform Act

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 ("UMRA"; 2 U.S.C. 1501 *et seq*.) and Executive Order 12875 (58 FR 58093, Oct. 28, 1993). As discussed above in section V.B of this preamble ("Summary of the Final Economic Analysis, and Regulatory Flexibility Analysis"), the Agency estimates that compliance with this rule will require private-sector employers to expend about $154.1 million each year. However, while this rule establishes a Federal mandate in the private sector, the Agency's standards do not apply to State, local, or Tribal governments except in States that have elected voluntarily to adopt a State Plan approved by the Agency. Consequently, this final rule does not meet the definition of a "Federal intergovernmental mandate" (*see* sec. 421(5) of the UMRA (2 U.S.C. 658(5))). However, the rule imposes costs of over $100 million per year on the private sector, and is thus subject to the requirement under UMRA for review of private sector costs. That requirement is met in section V.B. of the preamble.

G. Applicability of Existing Consensus Standards

Some of the types of equipment subject to this final standard are addressed by current national consensus standards in the ASME B30 series, including: ASME B30.5–2004, "Mobile and Locomotive Cranes"; ASME B30.6–2003, "Derricks"; ASME B30.8–2004, "Floating Cranes and Floating Derricks"; ASME B30.3–2004, "Construction Tower Cranes"; ASME B30.14–2004, "Side Boom Tractors"; and ASME B30.2–2001, "Overhead and Gantry Cranes." In addition, ASME B30.7–2005, "Base-Mounted Drum Hoists," addresses a type of equipment that is often a component of derricks, and ASME B30.23–2005, "Personnel Lifting Systems," addresses issues that are covered by § 1926.1431, *Hoisting personnel.*

The Committee consulted these ASME standards (or the most current versions available at the time) and other resources in developing its proposal. In most instances, the ASME standards that the Committee consulted were entered into the docket, including: ASME B30.5–2000 (OSHA–S030–2006–0663–0334); ASME B30.5a–2002 Addenda (OSHA–S030–2006–0663–0335); ASME B30.6–2003 (OSHA–S030–2006–0663–0337); ASME B30.17–2003 (OSHA–S030–2006–0663–0338); ASME B30.3–1996 (OSHA–S030–2006–0663–0353); and ASME B30.23–1998 (OSHA–S030–2006–0663–0354). When newer versions of the ASME standards were issued after the Committee finished its work, OSHA examined the updated standards to determine if the provisions of the updated standards deviated in a significant way from provisions on which the Committee relied. OSHA entered the updated standards into the record of this rulemaking. For the most part, OSHA did not find significant deviations between the updated versions and the versions reviewed by the Committee. In the few instances in which deviations occurred, OSHA identified those deviations and asked for public comment on any issues raised.

As discussed in detail in the Summary and Explanation of the standard, a number of provisions in this final rule contain concepts that are similar to the concepts underlying the various ASME standards. However, the Committee determined that, in most instances, the wording of the provisions in these ASME standards needed revision to improve the enforceability, clarity, and ease of use.

For some issues, the ASME standards do not address issues covered by this final rule, or the Committee determined that a different approach was necessary. For example, in the provisions on inspections (§§ 1926.1412 and 1926.1413), the Committee concluded that shift, monthly, and annual inspection intervals are most appropriate, in contrast to the ASME approach, which uses "frequent" and "periodic" intervals. In the provisions addressing assembly/disassembly (§§ 1926.1403 through 1926.1406) and the encroachment-prevention provisions for power lines (§§ 1926.1407 through 1926.1411), the Committee adopted approaches with no comparable counterparts in the ASME standards.

In some instances, the Committee determined that it was appropriate to incorporate ASME standards by reference, in whole or in part. For example, in § 1926.1433 (*Design, construction and testing*), the rule incorporates by reference ANSI B30.5–1968, safety code for "Crawler, Locomotive, and Truck Cranes," PCSA Std. No. 2 (1968), for crawler, truck and locomotive cranes manufactured prior to the effective date of this final rule, and incorporates portions of ASME B30.5a–2004, "Mobile and Locomotive Cranes," for mobile cranes (including crawler and truck cranes) and locomotive cranes manufactured on or after the effective date of this final rule.

List of Subjects in 29 CFR Part 1926

Construction industry, Incorporation by reference, Occupational safety and health, Safety.

VI. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice. The Agency is issuing this final rule under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq*.); Section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 5–2007 (72 FR 31159, Jun. 5, 2007); and 29 CFR part 1911.

Signed at Washington, DC, on July 16, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

VII. Amendments to Standards

■ For the reasons stated in the preamble of this final rule, the Agency is amending 29 CFR part 1926 to read as follows:

PART 1926—[AMENDED]

Subpart A—General

■ 1. The authority citation for subpart A of 29 CFR part 1926 is retained as follows:

Authority: Sec. 3704, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

■ 2. Section 1926.6 is added to read as follows:

§ 1926.6 Incorporation by reference.

(a) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.,* provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act. The locations where these standards may be examined are as follows:

(1) Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, Frances Perkins Building, Washington, DC 20210.

(2) The Regional and Field Offices of the Occupational Safety and Health Administration, which are listed in the U.S. Government Manual.

(b) The materials listed in paragraphs (g) through (ff) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(c) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627).

(d) [*Reserved.*]

(e) [*Reserved.*]

(f) [*Reserved.*]

(g) The following material is available for purchase from the American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240; telephone: 513–742–6163; fax: 513–742–3355; e-mail: *mail@acgih.org;* Web site: *http://www.acgih.org:*

(1) Threshold Limit Values of Airborne Contaminants for 1970, 1970, IBR approved for § 1926.55(a) and Appendix A of § 1926.55.

(h) The following material is available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, NY 10036; telephone: 212–642–4900; fax: 212–302–1286; e-mail: *info@ansi.org;* Web site: *http://www.ansi.org/.*

(1) ANSI A10.3–1970, Safety Requirements for Explosive-Actuated Fastening Tools, IBR approved for § 1926.302(e).

(2) ANSI A10.4–1963, Safety Requirements for Workmen's Hoists, IBR approved for § 1926.552(c).

(3) ANSI A10.5–1969, Safety Requirements for Material Hoists, IBR approved for § 1926.552(b).

(4) ANSI A11.1–1965 (R1970), Practice for Industrial Lighting, IBR approved for § 1926.56(b).

(5) ANSI A17.1–1965, Elevators, Dumbwaiters, Escalators, and Moving Walks, IBR approved for § 1926.552(d).

(6) ANSI A17.1a–1967, Elevators, Dumbwaiters, Escalators, and Moving Walks Supplement, IBR approved for § 1926.552(d).

(7) ANSI A17.1b–1968, Elevators, Dumbwaiters, Escalators, and Moving Walks Supplement, IBR approved for § 1926.552(d).

(8) ANSI A17.1c–1969, Elevators, Dumbwaiters, Escalators, and Moving Walks Supplement, IBR approved for § 1926.552(d).

(9) ANSI A17.1d–1970, Elevators, Dumbwaiters, Escalators, and Moving Walks Supplement, IBR approved for § 1926.552(d).

(10) ANSI A17.2–1960, Practice for the Inspection of Elevators (Inspector's Manual), IBR approved for § 1926.552(d).

(11) ANSI A17.2a–1965, Practice for the Inspection of Elevators (Inspector's Manual) Supplement, IBR approved for § 1926.552(d).

(12) ANSI A17.2b–1967, Practice for the Inspection of Elevators (Inspector's Manual) Supplement, IBR approved for § 1926.552(d).

(13) ANSI A92.2–1969, Vehicle Mounted Elevating and Rotating Work Platforms, IBR approved for §§ 1926.453(a) and 1926.453(b).

(14) ANSI B7.1–1970, Safety Code for the Use, Care, and Protection of Abrasive Wheels, IBR approved for §§ 1926.57(g), 1926.303(b), 1926.303(c), and 1926.303(d).

(15) ANSI B20.1–1957, Safety Code for Conveyors, Cableways, and Related Equipment, IBR approved for § 1926.555(a).

(16) ANSI B56.1–1969, Safety Standards for Powered Industrial Trucks, IBR approved for § 1926.602(c).

(17) ANSI J6.1–1950 (R1971), Rubber Insulating Line Hose, IBR approved for § 1926.951(a).

(18) ANSI J6.2–1950 (R1971), Rubber Insulating Hoods, IBR approved for § 1926.951(a).

(19) ANSI J6.4–1971, Rubber Insulating Blankets, IBR approved for § 1926.951(a).

(20) ANSI J6.5–1971, Rubber Insulating Sleeves, IBR approved for § 1926.951(a).

(21) ANSI J6.6–1971, Rubber Insulating Gloves, IBR approved for § 1926.951(a).

(22) ANSI J6.7–1935 (R1971), Rubber Matting for Use Around Electric Apparatus, IBR approved for § 1926.951(a).

(23) ANSI O1.1–1961, Safety Code for Woodworking Machinery, IBR approved for § 1926.304(f).

(24) ANSI Z35.1–1968, Specifications for Accident Prevention Signs, IBR approved for § 1926.200(i).

(25) ANSI Z35.2–1968, Specifications for Accident Prevention Tags, IBR approved for § 1926.200(i).

(26) ANSI Z49.1–1967, Safety in Welding and Cutting, IBR approved for § 1926.350(j).

(27) ANSI Z87.1–1968, Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1926.102(a).

(28) ANSI Z89.1–1969, Safety Requirements for Industrial Head Protection, IBR approved for § 1926.100(b).

(29) ANSI Z89.2–1971, Industrial Protective Helmets for Electrical Workers, Class B, IBR approved for §§ 1926.100(c) and 1926.951(a).

(i) [*Reserved.*]

(j) The following material is available for purchase from the American Society for Testing and Materials (ASTM), ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959; telephone: 610–832–9585; fax: 610–832–9555; e-mail: *service@astm.org;* Web site: *http://www.astm.org/:*

(1) ASTM A370–1968, Methods and Definitions for Mechanical Testing and Steel Products, IBR approved for § 1926.1001(f).

(2) ASTM B117–1964, 50 Hour Test, IBR approved for § 1926.959(a).

(3) ASTM D56–1969, Standard Method of Test for Flash Point by the Tag Closed Tester, IBR approved for § 1926.155(i).

(4) ASTM D93–1969, Standard Method of Test for Flash Point by the

Pensky Martens Closed Tester, IBR approved for § 1926.155(i).

(5) ASTM D323–1958 (R1968), Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for § 1926.155(m).

(k) The following material is available for purchase from the American Society of Agricultural and Biological Engineers (ASABE), 2950 Niles Road, St. Joseph, MI 49085; telephone: 269–429–0300; fax: 269–429–3852; e-mail: *hq@asabe.org;* Web site: *http://www.asabe.org/:*

(1) ASAE R313.1–1971, Soil Cone Penetrometer, reaffirmed 1975, IBR approved for § 1926.1002(e).

(l) The following material is available for purchase from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016; telephone: 1–800–843–2763; fax: 973–882–1717; e-mail: *infocentral@asme.org;* Web site: *http://www.asme.org/:*

(1) ASME B30.2–2005, Overhead and Gantry Cranes (Top Running Bridge, Single or Multiple Girder, Top Running Trolley Hoist), issued Dec. 30, 2005 ("ASME B30.2–2005"), IBR approved for § 1926.1438(b).

(2) ASME B30.5–2004, Mobile and Locomotive Cranes, issued Sept. 27, 2004 ("ASME B30.5–2004"), IBR approved for §§ 1926.1414(b); 1926.1414(e); 1926.1433(b).

(3) ASME B30.7–2001, Base-Mounted Drum Hoists, issued Jan. 21, 2002 ("ASME B30.7–2001"), IBR approved for § 1926.1436(e).

(4) ASME B30.14–2004, Side Boom Tractors, issued Sept. 20, 2004 ("ASME B30.14–2004"), IBR approved for § 1926.1440(c).

(5) ASME Boiler and Pressure Vessel Code, Section VIII, 1968, IBR approved for §§ 1926.152(i), 1926.306(a), and 1926.603(a).

(6) ASME Power Boilers, Section I, 1968, IBR approved for § 1926.603(a).

(m) The following material is available for purchase from the American Welding Society (AWS), 550 N.W. LeJeune Road, Miami, Florida 33126; telephone: 1–800–443–9353; Web site: *http://www.aws.org/:*

(1) AWS D1.1/D1.1M:2002, Structural Welding Code—Steel, 18th ed., ANSI approved Aug. 31, 2001 ("AWS D1.1/D1.1M:2002"), IBR approved for § 1926.1436(c).

(2) ANSI/AWS D14.3–94, Specification for Welding Earthmoving and Construction Equipment, ANSI approved Jun. 11, 1993 ("ANSI/AWS D14.3–94"), IBR approved for § 1926.1436(c).

(n) The following material is available for purchase from the British Standards Institution (BSI), 389 Chiswick High Road, London, W4 4AL, United Kingdom; telephone: +44 20 8996 9001; fax: +44 20 8996 7001; e-mail: *cservices@bsigroup.com;* Web site: *http://www.bsigroup.com/:*

(1) BS EN 13000:2004, Cranes—Mobile Cranes, published Jan. 4, 2006 ("BS EN 13000:2004"), IBR approved for § 1926.1433(c).

(2) BS EN 14439:2006, Cranes—Safety—Tower Cranes, published Jan. 31, 2007 ("BS EN 14439:2006"), IBR approved for § 1926.1433(c).

(o) The following material is available for purchase from the Bureau of Reclamation, United States Department of the Interior, 1849 C Street, NW., Washington DC 20240; telephone: 202–208–4501; Web site: *http://www.usbr.gov/:*

(1) Safety and Health Regulations for Construction, Part II, Sept. 1971, IBR approved for § 1926.1000(f).

(p) The following material is available for purchase from the California Department of Industrial Relations, 455 Golden Gate Avenue, San Francisco CA 94102; telephone: (415) 703–5070; e-mail: *info@dir.ca.gov;* Web site: *http://www.dir.ca.gov/:*

(1) Construction Safety Orders, IBR approved for § 1926.1000(f).

(q) [*Reserved*.]

(r) [*Reserved*.]

(s) [*Reserved*.]

(t) [*Reserved*.]

(u) The following material is available for purchase from the Federal Highway Administration, United States Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590; telephone: 202–366–4000; Web site: *http://www.fhwa.dot.gov/:*

(1) Manual on Uniform Traffic Control Devices, Millennium Edition, Dec. 2000, IBR approved for §§ 1926.200(g), 1926.201(a), and 1926.202.

(v) The following material is available for purchase from the General Services Administration (GSA), 1800 F Street, NW., Washington, DC 20405; telephone: (202) 501–0800; Web site: *http://www.gsa.gov/:*

(1) QQ–P–416, Federal Specification Plating Cadmium (Electrodeposited), IBR approved for § 1926.104(e).

(w) The following material is available for purchase from the Institute of Makers of Explosives (IME), 1120 19th Street, NW., Suite 310, Washington, DC 20036; telephone: 202–429–9280; fax: 202–429–9280; e-mail: *info@ime.org;* Web site: *http://www.ime.org/:*

(1) IME Pub. No. 2, American Table of Distances for Storage of Explosives, Jun. 5, 1964, IBR approved for § 1926.914(a).

(2) IME Pub. No. 20, Radio Frequency Energy—A Potential Hazard in the Use of Electric Blasting Caps, Mar. 1968, IBR approved for § 1926.900(k).

(x) The following material is available for purchase from the International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; telephone: +41 22 749 01 11; fax: +41 22 733 34 30; Web site: *http://www.iso.org/:*

(1) ISO 11660–1:2008(E), Cranes—Access, guards and restraints—Part 1: General, 2d ed., Feb. 15, 2008 ("ISO 11660–1:2008(E)"), IBR approved for § 1926.1423(c).

(2) ISO 11660–2:1994(E), Cranes—Access, guards and restraints—Part 2: Mobile cranes, 1994 ("ISO 11660–2:1994(E)"), IBR approved for § 1926.1423(c).

(3) ISO 11660–3:2008(E), Cranes—Access, guards and restraints—Part 3: Tower cranes, 2d ed., Feb. 15, 2008 ("ISO 11660–3:2008(E)"), IBR approved for § 1926.1423(c).

(y) The following material is available for purchase from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169; telephone: 617–770–3000; fax: 617–770–0700; Web site: *http://www.nfpa.org/:*

(1) NFPA 10A–1970, Maintenance and Use of Portable Fire Extinguishers, IBR approved for § 1926.150(c).

(2) NFPA 13–1969, Standard for the Installation of Sprinkler Systems, IBR approved for § 1926.152(d).

(3) NFPA 30–1969, The Flammable and Combustible Liquids Code, IBR approved for § 1926.152(c).

(4) NFPA 80–1970, Standard for Fire Doors and Windows, Class E or F Openings, IBR approved for § 1926.152(b).

(5) NFPA 251–1969, Standard Methods of Fire Test of Building Construction and Material, IBR approved for §§ 1926.152(b) and 1926.155(f).

(6) NFPA 385–1966, Standard for Tank Vehicles for Flammable and Combustible Liquids, IBR approved for § 1926.152(g).

(z) [*Reserved*.]

(aa) The following material is available for purchase from the Power Crane and Shovel Association (PCSA), 6737 W. Washington Street, Suite 2400, Milwaukee, WI 53214; telephone: 1–800–369–2310; fax: 414–272–1170; Web site: *http://www.aem.org/CBC/ProdSpec/PCSA/:*

(1) PCSA Std. No. 1, Mobile Crane and Excavator Standards, 1968, IBR approved for § 1926.602(b).

(2) PCSA Std. No. 2, Mobile Hydraulic Crane Standards, 1968 ("PCSA Std. No. 2 (1968)"), IBR approved for

§§ 1926.602(b), 1926.1433(a), and 1926.1501(a).

(3) PCSA Std. No. 3, Mobile Hydraulic Excavator Standards, 1969, IBR approved for § 1926.602(b).

(bb) [*Reserved*.]

(cc) [*Reserved*.]

(dd) The following material is available for purchase from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096; telephone: 1–877–606–7323; fax: 724–776–0790; Web site: *http://www.sae.org/:*

(1) SAE 1970 Handbook, IBR approved for § 1926.602(b).

(2) SAE 1971 Handbook, IBR approved for § 1926.1001(h).

(3) SAE J166–1971, Trucks and Wagons, IBR approved for § 1926.602(a).

(4) SAE J168–1970, Protective Enclosures—Test Procedures and Performance Requirements, IBR approved for § 1926.1002(a).

(5) SAE J185 (reaf. May 2003), Access Systems for Off-Road Machines, reaffirmed May 2003 ("SAE J185 (May 1993)"), IBR approved for § 1926.1423(c).

(6) SAE J236–1971, Self-Propelled Graders, IBR approved for § 1926.602(a).

(7) SAE J237–1971, Front End Loaders and Dozers, IBR approved for § 126.602(a).

(8) SAE J319b–1971, Self-Propelled Scrapers, IBR approved for § 1926.602(a).

(9) SAE J320a–1971, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers, IBR approved for § 1926.1001(h).

(10) SAE J321a–1970, Fenders for Pneumatic-Tired Earthmoving Haulage Equipment, IBR approved for § 1926.602(a).

(11) SAE J333a–1970, Operator Protection for Agricultural and Light Industrial Tractors, IBR approved for § 1926.602(a).

(11) SAE J386–1969, Seat Belts for Construction Equipment, IBR approved for § 1926.602(a).

(12) SAE J394–1971, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired Front End Loaders and Robber-Tired Dozers, IBR approved for § 1926.1001(h).

(13) SAE J395–1971, Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders, IBR approved for § 1926.1001(h).

(14) SAE J396–1971, Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders, IBR approved for § 1926.1001(h).

(15) SAE J397–1969, Critical Zone Characteristics and Dimensions for Operators of Construction and Industrial Machinery, IBR approved for § 1926.1001(f).

(16) SAE J743a–1964, Tractor Mounted Side Boom, 1964 ("SAE J743a–1964"), IBR approved for § 1926.1501(a).

(17) SAE J959–1966, Lifting Crane Wire-Rope Strength Factors, 1966 ("SAE J959–1966"), IBR approved for § 1926.1501(a).

(18) SAE J987 (rev. Jun. 2003), Lattice Boom Cranes—Method of Test, revised Jun. 2003 ("SAE J987 (Jun. 2003)"), IBR approved for § 1926.1433(c).

(19) SAE J1063 (rev. Nov. 1993), Cantilevered Boom Crane Structures—Method of Test, revised Nov. 1993 ("SAE J1063 (Nov. 1993)"), IBR approved for § 1926.1433(c).

(ee) The following material is available for purchase from the United States Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314; telephone: 202–761–0011; e-mail: *hq-publicaffairs@usace.army.mil;* Web site: *http://www.usace.army.mil/:*

(1) EM–385–1–1, General Safety Requirements, Mar. 1967, IBR approved for § 1926.1000(f).

(ff) The following material is available for purchase from standards resellers such as the Document Center Inc., 111 Industrial Road, Suite 9, Belmont, CA 94002; telephone: 650–591–7600; fax: 650–591–7617; e-mail: *info@document-center.com;* Web site: *http://www.document-center.com/:*

(1) ANSI B15.1–1953 (R1958), Safety Code for Mechanical Power-Transmission Apparatus, revised 1958, IBR approved for §§ 1926.300(b)(2) and 1926.1501(a).

(2) ANSI B30.2.0–1967, Safety Code for Overhead and Gantry Cranes, approved May 4, 1967, IBR approved for § 1926.1501(d).

(3) ANSI B30.5–1968, Crawler, Locomotive, and Truck Cranes, approved Dec. 16, 1968, IBR approved for §§ 1926.1433(a), 1926.1501(a), and 1926.1501(b).

(4) ANSI B30.6–1969, Safety Code for Derricks, approved Dec. 18, 1967, IBR approved for § 1926.1501(e).

Subpart C—General Safety and Health Provisions

■ 3. The authority citation for subpart C of 29 CFR part 1926 is retained as follows:

Authority: Sec. 3704, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

§ 1926.31 [Reserved.]

■ 4. Section 1926.31 is removed and reserved.

Subpart L—Scaffolds

■ 5. The authority citation for subpart L of 29 CFR part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act)(40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 1–90 (55 FR 9033) and 5–2007 (72 FR 31159); and 29 CFR part 1911.

■ 6. Section 1926.450 is amended by revising paragraph (a) to read as follows:

§ 1926.450 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all scaffolds used in workplaces covered by this part. It does not apply to crane or derrick suspended personnel platforms. The criteria for aerial lifts are set out exclusively in § 1926.453.

* * * * *

Subpart M—Fall Protection

■ 7. The authority citation for subpart M of 29 CFR part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701); Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), and 5–2007 (72 FR 31159); and 29 CFR part 1911.

■ 8. Section 1926.500 is amended by revising paragraph (a)(2)(ii), adding paragraph (a)(3)(v), and revising paragraph (a)(4), to read as follows:

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) * * *

(2) * * *

(ii) Requirements relating to fall protection for employees working on cranes and derricks are provided in subpart CC of this part.

* * * * *

(3) * * *

(v) Criteria for steps, handholds, ladders, and grabrails/guardrails/railings required by subpart CC are provided in subpart CC. Sections 1926.502(a), (c) through (e), and (i) apply to activities covered under subpart CC unless otherwise stated in subpart CC. No other paragraphs of § 1926.502 apply to subpart CC.

* * * * *

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities and the use of equipment covered by subpart CC.

Subpart DD—Cranes and Derricks Used in Demolition and Underground Construction

■ 9. New subpart DD, consisting of § 1926.1500 is added to read as follows:

Subpart DD—Cranes and Derricks Used in Demolition and Underground Construction

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (49 FR 35736), and 5–2007 (72 FR 31159).

§ 1926.1500 Scope.

This subpart applies only to employers engaged in demolition work covered by § 1926.856 and § 1926.858, and underground construction work covered by § 1926.800. This subpart applies in lieu of § 1926 subpart CC.

Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors

■ 10. The authority citation for subpart N of 29 CFR part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (49 FR 35736), and 5–2007 (72 FR 31159).

■ 11. The heading to subpart N of 29 CFR part 1926 is revised to read as follows:

Subpart N—Helicopters, Hoists, Elevators, and Conveyors

* * * * *

§ 1926.550 [Redesignated as § 1926.1501]

■ 12. Section 1926.550 is redesignated as § 1926.1501 in subpart DD.

§ 1926.550 [Reserved]

■ 13. Section 1926.550 is reserved.

■ 14. Section 1926.553 is amended by adding paragraph (c) to read as follows:

§ 1926.553 Base-mounted drum hoists.

* * * * *

(c) This section does not apply to base-mounted drum hoists used in conjunction with derricks. Base-mounted drum hoists used in conjunction with derricks must conform to § 1926.1436(e).

Subpart O—Motorized Vehicles, Mechanical Equipment, and Marine Operations

■ 15. The authority citation for subpart O of 29 CFR part 1926 is revised to read as follows:

Authority: Section 107, Construction Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2007 (72 FR 31159), as applicable. Section 1926.602 also issued under 29 CFR part 1911.

■ 16. Section 1926.600 is amended by revising paragraph (a)(6) to read as follows:

§ 1926.600 Equipment.

(a) *General Requirements.* * * *

(6) All equipment covered by this subpart shall comply with the following requirements when working or being moved in the vicinity of power lines or energized transmitters, except where electrical distribution and transmission lines have been deenergized and visibly grounded at point of work or where insulating barriers, not a part of or an attachment to the equipment or machinery, have been erected to prevent physical contact with the lines:

(i) For lines rated 50 kV or below, minimum clearance between the lines and any part of the crane or load shall be 10 feet;

(ii) For lines rated over 50 kV, minimum clearance between the lines and any part of the crane or load shall be 10 feet plus 0.4 inch for each 1 kV over 50 kV, or twice the length of the line insulator, but never less than 10 feet;

(iii) In transit with no load and boom lowered, the equipment clearance shall be a minimum of 4 feet for voltages less than 50 kV, and 10 feet for voltages over 50 kV, up to and including 345 kV, and 16 feet for voltages up to and including 750 kV;

(iv) A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means;

(v) Cage-type boom guards, insulating links, or proximity warning devices may be used on cranes, but the use of such devices shall not alter the requirements of any other regulation of this part even if such device is required by law or regulation;

(vi) Any overhead wire shall be considered to be an energized line unless and until the person owning such line or the electrical utility authorities indicate that it is not an energized line and it has been visibly grounded;

(vii) Prior to work near transmitter towers where an electrical charge can be induced in the equipment or materials being handled, the transmitter shall be de-energized or tests shall be made to determine if electrical charge is induced on the crane. The following precautions shall be taken when necessary to dissipate induced voltages:

(A) The equipment shall be provided with an electrical ground directly to the upper rotating structure supporting the boom; and

(B) Ground jumper cables shall be attached to materials being handled by boom equipment when electrical charge is induced while working near energized transmitters. Crews shall be provided with nonconductive poles having large alligator clips or other similar protection to attach the ground cable to the load.

(C) Combustible and flammable materials shall be removed from the immediate area prior to operations.

Subpart R—Steel Erection

■ 17. The authority citation for subpart R of 29 CFR part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31159); and 29 CFR part 1911.

■ 18. Section 1926.753 is amended by revising paragraphs (a) and (c)(4) to read as follows:

§ 1926.753 Hoisting and rigging.

(a) All the provisions of subpart CC apply to hoisting and rigging with the exception of § 1926.1431(a).

* * * * *

(c) * * *

(4) Cranes or derricks may be used to hoist employees on a personnel platform when work under this subpart is being conducted, provided that all provisions of § 1926.1431 (except for § 1926.1431(a)) are met.

* * * * *

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air

■ 19. The authority citation for subpart S of 29 CFR part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2007 (72 FR 31159) as applicable.

■ 20. Section 1926.800 is amended by revising paragraph (t) to read as follows:

§ 1926.800 Underground construction.

* * * * *

(t) *Hoisting unique to underground construction.* Employers must comply with § 1926.1501(g) of § 1926 subpart DD. Except as modified by this paragraph (t), the following provisions of subpart N of this part apply: Requirements for material hoists are found in §§ 1926.552(a) and (b) of this part. Requirements for personnel hoists are found in the personnel hoists requirements of §§ 1926.552(a) and (c) of this part and in the elevator requirement of §§ 1926.552(a) and (d) of this part.

* * * * *

Subpart T—Demolition

■ 21. The authority citation for subpart S of 29 CFR part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2007 (72 FR 31159) as applicable.

■ 22. Section 1926.856 is amended by revising paragraph (c) to read as follows:

§ 1926.856 Removal of walls, floors, and material with equipment.

* * * * *

(c) Mechanical equipment used shall meet the requirements specified in subparts N and O and § 1926.1501 of § 1926 subpart DD.

■ 23. Section 1926.858 is amended by revising paragraph (b) to read as follows:

§ 1926.858 Removal of walls, floors, and material with equipment.

* * * * *

(b) Cranes, derricks, and other hoisting equipment used shall meet the requirements specified in § 1926.1501 of § 1926 subpart DD.

Subpart V—Power Transmission and Distribution

■ 24. The authority citation for subpart V of part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754); 8–76 (41 FR 25059); 9–83 (48 FR 35736, 1–90 (55 FR 9033), and 5–2007 (72 FR 31159). Section 1926.951 also issued under 29 CFR part 1911.

■ 25. Section 1926.952 is amended by revising paragraph (c) to read as follows:

§ 1926.952 Mechanical equipment.

* * * * *

(c) *Cranes and other lifting equipment.*

(1) All equipment shall comply with subparts CC and O of this part, as applicable.

(2) Digger derricks used for augering holes for poles carrying electric lines, placing and removing poles, or for handling associated materials to be installed or removed from the poles must comply with 29 CFR 1910.269.

(3) With the exception of equipment certified for work on the proper voltage, mechanical equipment shall not be operated closer to any energized line or equipment than the clearances set forth in § 1926.950(c) unless, in addition to the requirements in § 1926.1410:

(i) The mechanical equipment is insulated, or

(ii) The mechanical equipment is considered as energized.

Note to paragraph (c)(3): In accordance with 29 CFR 1926.1400(g), compliance with 29 CFR 1910.269(p) will be deemed compliance with §§ 1926.1407 through 1926.1411, including § 1926.1410.

Subpart X—Stairways and Ladders

■ 26. The authority citation for subpart X of 29 CFR part 1926 is amended by revising paragraph (a) to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act](40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 1–90 (55 FR 9033), 5–2007 (72 FR 31159); and 29 CFR part 1911.

■ 27. Section 1926.1050 is amended by revising paragraph (a) to read as follows:

§ 1926.1050 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all stairways and ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR part 1926, and also sets forth, in specified circumstances, when ladders and stairways are required to be provided. Additional requirements for ladders used on or with scaffolds are contained in subpart L—Scaffolds. This subpart does not apply to integral components of equipment covered by subpart CC. Subpart CC exclusively sets forth the circumstances when ladders and stairways must be provided on equipment covered by subpart CC.

* * * * *

Appendix A to Part 1926—Designations for General Industry Standards Incorporated into Body of Construction Standards

■ 28. Appendix A to part 1926 is amended by removing the row containing "1926.550(a)(19)" and "1910.184(c)(9)" from the table "1926 DESIGNATIONS FOR APPLICABLE 1910 STANDARDS."

Subparts AA and BB—[Reserved]

■ 29. Subparts AA and BB are reserved and subpart CC is added to read as follows:

Subpart CC—Cranes and Derricks in Construction

Sec.

Subpart CC—Cranes and Derricks in Construction

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 5–2007 (72 FR 31159); and 29 CFR part 1911.

§ 1926.1400 Scope.

(a) This standard applies to power-operated equipment, when used in construction, that can hoist, lower and horizontally move a suspended load. Such equipment includes, but is not limited to: Articulating cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes); multi-purpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck cranes); dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes (such as a fixed jib, *i.e.,* "hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; sideboom cranes; derricks; and variations of such equipment. However, items listed in paragraph (c) of this section are excluded from the scope of this standard.

(b) *Attachments.* This standard applies to equipment included in paragraph (a) of this section when used with attachments. Such attachments, whether crane-attached or suspended include, but are not limited to: Hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers or drills and pile driving equipment.

(c) *Exclusions.* This subpart does not cover:

(1) Machinery included in paragraph (a) of this section while it has been converted or adapted for a non-hoisting/lifting use. Such conversions/adaptations include, but are not limited to, power shovels, excavators and concrete pumps.

(2) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.

(3) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.

(4) Digger derricks when used for augering holes for poles carrying electric and telecommunication lines, placing and removing the poles, and for handling associated materials to be installed on or removed from the poles. Digger derricks used in work subject to 29 CFR part 1926, subpart V, must comply with 29 CFR 1910.269. Digger derricks used in construction work for telecommunication service (as defined at 29 CFR 1910.268(s)(40)) must comply with 29 CFR 1910.268.

(5) Machinery originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.

(6) Telescopic/hydraulic gantry systems.

(7) Stacker cranes.

(8) Powered industrial trucks (forklifts), except when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load.

(9) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.

(10) Machinery that hoists by using a come-a-long or chainfall.

(11) Dedicated drilling rigs.

(12) Gin poles when used for the erection of communication towers.

(13) Tree trimming and tree removal work.

(14) Anchor handling or dredge-related operations with a vessel or barge using an affixed A-frame.

(15) Roustabouts.

(16) Helicopter cranes.

(17) *Material Delivery*

(i) Articulating/knuckle-boom truck cranes that deliver material to a construction site when used to transfer materials from the truck crane to the ground, without arranging the materials in a particular sequence for hoisting.

(ii) Articulating/knuckle-boom truck cranes that deliver material to a construction site when the crane is used to transfer building supply sheet goods or building supply packaged materials from the truck crane onto a structure, using a fork/cradle at the end of the boom, but only when the truck crane is equipped with a properly functioning automatic overload prevention device. Such sheet goods or packaged materials include, but are not limited to: Sheets of sheet rock, sheets of plywood, bags of cement, sheets or packages of roofing shingles, and rolls of roofing felt.

(iii) This exclusion does not apply when:

(A) The articulating/knuckle-boom crane is used to hold, support or stabilize the material to facilitate a construction activity, such as holding material in place while it is attached to the structure;

(B) The material being handled by the articulating/knuckle-boom crane is a prefabricated component. Such prefabricated components include, but are not limited to: Precast concrete members or panels, roof trusses (wooden, cold-formed metal, steel, or other material), prefabricated building sections such as, but not limited to: Floor panels, wall panels, roof panels, roof structures, or similar items;

(C) The material being handled by the crane is a structural steel member (for example, steel joists, beams, columns, steel decking (bundled or unbundled) or a component of a systems-engineered metal building (as defined in 29 CFR 1926 subpart R).

(D) The activity is not specifically excluded under § 1400(c)(17)(i) and (ii).

(d) All sections of this subpart CC apply to the equipment covered by this standard unless specified otherwise.

(e) The duties of controlling entities under this subpart include, but are not limited to, the duties specified in § 1926.1402(c), § 1926.1402(e) and § 1926.1424(b).

(f) Where provisions of this standard direct an operator, crewmember, or other employee to take certain actions, the employer must establish, effectively

communicate to the relevant persons, and enforce, work rules to ensure compliance with such provisions.

(g) For work covered by subpart V of this part, compliance with 29 CFR § 1910.269(p) is deemed compliance with §§ 1926.1407 through 1926.1411.

(h) Section 1926.1402 does not apply to cranes designed for use on railroad tracks, when used on railroad tracks that are part of the general railroad system of transportation that is regulated pursuant to the Federal Railroad Administration under 49 CFR part 213, and that comply with applicable Federal Railroad Administration requirements. *See* § 1926.1402(f).

§ 1926.1401 Definitions.

A/D director (Assembly/Disassembly director) means an individual who meets this subpart's requirements for an A/D director, irrespective of the person's formal job title or whether the person is non-management or management personnel.

Articulating crane means a crane whose boom consists of a series of folding, pin connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.

Assembly/Disassembly means the assembly and/or disassembly of equipment covered under this standard. With regard to tower cranes, "erecting and climbing" replaces the term "assembly," and "dismantling" replaces the term "disassembly." Regardless of whether the crane is initially erected to its full height or is climbed in stages, the process of increasing the height of the crane is an erection process.

Assist crane means a crane used to assist in assembling or disassembling a crane.

Attachments means any device that expands the range of tasks that can be done by the equipment. Examples include, but are not limited to: An auger, drill, magnet, pile-driver, and boom-attached personnel platform.

Audible signal means a signal made by a distinct sound or series of sounds. Examples include, but are not limited to, sounds made by a bell, horn, or whistle.

Blocking (also referred to as "cribbing") is wood or other material used to support equipment or a component and distribute loads to the ground. It is typically used to support lattice boom sections during assembly/disassembly and under outrigger and stabilizer floats.

Boatswain's chair means a single-point adjustable suspension scaffold consisting of a seat or sling (which may be incorporated into a full body harness) designed to support one employee in a sitting position.

Bogie means "travel bogie," which is defined below.

Boom (equipment other than tower crane) means an inclined spar, strut, or other long structural member which supports the upper hoisting tackle on a crane or derrick. Typically, the length and vertical angle of the boom can be varied to achieve increased height or height and reach when lifting loads. Booms can usually be grouped into general categories of hydraulically extendible, cantilevered type, latticed section, cable supported type or articulating type.

Boom (tower cranes): On tower cranes, if the "boom" (*i.e.,* principal horizontal structure) is fixed, it is referred to as a jib; if it is moveable up and down, it is referred to as a boom.

Boom angle indicator means a device which measures the angle of the boom relative to horizontal.

Boom hoist limiting device includes boom hoist disengaging device, boom hoist shut-off, boom hoist disconnect, boom hoist hydraulic relief, boom hoist kick-outs, automatic boom stop device, or derricking limiter. This type of device disengages boom hoist power when the boom reaches a predetermined operating angle. It also sets brakes or closes valves to prevent the boom from lowering after power is disengaged.

Boom length indicator indicates the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments.

Boom stop includes boom stops, (belly straps with struts/standoff), telescoping boom stops, attachment boom stops, and backstops. These devices restrict the boom from moving above a certain maximum angle and toppling over backward.

Boom suspension system means a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle.

Builder means the builder/constructor of equipment.

Center of gravity: The center of gravity of any object is the point in the object around which its weight is evenly distributed. If you could put a support under that point, you could balance the object on the support.

Certified welder means a welder who meets nationally recognized certification requirements applicable to the task being performed.

Climbing means the process in which a tower crane is raised to a new working height, either by adding additional tower sections to the top of the crane (top climbing), or by a system in which the entire crane is raised inside the structure (inside climbing).

Come-a-long means a mechanical device typically consisting of a chain or cable attached at each end that is used to facilitate movement of materials through leverage.

Competent person means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Controlled load lowering means lowering a load by means of a mechanical hoist drum device that allows a hoisted load to be lowered with maximum control using the gear train or hydraulic components of the hoist mechanism. Controlled load lowering requires the use of the hoist drive motor, rather than the load hoist brake, to lower the load.

Controlling entity means an employer that is a prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the construction of the project—its planning, quality and completion.

Counterweight means a weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads.

Crane/derrick includes all equipment covered by this subpart.

Crawler crane means equipment that has a type of base mounting which incorporates a continuous belt of sprocket driven track.

Crossover points means locations on a wire rope which is spooled on a drum where one layer of rope climbs up on and crosses over the previous layer. This takes place at each flange of the drum as the rope is spooled onto the drum, reaches the flange, and begins to wrap back in the opposite direction.

Dedicated channel means a line of communication assigned by the employer who controls the communication system to only one signal person and crane/derrick or to a coordinated group of cranes/derricks/signal person(s).

Dedicated pile-driver is a machine that is designed to function exclusively as a pile-driver. These machines typically have the ability to both hoist the material that will be pile-driven and to pile-drive that material.

Dedicated spotter (power lines): To be considered a dedicated spotter, the requirements of § 1926.1428 (Signal person qualifications) must be met and

his/her sole responsibility is to watch the separation between the power line and the equipment, load line and load (including rigging and lifting accessories), and ensure through communication with the operator that the applicable minimum approach distance is not breached.

Directly under the load means a part or all of an employee is directly beneath the load.

Dismantling includes partial dismantling (such as dismantling to shorten a boom or substitute a different component).

Drum rotation indicator means a device on a crane or hoist which indicates in which direction and at what relative speed a particular hoist drum is turning.

Electrical contact occurs when a person, object, or equipment makes contact or comes in close proximity with an energized conductor or equipment that allows the passage of current.

Employer-made equipment means floating cranes/derricks designed and built by an employer for the employer's own use.

Encroachment is where any part of the crane, load line or load (including rigging and lifting accessories) breaches a minimum clearance distance that this subpart requires to be maintained from a power line.

Equipment means equipment covered by this subpart.

Equipment criteria means instructions, recommendations, limitations and specifications.

Fall protection equipment means guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.

Fall restraint system means a fall protection system that prevents the user from falling any distance. The system is comprised of either a body belt or body harness, along with an anchorage, connectors and other necessary equipment. The other components typically include a lanyard, and may also include a lifeline and other devices.

Fall zone means the area (including but not limited to the area directly beneath the load) in which it is reasonably foreseeable that partially or completely suspended materials could fall in the event of an accident.

Flange points are points of contact between rope and drum flange where the rope changes layers.

Floating cranes/derricks means equipment designed by the manufacturer (or employer) for marine use by permanent attachment to a barge, pontoons, vessel or other means of flotation.

For example means "one example, although there are others."

Free fall (of the load line) means that only the brake is used to regulate the descent of the load line (the drive mechanism is not used to drive the load down faster or retard its lowering).

Free surface effect is the uncontrolled transverse movement of liquids in compartments which reduce a vessel's transverse stability.

Hoist means a mechanical device for lifting and lowering loads by winding a line onto or off a drum.

Hoisting is the act of raising, lowering or otherwise moving a load in the air with equipment covered by this standard. As used in this standard, "hoisting" can be done by means other than wire rope/hoist drum equipment.

Include/including means "including, but not limited to."

Insulating link/device means an insulating device listed, labeled, or accepted by a Nationally Recognized Testing Laboratory in accordance with 29 CFR 1910.7.

Jib stop (also referred to as a jib backstop), is the same type of device as a boom stop but is for a fixed or luffing jib.

Land crane/derrick is equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of floatation.

List means the angle of inclination about the longitudinal axis of a barge, pontoons, vessel or other means of floatation.

Load refers to the object(s) being hoisted and/or the weight of the object(s); both uses refer to the object(s) and the load-attaching equipment, such as, the load block, ropes, slings, shackles, and any other ancillary attachment.

Load moment (or rated capacity) indicator means a system which aids the equipment operator by sensing (directly or indirectly) the overturning moment on the equipment, *i.e.,* load multiplied by radius. It compares this lifting condition to the equipment's rated capacity, and indicates to the operator the percentage of capacity at which the equipment is working. Lights, bells, or buzzers may be incorporated as a warning of an approaching overload condition.

Load moment (or rated capacity) limiter means a system which aids the equipment operator by sensing (directly or indirectly) the overturning moment on the equipment, *i.e.,* load multiplied by radius. It compares this lifting condition to the equipment's rated capacity, and when the rated capacity is reached, it shuts off power to those equipment functions which can increase the severity of loading on the equipment, *e.g.,* hoisting, telescoping out, or luffing out. Typically, those functions which decrease the severity of loading on the equipment remain operational, *e.g.,* lowering, telescoping in, or luffing in.

Locomotive crane means a crane mounted on a base or car equipped for travel on a railroad track.

Luffing jib limiting device is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib.

Marine hoisted personnel transfer device means a device, such as a "transfer net," that is designed to protect the employees being hoisted during a marine transfer and to facilitate rapid entry into and exit from the device. Such devices do not include boatswain's chairs when hoisted by equipment covered by this standard.

Marine worksite means a construction worksite located in, on or above the water.

Mobile crane means a lifting device incorporating a cable suspended latticed boom or hydraulic telescopic boom designed to be moved between operating locations by transport over the road.

Moving point-to-point means the times during which an employee is in the process of going to or from a work station.

Multi-purpose machine means a machine that is designed to be configured in various ways, at least one of which allows it to hoist (by means of a winch or hook) and horizontally move a suspended load. For example, a machine that can rotate and can be configured with removable forks/tongs (for use as a forklift) or with a winch pack, jib (with a hook at the end) or jib used in conjunction with a winch. When configured with the forks/tongs, it is not covered by this subpart. When configured with a winch pack, jib (with a hook at the end) or jib used in conjunction with a winch, it is covered by this subpart.

Nationally recognized accrediting agency is an organization that, due to its independence and expertise, is widely recognized as competent to accredit testing organizations. Examples of such accrediting agencies include, but are not limited to, the National Commission for Certifying Agencies and the American National Standards Institute.

Nonconductive means that, because of the nature and condition of the materials used, and the conditions of use (including environmental conditions and condition of the material), the object in question has the

property of not becoming energized (that is, it has high dielectric properties offering a high resistance to the passage of current under the conditions of use).

Operational aids are devices that assist the operator in the safe operation of the crane by providing information or automatically taking control of a crane function. These include, but are not limited to, the devices listed in § 1926.1416 ("listed operational aids").

Operational controls means levers, switches, pedals and other devices for controlling equipment operation.

Operator means a person who is operating the equipment.

Overhead and gantry cranes includes overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.

Paragraph refers to a paragraph in the same section of this subpart that the word "paragraph" is used, unless otherwise specified.

Pendants includes both wire and bar types. Wire type: A fixed length of wire rope with mechanical fittings at both ends for pinning segments of wire rope together. Bar type: Instead of wire rope, a bar is used. Pendants are typically used in a latticed boom crane system to easily change the length of the boom suspension system without completely changing the rope on the drum when the boom length is increased or decreased.

Personal fall arrest system means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body harness and may include a lanyard, deceleration device, lifeline, or suitable combination of these.

Portal crane is a type of crane consisting of a rotating upperstructure, hoist machinery, and boom mounted on top of a structural gantry which may be fixed in one location or have travel capability. The gantry legs or columns usually have portal openings in between to allow passage of traffic beneath the gantry.

Power lines means electric transmission and distribution lines.

Procedures include, but are not limited to: Instructions, diagrams, recommendations, warnings, specifications, protocols and limitations.

Proximity alarm is a device that provides a warning of proximity to a power line and that has been listed, labeled, or accepted by a Nationally Recognized Testing Laboratory in accordance with 29 CFR 1910.7.

Qualified evaluator (not a third party) means a person employed by the signal person's employer who has demonstrated that he/she is competent in accurately assessing whether individuals meet the Qualification Requirements in this subpart for a signal person.

Qualified evaluator (third party) means an entity that, due to its independence and expertise, has demonstrated that it is competent in accurately assessing whether individuals meet the Qualification Requirements in this subpart for a signal person.

Qualified person means a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.

Qualified rigger is a rigger who meets the criteria for a qualified person.

Range control limit device is a device that can be set by an equipment operator to limit movement of the boom or jib tip to a plane or multiple planes.

Range control warning device is a device that can be set by an equipment operator to warn that the boom or jib tip is at a plane or multiple planes.

Rated capacity means the maximum working load permitted by the manufacturer under specified working conditions. Such working conditions typically include a specific combination of factors such as equipment configuration, radii, boom length, and other parameters of use.

Rated capacity indicator: See load moment indicator.

Rated capacity limiter: See load moment limiter.

Repetitive pickup points refer to, when operating on a short cycle operation, the rope being used on a single layer and being spooled repetitively over a short portion of the drum.

Running wire rope means a wire rope that moves over sheaves or drums.

Runway means a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the crane being used to lift and travel with the crane suspended platform. An existing surface may be used as long as it meets these criteria.

Section means a section of this subpart, unless otherwise specified.

Sideboom crane means a track-type or wheel-type tractor having a boom mounted on the side of the tractor, used for lifting, lowering or transporting a load suspended on the load hook. The boom or hook can be lifted or lowered in a vertical direction only.

Special hazard warnings means warnings of site-specific hazards (for example, proximity of power lines).

Stability (flotation device) means the tendency of a barge, pontoons, vessel or other means of flotation to return to an upright position after having been inclined by an external force.

Standard Method means the protocol in Appendix A of this subpart for hand signals.

Such as means "such as, but not limited to."

Superstructure: See Upperworks.

Tagline means a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations.

Tender means an individual responsible for monitoring and communicating with a diver.

Tilt up or tilt down operation means raising/lowering a load from the horizontal to vertical or vertical to horizontal.

Tower crane is a type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib) in an elevated position. Loads are suspended from the working boom. While the working boom may be of the fixed type (horizontal or angled) or have luffing capability, it can always rotate to swing loads, either by rotating on the top of the tower (top slewing) or by the rotation of the tower (bottom slewing). The tower base may be fixed in one location or ballasted and moveable between locations. Mobile cranes that are configured with luffing jib and/or tower attachments are not considered tower cranes under this section.

Travel bogie (tower cranes) is an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels.

Trim means angle of inclination about the transverse axis of a barge, pontoons, vessel or other means of floatation.

Two blocking means a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component.

Unavailable procedures means procedures that are no longer available from the manufacturer, or have never been available, from the manufacturer.

Upperstructure: See Upperworks.

Upperworks means the revolving frame of equipment on which the operating machinery (and many cases the engine) are mounted along with the operator's cab. The counterweight is typically supported on the rear of the upperstructure and the boom or other front end attachment is mounted on the front.

Up to means "up to and including."

Wire rope means a flexible rope constructed by laying steel wires into various patterns of multi-wired strands around a core system to produce a helically wound rope.

§ 1926.1402 Ground conditions.

(a) *Definitions.*

(1) "Ground conditions" means the ability of the ground to support the equipment (including slope, compaction, and firmness).

(2) "Supporting materials" means blocking, mats, cribbing, marsh buggies (in marshes/wetlands), or similar supporting materials or devices.

(b) The equipment must not be assembled or used unless ground conditions are firm, drained, and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the equipment manufacturer's specifications for adequate support and degree of level of the equipment are met. The requirement for the ground to be drained does not apply to marshes/wetlands.

(c) The controlling entity must:

(1) Ensure that ground preparations necessary to meet the requirements in paragraph (b) of this section are provided.

(2) Inform the user of the equipment and the operator of the location of hazards beneath the equipment set-up area (such as voids, tanks, utilities) if those hazards are identified in documents (such as site drawings, as-built drawings, and soil analyses) that are in the possession of the controlling entity (whether at the site or off-site) or the hazards are otherwise known to that controlling entity.

(d) If there is no controlling entity for the project, the requirement in paragraph (c)(1) of this section must be met by the employer that has authority at the site to make or arrange for ground preparations needed to meet paragraph (b) of this section.

(e) If the A/D director or the operator determines that ground conditions do not meet the requirements in paragraph (b) of this section, that person's employer must have a discussion with the controlling entity regarding the ground preparations that are needed so that, with the use of suitable supporting materials/devices (if necessary), the requirements in paragraph (b) of this section can be met.

(f) This section does not apply to cranes designed for use on railroad tracks when used on railroad tracks that are part of the general railroad system of transportation that is regulated pursuant to the Federal Railroad Administration under 49 CFR part 213 and that comply with applicable Federal Railroad Administration requirements.

§ 1926.1403 Assembly/Disassembly—selection of manufacturer or employer procedures.

When assembling or disassembling equipment (or attachments), the employer must comply with all applicable manufacturer prohibitions and must comply with either:

(a) Manufacturer procedures applicable to assembly and disassembly, or

(b) Employer procedures for assembly and disassembly. Employer procedures may be used only where the employer can demonstrate that the procedures used meet the requirements in § 1926.1406. **Note:** The employer must follow manufacturer procedures when an employer uses synthetic slings during assembly or disassembly rigging. (*See* § 1926.1404(r).)

§ 1926.1404 Assembly/Disassembly—general requirements (applies to all assembly and disassembly operations).

(a) *Supervision—competent-qualified person.*

(1) Assembly/disassembly must be directed by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons ("A/D director").

(2) Where the assembly/disassembly is being performed by only one person, that person must meet the criteria for both a competent person and a qualified person. For purposes of this standard, that person is considered the A/D director.

(b) *Knowledge of procedures.* The A/D director must understand the applicable assembly/disassembly procedures.

(c) *Review of procedures.* The A/D director must review the applicable assembly/disassembly procedures immediately prior to the commencement of assembly/disassembly unless the A/D director understands the procedures and has applied them to the same type and configuration of equipment (including accessories, if any).

(d) *Crew instructions.*

(1) Before commencing assembly/disassembly operations, the A/D director must ensure that the crew members understand all of the following:

(i) Their tasks.

(ii) The hazards associated with their tasks.

(iii) The hazardous positions/locations that they need to avoid.

(2) During assembly/disassembly operations, before a crew member takes on a different task, or when adding new personnel during the operations, the requirements in paragraphs (d)(1)(i) through (d)(1)(iii) of this section must be met.

(e) *Protecting assembly/disassembly crew members out of operator view.*

(1) Before a crew member goes to a location that is out of view of the operator and is either in, on, or under the equipment, or near the equipment (or load) where the crew member could be injured by movement of the equipment (or load), the crew member must inform the operator that he/she is going to that location.

(2) Where the operator knows that a crew member went to a location covered by paragraph (e)(1) of this section, the operator must not move any part of the equipment (or load) until the operator is informed in accordance with a pre-arranged system of communication that the crew member is in a safe position.

(f) *Working under the boom, jib or other components.*

(1) When pins (or similar devices) are being removed, employees must not be under the boom, jib, or other components, except where the requirements of paragraph (f)(2) of this section are met.

(2) *Exception.* Where the employer demonstrates that site constraints require one or more employees to be under the boom, jib, or other components when pins (or similar devices) are being removed, the A/D director must implement procedures that minimize the risk of unintended dangerous movement and minimize the duration and extent of exposure under the boom. (*See* Non-mandatory Appendix B of this subpart for an example.)

(g) *Capacity limits.* During all phases of assembly/disassembly, rated capacity limits for loads imposed on the equipment, equipment components (including rigging), lifting lugs and equipment accessories, must not be exceeded for the equipment being assembled/disassembled.

(h) *Addressing specific hazards.* The A/D director supervising the assembly/disassembly operation must address the hazards associated with the operation, which include:

(1) *Site and ground bearing conditions.* Site and ground conditions must be adequate for safe assembly/disassembly operations and to support the equipment during assembly/disassembly (*see* § 1926.1402 for ground condition requirements).

(2) *Blocking material.* The size, amount, condition and method of stacking the blocking must be sufficient to sustain the loads and maintain stability.

(3) *Proper location of blocking.* When used to support lattice booms or components, blocking must be appropriately placed to:

(i) Protect the structural integrity of the equipment, and

(ii) Prevent dangerous movement and collapse.

(4) *Verifying assist crane loads.* When using an assist crane, the loads that will be imposed on the assist crane at each phase of assembly/disassembly must be verified in accordance with § 1926.1417(o)(3) before assembly/disassembly begins.

(5) *Boom and jib pick points.* The point(s) of attachment of rigging to a boom (or boom sections or jib or jib sections) must be suitable for preventing structural damage and facilitating safe handling of these components.

(6) *Center of gravity.*

(i) The center of gravity of the load must be identified if that is necessary for the method used for maintaining stability.

(ii) Where there is insufficient information to accurately identify the center of gravity, measures designed to prevent unintended dangerous movement resulting from an inaccurate identification of the center of gravity must be used. (*See* Non-mandatory Appendix B of this subpart for an example.)

(7) *Stability upon pin removal.* The boom sections, boom suspension systems (such as gantry A-frames and jib struts), and components must be rigged or supported to maintain stability upon the removal of the pins.

(8) *Snagging.* Suspension ropes and pendants must not be allowed to catch on the boom or jib connection pins or cotter pins (including keepers and locking pins).

(9) *Struck by counterweights.* The potential for unintended movement from inadequately supported counterweights and from hoisting counterweights.

(10) *Boom hoist brake failure.* Each time reliance is to be placed on the boom hoist brake to prevent boom movement during assembly/disassembly, the brake must be tested prior to such reliance to determine if it is sufficient to prevent boom movement. If it is not sufficient, a boom hoist pawl, other locking device/back-up braking device, or another method of preventing dangerous movement of the boom (such as blocking or using an assist crane) from a boom hoist brake failure must be used.

(11) *Loss of backward stability.* Backward stability before swinging the upperworks, travel, and when attaching or removing equipment components.

(12) *Wind speed and weather.* The effect of wind speed and weather on the equipment.

(i) [*Reserved.*]

(j) *Cantilevered boom sections.* Manufacturer limitations on the maximum amount of boom supported only by cantilevering must not be exceeded. Where these are unavailable, a registered professional engineer familiar with the type of equipment involved must determine in writing this limitation, which must not be exceeded.

(k) *Weight of components.* The weight of each of the components must be readily available.

(l) [*Reserved.*]

(m) *Components and configuration.*

(1) The selection of components, and configuration of the equipment, that affect the capacity or safe operation of the equipment must be in accordance with:

(i) Manufacturer instructions, prohibitions, limitations, and specifications. Where these are unavailable, a registered professional engineer familiar with the type of equipment involved must approve, in writing, the selection and configuration of components; or

(ii) Approved modifications that meet the requirements of § 1926.1434 (Equipment modifications).

(2) *Post-assembly inspection.* Upon completion of assembly, the equipment must be inspected to ensure compliance with paragraph (m)(1) of this section (*see* § 1926.1412(c) for post-assembly inspection requirements).

(n) [*Reserved.*]

(o) *Shipping pins.* Reusable shipping pins, straps, links, and similar equipment must be removed. Once they are removed they must either be stowed or otherwise stored so that they do not present a falling object hazard.

(p) *Pile driving.* Equipment used for pile driving must not have a jib attached during pile driving operations.

(q) *Outriggers and Stabilizers.* When the load to be handled and the operating radius require the use of outriggers or stabilizers, or at any time when outriggers or stabilizers are used, all of the following requirements must be met (except as otherwise indicated):

(1) The outriggers or stabilizers must be either fully extended or, if manufacturer procedures permit, deployed as specified in the load chart.

(2) The outriggers must be set to remove the equipment weight from the wheels, except for locomotive cranes (*see* paragraph (q)(6) of this section for use of outriggers on locomotive cranes). This provision does not apply to stabilizers.

(3) When outrigger floats are used, they must be attached to the outriggers. When stabilizer floats are used, they must be attached to the stabilizers.

(4) Each outrigger or stabilizer must be visible to the operator or to a signal person during extension and setting.

(5) Outrigger and stabilizer blocking must:

(i) Meet the requirements in paragraphs (h)(2) and (h)(3) of this section.

(ii) Be placed only under the outrigger or stabilizer float/pad of the jack or, where the outrigger or stabilizer is designed without a jack, under the outer bearing surface of the extended outrigger or stabilizer beam.

(6) For locomotive cranes, when using outriggers or stabilizers to handle loads, the manufacturer's procedures must be followed. When lifting loads without using outriggers or stabilizers, the manufacturer's procedures must be met regarding truck wedges or screws.

(r) *Rigging.* In addition to following the requirements in 29 CFR 1926.251 and other requirements in this and other standards applicable to rigging, when rigging is used for assembly/disassembly, the employer must ensure that:

(1) The rigging work is done by a qualified rigger.

(2) Synthetic slings are protected from: Abrasive, sharp or acute edges, and configurations that could cause a reduction of the sling's rated capacity, such as distortion or localized compression. **Note:** Requirements for the protection of wire rope slings are contained in 29 CFR 1926.251(c)(9).

(3) When synthetic slings are used, the synthetic sling manufacturer's instructions, limitations, specifications and recommendations must be followed.

§ 1926.1405 Disassembly—additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures).

Dismantling (including dismantling for changing the length of) booms and jibs.

(a) None of the pins in the pendants are to be removed (partly or completely) when the pendants are in tension.

(b) None of the pins (top or bottom) on boom sections located between the pendant attachment points and the crane/derrick body are to be removed (partly or completely) when the pendants are in tension.

(c) None of the pins (top or bottom) on boom sections located between the uppermost boom section and the crane/derrick body are to be removed (partly or completely) when the boom is being supported by the uppermost boom section resting on the ground (or other support).

(d) None of the top pins on boom sections located on the cantilevered portion of the boom being removed (the portion being removed ahead of the pendant attachment points) are to be removed (partly or completely) until the cantilevered section to be removed is fully supported.

§ 1926.1406 Assembly/Disassembly—employer procedures—general requirements.

(a) When using employer procedures instead of manufacturer procedures for assembly/disassembly, the employer must ensure that the procedures:

(1) Prevent unintended dangerous movement, and prevent collapse, of any part of the equipment.

(2) Provide adequate support and stability of all parts of the equipment.

(3) Position employees involved in the assembly/disassembly operation so that their exposure to unintended movement or collapse of part or all of the equipment is minimized.

(b) *Qualified person.* Employer procedures must be developed by a qualified person.

§ 1926.1407 Power line safety (up to 350 kV)—assembly and disassembly.

(a) Before assembling or disassembling equipment, the employer must determine if any part of the equipment, load line, or load (including rigging and lifting accessories) could get, in the direction or area of assembly/disassembly, closer than 20 feet to a power line during the assembly/disassembly process. If so, the employer must meet the requirements in Option (1), Option (2), or Option (3) of this section, as follows:

(1) *Option (1)—Deenergize and ground.* Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.

(2) *Option (2)—20 foot clearance.* Ensure that no part of the equipment, load line or load (including rigging and lifting accessories), gets closer than 20 feet to the power line by implementing the measures specified in paragraph (b) of this section.

(3) *Option (3)—Table A clearance.*

(i) Determine the line's voltage and the minimum clearance distance permitted under Table A (*see* § 1926.1408).

(ii) Determine if any part of the equipment, load line, or load (including rigging and lifting accessories), could get closer than the minimum clearance distance to the power line permitted under Table A (*see* § 1926.1408). If so, then the employer must follow the requirements in paragraph (b) of this section to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum clearance distance.

(b) *Preventing encroachment/electrocution.* Where encroachment precautions are required under Option (2), or Option (3) of this section, all of the following requirements must be met:

(1) Conduct a planning meeting with the Assembly/Disassembly director (A/D director), operator, assembly/disassembly crew and the other workers who will be in the assembly/disassembly area to review the location of the power line(s) and the steps that will be implemented to prevent encroachment/electrocution.

(2) If tag lines are used, they must be nonconductive.

(3) At least one of the following additional measures must be in place. The measure selected from this list must be effective in preventing encroachment.

The additional measures are:

(i) Use a dedicated spotter who is in continuous contact with the equipment operator. The dedicated spotter must:

(A) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include, but are not limited to: A clearly visible line painted on the ground; a clearly visible line of stanchions; a set of clearly visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).

(B) Be positioned to effectively gauge the clearance distance.

(C) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.

(D) Give timely information to the operator so that the required clearance distance can be maintained.

(ii) A proximity alarm set to give the operator sufficient warning to prevent encroachment.

(iii) A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device must be set to give the operator sufficient warning to prevent encroachment.

(iv) A device that automatically limits range of movement, set to prevent encroachment.

(v) An elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high-visibility markings.

(c) *Assembly/disassembly below power lines prohibited.* No part of a crane/derrick, load line, or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.

(d) *Assembly/disassembly inside Table A clearance prohibited.* No part of a crane/derrick, load line, or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed closer than the minimum approach distance under Table A (*see* § 1926.1408) to a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.

(e) *Voltage information.* Where Option (3) of this section is used, the utility owner/operator of the power lines must provide the requested voltage information within two working days of the employer's request.

(f) *Power lines presumed energized.* The employer must assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.

(g) *Posting of electrocution warnings.* There must be at least one electrocution hazard warning conspicuously posted in the cab so that it is in view of the operator and (except for overhead gantry and tower cranes) at least two on the outside of the equipment.

§ 1926.1408 Power line safety (up to 350 kV)—equipment operations.

(a) *Hazard assessments and precautions inside the work zone.* Before beginning equipment operations, the employer must:

(1) *Identify the work zone by either:*

(i) Demarcating boundaries (such as with flags, or a device such as a range limit device or range control warning device) and prohibiting the operator from operating the equipment past those boundaries, or

(ii) Defining the work zone as the area 360 degrees around the equipment, up to the equipment's maximum working radius.

(2) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone, could get closer than 20 feet to a power line. If so, the employer must meet the requirements in Option (1), Option (2), or Option (3) of this section, as follows:

(i) *Option (1)—Deenergize and ground.* Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.

(ii) *Option (2)—20 foot clearance.* Ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer than 20 feet to the power line by implementing the measures specified in paragraph (b) of this section.

(iii) *Option (3)—Table A clearance.*

(A) Determine the line's voltage and the minimum approach distance permitted under Table A (*see* § 1926.1408).

(B) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), while operating up to the equipment's maximum working radius in the work zone, could get closer than the minimum approach distance of the power line permitted under Table A (*see* § 1926.1408). If so, then the employer must follow the requirements in paragraph (b) of this section to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum approach distance.

(b) *Preventing encroachment/electrocution.* Where encroachment precautions are required under Option (2) or Option (3) of this section, all of the following requirements must be met:

(1) Conduct a planning meeting with the operator and the other workers who will be in the area of the equipment or load to review the location of the power line(s), and the steps that will be implemented to prevent encroachment/electrocution.

(2) If tag lines are used, they must be non-conductive.

(3) Erect and maintain an elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high-visibility markings, at 20 feet from the power line (if using Option (2) of this section) or at the minimum approach distance under Table A (*see* § 1926.1408) (if using Option (3) of this section). If the operator is unable to see the elevated warning line, a dedicated spotter must be used as described in § 1926.1408(b)(4)(ii) in addition to implementing one of the measures described in §§ 1926.1408(b)(4)(i), (iii), (iv) and (v).

(4) Implement at least one of the following measures:

(i) A proximity alarm set to give the operator sufficient warning to prevent encroachment.

(ii) A dedicated spotter who is in continuous contact with the operator. Where this measure is selected, the dedicated spotter must:

(A) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include, but are not limited to: A clearly visible line painted on the ground; a clearly visible line of stanchions; a set of clearly visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).

(B) Be positioned to effectively gauge the clearance distance.

(C) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.

(D) Give timely information to the operator so that the required clearance distance can be maintained.

(iii) A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device must be set to give the operator sufficient warning to prevent encroachment.

(iv) A device that automatically limits range of movement, set to prevent encroachment.

(v) An insulating link/device, as defined in § 1926.1401, installed at a point between the end of the load line (or below) and the load.

(5) The requirements of paragraph (b)(4) of this section do not apply to work covered by subpart V of this part.

(c) *Voltage information.* Where Option (3) of this section is used, the utility owner/operator of the power lines must provide the requested voltage information within two working days of the employer's request.

(d) *Operations below power lines.*

(1) No part of the equipment, load line, or load (including rigging and lifting accessories) is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line, except where one of the exceptions in paragraph (d)(2) of this section applies.

(2) *Exceptions.* Paragraph (d)(1) of this section is inapplicable where the employer demonstrates that one of the following applies:

(i) The work is covered by subpart V of this part.

(ii) For equipment with non-extensible booms: The uppermost part of the equipment, with the boom at true vertical, would be more than 20 feet below the plane of the power line or more than the Table A of this section minimum clearance distance below the plane of the power line.

(iii) For equipment with articulating or extensible booms: The uppermost part of the equipment, with the boom in the fully extended position, at true vertical, would be more than 20 feet below the plane of the power line or more than the Table A of this section minimum clearance distance below the plane of the power line.

(iv) The employer demonstrates that compliance with paragraph (d)(1) of this section is infeasible and meets the requirements of § 1926.1410.

(e) *Power lines presumed energized.* The employer must assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.

(f) When working near transmitter/communication towers where the equipment is close enough for an electrical charge to be induced in the equipment or materials being handled, the transmitter must be deenergized or the following precautions must be taken:

(1) The equipment must be provided with an electrical ground.

(2) If tag lines are used, they must be non-conductive.

(g) *Training.*

(1) The employer must train each operator and crew member assigned to work with the equipment on all of the following:

(i) The procedures to be followed in the event of electrical contact with a power line. Such training must include:

(A) Information regarding the danger of electrocution from the operator simultaneously touching the equipment and the ground.

(B) The importance to the operator's safety of remaining inside the cab except where there is an imminent danger of fire, explosion, or other emergency that necessitates leaving the cab.

(C) The safest means of evacuating from equipment that may be energized.

(D) The danger of the potentially energized zone around the equipment (step potential).

(E) The need for crew in the area to avoid approaching or touching the equipment and the load.

(F) Safe clearance distance from power lines.

(ii) Power lines are presumed to be energized unless the utility owner/

operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.

(iii) Power lines are presumed to be uninsulated unless the utility owner/operator or a registered engineer who is a qualified person with respect to electrical power transmission and distribution confirms that a line is insulated.

(iv) The limitations of an insulating link/device, proximity alarm, and range control (and similar) device, if used.

(v) The procedures to be followed to properly ground equipment and the limitations of grounding.

(2) Employees working as dedicated spotters must be trained to enable them to effectively perform their task, including training on the applicable requirements of this section.

(3) Training under this section must be administered in accordance with § 1926.1430(g).

(h) Devices originally designed by the manufacturer for use as: A safety device (*see* § 1926.1415), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this section, must meet the manufacturer's procedures for use and conditions of use.

TABLE A—MINIMUM CLEARANCE DISTANCES

Voltage (nominal, kV, alternating current)	Minimum clearance distance (feet)
up to 50	10
over 50 to 200	15
over 200 to 350	20
over 350 to 500	25
over 500 to 750	35
over 750 to 1,000	45
over 1,000	(as established by the utility owner/operator or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution).

Note: The value that follows "to" is up to and includes that value. For example, over 50 to 200 means up to and including 200kV.

§ 1926.1409 Power line safety (over 350 kV).

The requirements of § 1926.1407 and § 1926.1408 apply to power lines over 350 kV except:

(a) For power lines at or below 1000 kV, wherever the distance "20 feet" is specified, the distance "50 feet" must be substituted; and

(b) For power lines over 1000 kV, the minimum clearance distance must be established by the utility owner/operator or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution.

§ 1926.1410 Power line safety (all voltages)—equipment operations closer than the Table A zone.

Equipment operations in which any part of the equipment, load line, or load (including rigging and lifting accessories) is closer than the minimum approach distance under Table A of § 1926.1408 to an energized power line is prohibited, except where the employer demonstrates that all of the following requirements are met:

(a) The employer determines that it is infeasible to do the work without breaching the minimum approach distance under Table A of § 1926.1408.

(b) The employer determines that, after consultation with the utility owner/operator, it is infeasible to deenergize and ground the power line or relocate the power line.

(c) *Minimum clearance distance.*

(1) The power line owner/operator or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution determines the minimum clearance distance that must be maintained to prevent electrical contact in light of the on-site conditions. The factors that must be considered in making this determination include, but are not limited to: Conditions affecting atmospheric conductivity; time necessary to bring the equipment, load line, and load (including rigging and lifting accessories) to a complete stop; wind conditions; degree of sway in the power line; lighting conditions, and other conditions affecting the ability to prevent electrical contact.

(2) Paragraph (c)(1) of this section does not apply to work covered by subpart V of this part; instead, for such work, the minimum clearance distances specified in § 1926.950 Table V–1 apply. Employers engaged in subpart V work are permitted to work closer than the distances in § 1926.950 Table V–1 where both the requirements of this section and § 1926.952(c)(3)(i) or (ii) are met.

(d) A planning meeting with the employer and utility owner/operator (or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution) is held to determine the procedures that will be followed to prevent electrical contact and electrocution. At a minimum these procedures must include:

(1) If the power line is equipped with a device that automatically reenergizes the circuit in the event of a power line contact, before the work begins, the automatic reclosing feature of the circuit interrupting device must be made inoperative if the design of the device permits.

(2) A dedicated spotter who is in continuous contact with the operator. The dedicated spotter must:

(i) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include, but are not limited to: A line painted on the ground; a clearly visible line of stanchions; a set of clearly visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).

(ii) Be positioned to effectively gauge the clearance distance.

(iii) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.

(iv) Give timely information to the operator so that the required clearance distance can be maintained.

(3) An elevated warning line, or barricade (not attached to the crane), in view of the operator (either directly or through video equipment), equipped with flags or similar high-visibility markings, to prevent electrical contact. However, this provision does not apply to work covered by subpart V of this part.

(4) *Insulating link/device.*

(i) An insulating link/device installed at a point between the end of the load line (or below) and the load.

(ii) For work covered by subpart V of this part, the requirement in paragraph

(d)(4)(i) of this section applies only when working inside the § 1926.950 Table V–1 clearance distances.

(iii) For work covered by subpart V of this part involving operations where use of an insulating link/device is infeasible, the requirements of § 1910.269(p)(4)(iii)(B) or (C) may be substituted for the requirement in (d)(4)(i) of this section.

(iv) Until November 8, 2011, the following procedure may be substituted for the requirement in paragraph (d)(4)(i) of this section: All employees, excluding equipment operators located on the equipment, who may come in contact with the equipment, the load line, or the load must be insulated or guarded from the equipment, the load line, and the load. Insulating gloves rated for the voltage involved are adequate insulation for the purposes of this paragraph.

(v) Until November 8, 2013, the following procedure may be substituted for the requirement in (d)(4)(i) of this section:

(A) The employer must use a link/device manufactured on or before November 8, 2011, that meets the definition of an insulating link/device, except that it has not been approved by a Nationally Recognized Testing Laboratory, and that is maintained and used in accordance with manufacturer requirements and recommendations, and is installed at a point between the end of the load line (or below) and the load; and

(B) All employees, excluding equipment operators located on the equipment, who may come in contact with the equipment, the load line, or the load must be insulated or guarded from the equipment, the load line, and the load through an additional means other than the device described in paragraph (d)(4)(v)(A) of this section. Insulating gloves rated for the voltage involved are adequate additional means of protection for the purposes of this paragraph.

(5) Nonconductive rigging if the rigging may be within the Table A of § 1926.1408 distance during the operation.

(6) If the equipment is equipped with a device that automatically limits range of movement, it must be used and set to prevent any part of the equipment, load line, or load (including rigging and lifting accessories) from breaching the minimum approach distance established under paragraph (c) of this section.

(7) If a tag line is used, it must be of the nonconductive type.

(8) Barricades forming a perimeter at least 10 feet away from the equipment to prevent unauthorized personnel from entering the work area. In areas where obstacles prevent the barricade from being at least 10 feet away, the barricade must be as far from the equipment as feasible.

(9) Workers other than the operator must be prohibited from touching the load line above the insulating link/device and crane. Operators remotely operating the equipment from the ground must use either wireless controls that isolate the operator from the equipment or insulating mats that insulate the operator from the ground.

(10) Only personnel essential to the operation are permitted to be in the area of the crane and load.

(11) The equipment must be properly grounded.

(12) Insulating line hose or cover-up must be installed by the utility owner/operator except where such devices are unavailable for the line voltages involved.

(e) The procedures developed to comply with paragraph (d) of this section are documented and immediately available on-site.

(f) The equipment user and utility owner/operator (or registered professional engineer) meet with the equipment operator and the other workers who will be in the area of the equipment or load to review the procedures that will be implemented to prevent breaching the minimum approach distance established in paragraph (c) of this section and prevent electrocution.

(g) The procedures developed to comply with paragraph (d) of this section are implemented.

(h) The utility owner/operator (or registered professional engineer) and all employers of employees involved in the work must identify one person who will direct the implementation of the procedures. The person identified in accordance with this paragraph must direct the implementation of the procedures and must have the authority to stop work at any time to ensure safety.

(i) [*Reserved*.]

(j) If a problem occurs implementing the procedures being used to comply with paragraph (d) of this section, or indicating that those procedures are inadequate to prevent electrocution, the employer must safely stop operations and either develop new procedures to comply with paragraph (d) of this section or have the utility owner/operator deenergize and visibly ground or relocate the power line before resuming work.

(k) Devices originally designed by the manufacturer for use as a safety device (*see* § 1926.1415), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this section, must comply with the manufacturer's procedures for use and conditions of use.

(l) [*Reserved*.]

(m) The employer must train each operator and crew member assigned to work with the equipment in accordance with § 1926.1408(g).

§ 1926.1411 Power line safety—while traveling under or near power lines with no load.

(a) This section establishes procedures and criteria that must be met for equipment traveling under or near a power line on a construction site with no load. Equipment traveling on a construction site with a load is governed by §§ 1926.1408, 1926.1409 or 1926.1410, whichever is appropriate, and § 1926.1417(u).

(b) The employer must ensure that:

(1) The boom/mast and boom/mast support system are lowered sufficiently to meet the requirements of this paragraph.

(2) The clearances specified in Table T of this section are maintained.

(3) The effects of speed and terrain on equipment movement (including movement of the boom/mast) are considered so that those effects do not cause the minimum clearance distances specified in Table T of this section to be breached.

(4) *Dedicated spotter.* If any part of the equipment while traveling will get closer than 20 feet to the power line, the employer must ensure that a dedicated spotter who is in continuous contact with the driver/operator is used. The dedicated spotter must:

(i) Be positioned to effectively gauge the clearance distance.

(ii) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.

(iii) Give timely information to the operator so that the required clearance distance can be maintained.

(5) *Additional precautions for traveling in poor visibility.* When traveling at night, or in conditions of poor visibility, in addition to the measures specified in paragraphs (b)(1) through (4) of this section, the employer must ensure that:

(i) The power lines are illuminated or another means of identifying the location of the lines is used.

(ii) A safe path of travel is identified and used.

TABLE T—MINIMUM CLEARANCE DISTANCES WHILE TRAVELING WITH NO LOAD

Voltage (nominal, kV, alternating current)	While traveling—minimum clearance distance (feet)
up to 0.75	4
over .75 to 50	6
over 50 to 345	10
over 345 to 750	16
Over 750 to 1,000	20
Over 1,000	(as established by the utility owner/operator or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution).

§ 1926.1412 Inspections.

(a) *Modified equipment.*

(1) Equipment that has had modifications or additions which affect the safe operation of the equipment (such as modifications or additions involving a safety device or operational aid, critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism) or capacity must be inspected by a qualified person after such modifications/additions have been completed, prior to initial use. The inspection must meet all of the following requirements:

(i) The inspection must assure that the modifications or additions have been done in accordance with the approval obtained pursuant to § 1926.1434 (Equipment modifications).

(ii) The inspection must include functional testing of the equipment.

(2) Equipment must not be used until an inspection under this paragraph demonstrates that the requirements of paragraph (a)(1)(i) of this section have been met.

(b) *Repaired/adjusted equipment.*

(1) Equipment that has had a repair or adjustment that relates to safe operation (such as: A repair or adjustment to a safety device or operator aid, or to a critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism), must be inspected by a qualified person after such a repair or adjustment has been completed, prior to initial use. The inspection must meet all of the following requirements:

(i) The qualified person must determine if the repair/adjustment meets manufacturer equipment criteria (where applicable and available).

(ii) Where manufacturer equipment criteria are unavailable or inapplicable, the qualified person must:

(A) Determine if a registered professional engineer (RPE) is needed to develop criteria for the repair/adjustment. If an RPE is not needed, the employer must ensure that the criteria are developed by the qualified person. If an RPE is needed, the employer must ensure that they are developed by an RPE.

(B) Determine if the repair/adjustment meets the criteria developed in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) The inspection must include functional testing of the repaired/adjusted parts and other components that may be affected by the repair/adjustment.

(4) Equipment must not be used until an inspection under this paragraph demonstrates that the repair/adjustment meets the requirements of paragraph (b)(1)(i) of this section (or, where applicable, paragraph (b)(1)(ii) of this section).

(c) *Post-assembly.*

(1) Upon completion of assembly, the equipment must be inspected by a qualified person to assure that it is configured in accordance with manufacturer equipment criteria.

(2) Where manufacturer equipment criteria are unavailable, a qualified person must:

(i) Determine if a registered professional engineer (RPE) familiar with the type of equipment involved is needed to develop criteria for the equipment configuration. If an RPE is not needed, the employer must ensure that the criteria are developed by the qualified person. If an RPE is needed, the employer must ensure that they are developed by an RPE.

(ii) Determine if the equipment meets the criteria developed in accordance with paragraph (c)(2)(i) of this section.

(3) Equipment must not be used until an inspection under this paragraph demonstrates that the equipment is configured in accordance with the applicable criteria.

(d) *Each shift.*

(1) A competent person must begin a visual inspection prior to each shift the equipment will be used, which must be completed before or during that shift. The inspection must consist of observation for apparent deficiencies. Taking apart equipment components and booming down is not required as part of this inspection unless the results of the visual inspection or trial operation indicate that further investigation necessitating taking apart equipment components or booming down is needed. Determinations made in conducting the inspection must be reassessed in light of observations made during operation. At a minimum the inspection must include all of the following:

(i) Control mechanisms for maladjustments interfering with proper operation.

(ii) Control and drive mechanisms for apparent excessive wear of components and contamination by lubricants, water or other foreign matter.

(iii) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation.

(iv) Hydraulic system for proper fluid level.

(v) Hooks and latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat.

(vi) Wire rope reeving for compliance with the manufacturer's specifications.

(vii) Wire rope, in accordance with § 1926.1413(a).

(viii) Electrical apparatus for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation.

(ix) Tires (when in use) for proper inflation and condition.

(x) Ground conditions around the equipment for proper support, including ground settling under and around outriggers/stabilizers and supporting foundations, ground water accumulation, or similar conditions. This paragraph does not apply to the inspection of ground conditions for railroad tracks and their underlying support when the railroad tracks are part of the general railroad system of transportation that is regulated pursuant to the Federal Railroad Administration under 49 CFR part 213.

(xi) The equipment for level position within the tolerances specified by the

equipment manufacturer's recommendations, both before each shift and after each move and setup.

(xii) Operator cab windows for significant cracks, breaks, or other deficiencies that would hamper the operator's view.

(xiii) Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling. This paragraph does not apply to the inspection of rails, rail stops, rail clamps and supporting surfaces when the railroad tracks are part of the general railroad system of transportation that is regulated pursuant to the Federal Railroad Administration under 49 CFR part 213.

(xiv) Safety devices and operational aids for proper operation.

(2) If any deficiency in paragraphs (d)(1)(i) through (xiii) of this section (or in additional inspection items required to be checked for specific types of equipment in accordance with other sections of this standard) is identified, an immediate determination must be made by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the equipment must be taken out of service until it has been corrected. *See* § 1926.1417.

(3) If any deficiency in paragraph (d)(1)(xiv) of this section (safety devices/operational aids) is identified, the action specified in § 1926.1415 and § 1926.1416 must be taken prior to using the equipment.

(e) *Monthly.*

(1) Each month the equipment is in service it must be inspected in accordance with paragraph (d) of this section (each shift).

(2) Equipment must not be used until an inspection under this paragraph demonstrates that no corrective action under paragraphs (d)(2) and (3) of this section is required.

(3) *Documentation.*

(i) The following information must be documented and maintained by the employer that conducts the inspection:

(A) The items checked and the results of the inspection.

(B) The name and signature of the person who conducted the inspection and the date.

(ii) This document must be retained for a minimum of three months.

(f) *Annual/comprehensive.*

(1) At least every 12 months the equipment must be inspected by a qualified person in accordance with paragraph (d) of this section (each shift) except that the corrective action set forth in paragraphs (f)(4), (f)(5), and (f)(6) of this section must apply in place of the corrective action required by paragraphs (d)(2) and (d)(3) of this section.

(2) In addition, at least every 12 months, the equipment must be inspected by a qualified person. Disassembly is required, as necessary, to complete the inspection. The equipment must be inspected for all of the following:

(i) Equipment structure (including the boom and, if equipped, the jib):

(A) Structural members: Deformed, cracked, or significantly corroded.

(B) Bolts, rivets and other fasteners: loose, failed or significantly corroded.

(C) Welds for cracks.

(ii) Sheaves and drums for cracks or significant wear.

(iii) Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or significant wear.

(iv) Brake and clutch system parts, linings, pawls and ratchets for excessive wear.

(v) Safety devices and operational aids for proper operation (including significant inaccuracies).

(vi) Gasoline, diesel, electric, or other power plants for safety-related problems (such as leaking exhaust and emergency shut-down feature) and conditions, and proper operation.

(vii) Chains and chain drive sprockets for excessive wear of sprockets and excessive chain stretch.

(viii) Travel steering, brakes, and locking devices, for proper operation.

(ix) Tires for damage or excessive wear.

(x) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(A) Flexible hose or its junction with the fittings for indications of leaks.

(B) Threaded or clamped joints for leaks.

(C) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(D) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing.

(xi) Hydraulic and pneumatic pumps and motors, as follows:

(A) Performance indicators: Unusual noises or vibration, low operating speed, excessive heating of the fluid, low pressure.

(B) Loose bolts or fasteners.

(C) Shaft seals and joints between pump sections for leaks.

(xii) Hydraulic and pneumatic valves, as follows:

(A) Spools: Sticking, improper return to neutral, and leaks.

(B) Leaks.

(C) Valve housing cracks.

(D) Relief valves: Failure to reach correct pressure (if there is a manufacturer procedure for checking pressure, it must be followed).

(xiii) Hydraulic and pneumatic cylinders, as follows:

(A) Drifting caused by fluid leaking across the piston.

(B) Rod seals and welded joints for leaks.

(C) Cylinder rods for scores, nicks, or dents.

(D) Case (barrel) for significant dents.

(E) Rod eyes and connecting joints: Loose or deformed.

(xiv) Outrigger or stabilizer pads/floats for excessive wear or cracks.

(xv) Slider pads for excessive wear or cracks.

(xvi) Electrical components and wiring for cracked or split insulation and loose or corroded terminations.

(xvii) Warning labels and decals originally supplied with the equipment by the manufacturer or otherwise required under this standard: Missing or unreadable.

(xviii) Originally equipped operator seat (or equivalent): Missing.

(xix) Operator seat: Unserviceable.

(xx) Originally equipped steps, ladders, handrails, guards: Missing.

(xxi) Steps, ladders, handrails, guards: In unusable/unsafe condition.

(3) This inspection must include functional testing to determine that the equipment as configured in the inspection is functioning properly.

(4) If any deficiency is identified, an immediate determination must be made by the qualified person as to whether the deficiency constitutes a safety hazard or, though not yet a safety hazard, needs to be monitored in the monthly inspections.

(5) If the qualified person determines that a deficiency is a safety hazard, the equipment must be taken out of service until it has been corrected, except when temporary alternative measures are implemented as specified in § 1926.1416(d) or § 1926.1435(e). *See* § 1926.1417.

(6) If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer must ensure that the deficiency is checked in the monthly inspections.

(7) *Documentation of annual/comprehensive inspection.* The following information must be documented, maintained, and retained for a minimum of 12 months, by the employer that conducts the inspection:

(i) The items checked and the results of the inspection.

(ii) The name and signature of the person who conducted the inspection and the date.

(g) *Severe service.* Where the severity of use/conditions is such that there is a

reasonable probability of damage or excessive wear (such as loading that may have exceeded rated capacity, shock loading that may have exceeded rated capacity, prolonged exposure to a corrosive atmosphere), the employer must stop using the equipment and a qualified person must:

(1) Inspect the equipment for structural damage to determine if the equipment can continue to be used safely.

(2) In light of the use/conditions determine whether any items/conditions listed in paragraph (f) of this section need to be inspected; if so, the qualified person must inspect those items/conditions.

(3) If a deficiency is found, the employer must follow the requirements in paragraphs (f)(4) through (6) of this section.

(h) *Equipment not in regular use.* Equipment that has been idle for 3 months or more must be inspected by a qualified person in accordance with the requirements of paragraph (e) (Monthly) of this section before initial use.

(i) [*Reserved.*]

(j) Any part of a manufacturer's procedures regarding inspections that relate to safe operation (such as to a safety device or operational aid, critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism) that is more comprehensive or has a more frequent schedule of inspection than the requirements of this section must be followed.

(k) All documents produced under this section must be available, during the applicable document retention period, to all persons who conduct inspections under this section.

§ 1926.1413 Wire rope—inspection.

(a) *Shift inspection.*

(1) A competent person must begin a visual inspection prior to each shift the equipment is used, which must be completed before or during that shift. The inspection must consist of observation of wire ropes (running and standing) that are likely to be in use during the shift for apparent deficiencies, including those listed in paragraph (a)(2) of this section. Untwisting (opening) of wire rope or booming down is not required as part of this inspection.

(2) *Apparent deficiencies.*

(i) *Category I.* Apparent deficiencies in this category include the following:

(A) Significant distortion of the wire rope structure such as kinking, crushing, unstranding, birdcaging, signs of core failure or steel core protrusion between the outer strands.

(B) Significant corrosion.

(C) Electric arc damage (from a source other than power lines) or heat damage.

(D) Improperly applied end connections.

(E) Significantly corroded, cracked, bent, or worn end connections (such as from severe service).

(ii) *Category II.* Apparent deficiencies in this category are:

(A) Visible broken wires, as follows:

(1) In running wire ropes: Six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay, where a rope lay is the length along the rope in which one strand makes a complete revolution around the rope.

(2) In rotation resistant ropes: Two randomly distributed broken wires in six rope diameters or four randomly distributed broken wires in 30 rope diameters.

(3) In pendants or standing wire ropes: More than two broken wires in one rope lay located in rope beyond end connections and/or more than one broken wire in a rope lay located at an end connection.

(B) A diameter reduction of more than 5% from nominal diameter.

(iii) *Category III.* Apparent deficiencies in this category include the following:

(A) In rotation resistant wire rope, core protrusion or other distortion indicating core failure.

(B) Prior electrical contact with a power line.

(C) A broken strand.

(3) *Critical review items.* The competent person must give particular attention to all of the following:

(i) Rotation resistant wire rope in use.

(ii) Wire rope being used for boom hoists and luffing hoists, particularly at reverse bends.

(iii) Wire rope at flange points, crossover points and repetitive pickup points on drums.

(iv) Wire rope at or near terminal ends.

(v) Wire rope in contact with saddles, equalizer sheaves or other sheaves where rope travel is limited.

(4) *Removal from service.*

(i) If a deficiency in Category I (*see* paragraph (a)(2)(i) of this section) is identified, an immediate determination must be made by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, operations involving use of the wire rope in question must be prohibited until:

(A) The wire rope is replaced (*see* § 1926.1417), or

(B) If the deficiency is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. If a rope is shortened under this paragraph, the employer must ensure that the drum will still have two wraps of wire when the load and/or boom is in its lowest position.

(ii) If a deficiency in Category II (*see* paragraph (a)(2)(ii) of this section) is identified, operations involving use of the wire rope in question must be prohibited until:

(A) The employer complies with the wire rope manufacturer's established criterion for removal from service or a different criterion that the wire rope manufacturer has approved in writing for that specific wire rope (*see* § 1926.1417),

(B) The wire rope is replaced (*see* § 1926.1417), or

(C) If the deficiency is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. If a rope is shortened under this paragraph, the employer must ensure that the drum will still have two wraps of wire when the load and/or boom is in its lowest position.

(iii) If a deficiency in Category III is identified, operations involving use of the wire rope in question must be prohibited until:

(A) The wire rope is replaced (*see* § 1926.1417), or

(B) If the deficiency (other than power line contact) is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. Repair of wire rope that contacted an energized power line is also prohibited. If a rope is shortened under this paragraph, the employer must ensure that the drum will still have two wraps of wire when the load and/or boom is in its lowest position.

(iv) Where a wire rope is required to be removed from service under this section, either the equipment (as a whole) or the hoist with that wire rope must be tagged-out, in accordance with § 1926.1417(f)(1), until the wire rope is repaired or replaced.

(b) *Monthly inspection.*

(1) Each month an inspection must be conducted in accordance with paragraph (a) (shift inspection) of this section.

(2) The inspection must include any deficiencies that the qualified person who conducts the annual inspection

determines under paragraph (c)(3)(ii) of this section must be monitored.

(3) Wire ropes on equipment must not be used until an inspection under this paragraph demonstrates that no corrective action under paragraph (a)(4) of this section is required.

(4) The inspection must be documented according to § 1926.1412(e)(3) (monthly inspection documentation).

(c) *Annual/comprehensive.*

(1) At least every 12 months, wire ropes in use on equipment must be inspected by a qualified person in accordance with paragraph (a) of this section (shift inspection).

(2) In addition, at least every 12 months, the wire ropes in use on equipment must be inspected by a qualified person, as follows:

(i) The inspection must be for deficiencies of the types listed in paragraph (a)(2) of this section.

(ii) The inspection must be complete and thorough, covering the surface of the entire length of the wire ropes, with particular attention given to all of the following:

(A) Critical review items listed in paragraph (a)(3) of this section.

(B) Those sections that are normally hidden during shift and monthly inspections.

(C) Wire rope subject to reverse bends.

(D) Wire rope passing over sheaves.

(iii) *Exception:* In the event an inspection under paragraph (c)(2) of this section is not feasible due to existing set-up and configuration of the equipment (such as where an assist crane is needed) or due to site conditions (such as a dense urban setting), such inspections must be conducted as soon as it becomes feasible, but no longer than an additional 6 months for running ropes and, for standing ropes, at the time of disassembly.

(3) If a deficiency is identified, an immediate determination must be made by the qualified person as to whether the deficiency constitutes a safety hazard.

(i) If the deficiency is determined to constitute a safety hazard, operations involving use of the wire rope in question must be prohibited until:

(A) The wire rope is replaced (*see* § 1926.1417), or

(B) If the deficiency is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. If a rope is shortened under this paragraph, the employer must ensure that the drum will still have two wraps of wire when the load and/or boom is in its lowest position.

(ii) If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer must ensure that the deficiency is checked in the monthly inspections.

(4) The inspection must be documented according to § 1926.1412(f)(7) (annual/comprehensive inspection documentation).

(d) Rope lubricants that are of the type that hinder inspection must not be used.

(e) All documents produced under this section must be available, during the applicable document retention period, to all persons who conduct inspections under this section.

§ 1926.1414 Wire rope—selection and installation criteria.

(a) Original equipment wire rope and replacement wire rope must be selected and installed in accordance with the requirements of this section. Selection of replacement wire rope must be in accordance with the recommendations of the wire rope manufacturer, the equipment manufacturer, or a qualified person.

(b) *Wire rope design criteria:* Wire rope (other than rotation resistant rope) must comply with either Option (1) or Option (2) of this section, as follows:

(1) *Option (1).* Wire rope must comply with section 5–1.7.1 of ASME B30.5–2004 (incorporated by reference, *see* § 1926.6) except that section's paragraph (c) must not apply.

(2) *Option (2).* Wire rope must be designed to have, in relation to the equipment's rated capacity, a sufficient minimum breaking force and design factor so that compliance with the applicable inspection provisions in § 1926.1413 will be an effective means of preventing sudden rope failure.

(c) Wire rope must be compatible with the safe functioning of the equipment.

(d) *Boom hoist reeving.*

(1) Fiber core ropes must not be used for boom hoist reeving, except for derricks.

(2) Rotation resistant ropes must be used for boom hoist reeving only where the requirements of paragraph (e)(4)(ii) of this section are met.

(e) *Rotation resistant ropes.*

(1) *Definitions.*

(i) *Type I rotation resistant wire rope ("Type I").* Type I rotation resistant rope is stranded rope constructed to have little or no tendency to rotate or, if guided, transmits little or no torque. It has at least 15 outer strands and comprises an assembly of at least three layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.

(ii) *Type II rotation resistant wire rope ("Type II").* Type II rotation resistant rope is stranded rope constructed to have significant resistance to rotation. It has at least 10 outer strands and comprises an assembly of two or more layers of strands laid helically over a center in two or three operations. The direction of lay of the outer strands is opposite to that of the underlying layer.

(iii) *Type III rotation resistant wire rope ("Type III").* Type III rotation resistant rope is stranded rope constructed to have limited resistance to rotation. It has no more than nine outer strands, and comprises an assembly of two layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.

(2) *Requirements.*

(i) Types II and III with an operating design factor of less than 5 must not be used for duty cycle or repetitive lifts.

(ii) Rotation resistant ropes (including Types I, II and III) must have an operating design factor of no less than 3.5.

(iii) Type I must have an operating design factor of no less than 5, except where the wire rope manufacturer and the equipment manufacturer approves the design factor, in writing.

(iv) Types II and III must have an operating design factor of no less than 5, except where the requirements of paragraph (e)(3) of this section are met.

(3) When Types II and III with an operating design factor of less than 5 are used (for non-duty cycle, non-repetitive lifts), the following requirements must be met for each lifting operation:

(i) A qualified person must inspect the rope in accordance with § 1926.1413(a). The rope must be used only if the qualified person determines that there are no deficiencies constituting a hazard. In making this determination, more than one broken wire in any one rope lay must be considered a hazard.

(ii) Operations must be conducted in such a manner and at such speeds as to minimize dynamic effects.

(iii) Each lift made under § 1926.1414(e)(3) must be recorded in the monthly and annual inspection documents. Such prior uses must be considered by the qualified person in determining whether to use the rope again.

(4) *Additional requirements for rotation resistant ropes for boom hoist reeving.*

(i) Rotation resistant ropes must not be used for boom hoist reeving, except where the requirements of paragraph (e)(4)(ii) of this section are met.

(ii) Rotation resistant ropes may be used as boom hoist reeving when load hoists are used as boom hoists for attachments such as luffing attachments or boom and mast attachment systems. Under these conditions, all of the following requirements must be met:

(A) The drum must provide a first layer rope pitch diameter of not less than 18 times the nominal diameter of the rope used.

(B) The requirements in § 1926.1426(a) (irrespective of the date of manufacture of the equipment), and § 1926.1426(b).

(C) The requirements in ASME B30.5–2004 sections 5–1.3.2(a), (a)(2) through (a)(4), (b) and (d) (incorporated by reference, *see* § 1926.6) except that the minimum pitch diameter for sheaves used in multiple rope reeving is 18 times the nominal diameter of the rope used (instead of the value of 16 specified in section 5–1.3.2(d)).

(D) All sheaves used in the boom hoist reeving system must have a rope pitch diameter of not less than 18 times the nominal diameter of the rope used.

(E) The operating design factor for the boom hoist reeving system must be not less than five.

(F) The operating design factor for these ropes must be the total minimum breaking force of all parts of rope in the system divided by the load imposed on the rope system when supporting the static weights of the structure and the load within the equipment's rated capacity.

(G) When provided, a power-controlled lowering system must be capable of handling rated capacities and speeds as specified by the manufacturer.

(f) Wire rope clips used in conjunction with wedge sockets must be attached to the unloaded dead end of the rope only, except that the use of devices specifically designed for dead-ending rope in a wedge socket is permitted.

(g) Socketing must be done in the manner specified by the manufacturer of the wire rope or fitting.

(h) Prior to cutting a wire rope, seizings must be placed on each side of the point to be cut. The length and number of seizings must be in accordance with the wire rope manufacturer's instructions.

§ 1926.1415 Safety devices.

(a) *Safety devices.* The following safety devices are required on all equipment covered by this subpart, unless otherwise specified:

(1) *Crane level indicator.*

(i) The equipment must have a crane level indicator that is either built into the equipment or is available on the equipment.

(ii) If a built-in crane level indicator is not working properly, it must be tagged-out or removed. If a removable crane level indicator is not working properly, it must be removed.

(iii) This requirement does not apply to portal cranes, derricks, floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.

(2) Boom stops, except for derricks and hydraulic booms.

(3) Jib stops (if a jib is attached), except for derricks.

(4) Equipment with foot pedal brakes must have locks.

(5) Hydraulic outrigger jacks and hydraulic stabilizer jacks must have an integral holding device/check valve.

(6) Equipment on rails must have rail clamps and rail stops, except for portal cranes.

(7) *Horn*

(i) The equipment must have a horn that is either built into the equipment or is on the equipment and immediately available to the operator.

(ii) If a built-in horn is not working properly, it must be tagged-out or removed. If a removable horn is not working properly, it must be removed.

(b) *Proper operation required.* Operations must not begin unless all of the devices listed in this section are in proper working order. If a device stops working properly during operations, the operator must safely stop operations. If any of the devices listed in this section are not in proper working order, the equipment must be taken out of service and operations must not resume until the device is again working properly. *See* § 1926.1417 (Operation). Alternative measures are not permitted to be used.

§ 1926.1416 Operational aids.

(a) The devices listed in this section ("listed operational aids") are required on all equipment covered by this subpart, unless otherwise specified.

(1) The requirements in paragraphs (e)(1), (e)(2), and (e)(3) of this section do not apply to articulating cranes.

(2) The requirements in paragraphs (d)(3), (e)(1), and (e)(4) of this section apply only to those digger derricks manufactured after November 8, 2011.

(b) Operations must not begin unless the listed operational aids are in proper working order, except where an operational aid is being repaired the employer uses the specified temporary alternative measures. The time periods permitted for repairing defective operational aids are specified in paragraphs (d) and (e) of this section. More protective alternative measures specified by the crane/derrick manufacturer, if any, must be followed.

(c) If a listed operational aid stops working properly during operations, the operator must safely stop operations until the temporary alternative measures are implemented or the device is again working properly. If a replacement part is no longer available, the use of a substitute device that performs the same type of function is permitted and is not considered a modification under § 1926.1434.

(d) *Category I operational aids and alternative measures.* Operational aids listed in this paragraph that are not working properly must be repaired no later than 7 calendar days after the deficiency occurs. *Exception:* If the employer documents that it has ordered the necessary parts within 7 calendar days of the occurrence of the deficiency, the repair must be completed within 7 calendar days of receipt of the parts. *See* § 1926.1417(j) for additional requirements.

(1) *Boom hoist limiting device.*

(i) For equipment manufactured after December 16, 1969, a boom hoist limiting device is required. *Temporary alternative measures (use at least one).* One or more of the following methods must be used:

(A) Use a boom angle indicator.

(B) Clearly mark the boom hoist cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to keep the boom within the minimum allowable radius. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.

(C) Clearly mark the boom hoist cable (so that it can easily be seen by a spotter) at a point that will give the spotter sufficient time to signal the operator and have the operator stop the hoist to keep the boom within the minimum allowable radius.

(ii) If the equipment was manufactured on or before December 16, 1969, and is not equipped with a boom hoist limiting device, at least one of the measures in paragraphs (d)(1)(i)(A) through (C) of this section must be used.

(2) *Luffing jib limiting device.* Equipment with a luffing jib must have a luffing jib limiting device. Temporary alternative measures are the same as in paragraph (d)(1)(i) of this section, except to limit the movement of the luffing jib rather than the boom hoist.

(3) *Anti two-blocking device.*

(i) Telescopic boom cranes manufactured after February 28, 1992, must be equipped with a device which automatically prevents damage from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block

or similar component). The device(s) must prevent such damage at all points where two-blocking could occur.

Temporary alternative measures: Clearly mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, and use a spotter when extending the boom.

(ii) *Lattice boom cranes.*

(A) Lattice boom cranes manufactured after Feb 28, 1992, must be equipped with a device that either automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component), or warns the operator in time for the operator to prevent two-blocking. The device must prevent such damage/failure or provide adequate warning for all points where two-blocking could occur.

(B) Lattice boom cranes and derricks manufactured after November 8, 2011 must be equipped with a device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device(s) must prevent such damage/failure at all points where two-blocking could occur.

(C) *Exception.* The requirements in paragraphs (d)(3)(ii)(A) and (B) of this section do not apply to such lattice boom equipment when used for dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, marine operations that do not involve hoisting personnel, and pile driving work.

(D) *Temporary alternative measures.* Clearly mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter.

(iii) Articulating cranes manufactured after December 31, 1999, that are equipped with a load hoist must be equipped with a device that automatically prevents damage from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device must prevent such damage at all points where two-blocking could occur. *Temporary alternative measures:* When two-blocking could only occur with movement of the load hoist, clearly mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter. When two-blocking could occur without movement of the load hoist, clearly mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, and use a spotter when extending the boom.

(e) *Category II operational aids and alternative measures.* Operational aids listed in this paragraph that are not working properly must be repaired no later than 30 calendar days after the deficiency occurs. *Exception:* If the employer documents that it has ordered the necessary parts within 7 calendar days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 calendar days, the repair must be completed within 7 calendar days of receipt of the parts. *See* § 1926.1417(j) for additional requirements.

(1) *Boom angle or radius indicator.* The equipment must have a boom angle or radius indicator readable from the operator's station. *Temporary alternative measures:* Radii or boom angle must be determined by measuring the radii or boom angle with a measuring device.

(2) Jib angle indicator if the equipment has a luffing jib. *Temporary alternative measures:* Radii or jib angle must be determined by ascertaining the main boom angle and then measuring the radii or jib angle with a measuring device.

(3) Boom length indicator if the equipment has a telescopic boom, except where the rated capacity is independent of the boom length. *Temporary alternative measures.* One or more of the following methods must be used:

(i) Mark the boom with measured marks to calculate boom length,

(ii) Calculate boom length from boom angle and radius measurements,

(iii) Measure the boom with a measuring device.

(4) *Load weighing and similar devices.*

(i) Equipment (other than derricks and articulating cranes) manufactured after March 29, 2003 with a rated capacity over 6,000 pounds must have at least one of the following: load weighing device, load moment (or rated capacity) indicator, or load moment (or rated capacity) limiter. *Temporary alternative measures:* The weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer) or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight). This information must be provided to the operator prior to the lift.

(ii) Articulating cranes manufactured after November 8, 2011 must have at least one of the following: automatic overload prevention device, load weighing device, load moment (or rated capacity) indicator, or load moment (rated capacity) limiter. *Temporary alternative measures:* The weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer) or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight). This information must be provided to the operator prior to the lift.

(5) The following devices are required on equipment manufactured after November 8, 2011:

(i) Outrigger/stabilizer position (horizontal beam extension) sensor/monitor if the equipment has outriggers or stabilizers. *Temporary alternative measures:* The operator must verify that the position of the outriggers or stabilizers is correct (in accordance with manufacturer procedures) before beginning operations requiring outrigger or stabilizer deployment.

(ii) Hoist drum rotation indicator if the equipment has a hoist drum not visible from the operator's station. *Temporary alternative measures:* Mark the drum to indicate the rotation of the drum. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.

§ 1926.1417 Operation.

(a) The employer must comply with all manufacturer procedures applicable to the operational functions of equipment, including its use with attachments.

(b) *Unavailable operation procedures.*

(1) Where the manufacturer procedures are unavailable, the employer must develop and ensure compliance with all procedures necessary for the safe operation of the equipment and attachments.

(2) Procedures for the operational controls must be developed by a qualified person.

(3) Procedures related to the capacity of the equipment must be developed and signed by a registered professional engineer familiar with the equipment.

(c) *Accessibility of procedures.*

(1) The procedures applicable to the operation of the equipment, including rated capacities (load charts), recommended operating speeds, special hazard warnings, instructions, and operator's manual, must be readily available in the cab at all times for use by the operator.

(2) Where rated capacities are available in the cab only in electronic form: In the event of a failure which makes the rated capacities inaccessible, the operator must immediately cease operations or follow safe shut-down procedures until the rated capacities (in electronic or other form) are available.

(d) The operator must not engage in any practice or activity that diverts his/her attention while actually engaged in operating the equipment, such as the use of cellular phones (other than when used for signal communications).

(e) *Leaving the equipment unattended.*

(1) The operator must not leave the controls while the load is suspended, except where all of the following are met:

(i) The operator remains adjacent to the equipment and is not engaged in any other duties.

(ii) The load is to be held suspended for a period of time exceeding normal lifting operations.

(iii) The competent person determines that it is safe to do so and implements measures necessary to restrain the boom hoist and telescoping, load, swing, and outrigger or stabilizer functions.

(iv) Barricades or caution lines, and notices, are erected to prevent all employees from entering the fall zone. No employees, including those listed in §§ 1926.1425(b)(1) through (3), § 1926.1425(d) or § 1926.1425(e), are permitted in the fall zone.

(2) The provisions in § 1926.1417(e)(1) do not apply to working gear (such as slings, spreader bars, ladders, and welding machines) where the weight of the working gear is negligible relative to the lifting capacity of the equipment as positioned, and the working gear is suspended over an area other than an entrance or exit.

(f) *Tag-out.*

(1) *Tagging out of service equipment/functions.* Where the employer has taken the equipment out of service, a tag must be placed in the cab stating that the equipment is out of service and is not to be used. Where the employer has taken a function(s) out of service, a tag must be placed in a conspicuous position stating that the function is out of service and is not to be used.

(2) *Response to* "*do not operate*"*/tag-out signs.*

(i) If there is a warning (tag-out or maintenance/do not operate) sign on the equipment or starting control, the operator must not activate the switch or start the equipment until the sign has been removed by a person authorized to remove it, or until the operator has verified that:

(A) No one is servicing, working on, or otherwise in a dangerous position on the machine.

(B) The equipment has been repaired and is working properly.

(ii) If there is a warning (tag-out or maintenance/do not operate) sign on any other switch or control, the operator must not activate that switch or control until the sign has been removed by a person authorized to remove it, or until the operator has verified that the requirements in paragraphs (f)(2)(i)(A) and (B) of this section have been met.

(g) Before starting the engine, the operator must verify that all controls are in the proper starting position and that all personnel are in the clear.

(h) *Storm warning.* When a local storm warning has been issued, the competent person must determine whether it is necessary to implement manufacturer recommendations for securing the equipment.

(i) [*Reserved.*]

(j) If equipment adjustments or repairs are necessary:

(1) The operator must, in writing, promptly inform the person designated by the employer to receive such information and, where there are successive shifts, to the next operator; and

(2) The employer must notify all affected employees, at the beginning of each shift, of the necessary adjustments or repairs and all alternative measures.

(k) Safety devices and operational aids must not be used as a substitute for the exercise of professional judgment by the operator.

(l) [*Reserved.*]

(m) If the competent person determines that there is a slack rope condition requiring re-spooling of the rope, it must be verified (before starting to lift) that the rope is seated on the drum and in the sheaves as the slack is removed.

(n) The competent person must adjust the equipment and/or operations to address the effect of wind, ice, and snow on equipment stability and rated capacity.

(o) *Compliance with rated capacity.*

(1) The equipment must not be operated in excess of its rated capacity.

(2) The operator must not be required to operate the equipment in a manner that would violate paragraph (o)(1) of this section.

(3) *Load weight.* The operator must verify that the load is within the rated capacity of the equipment by at least one of the following methods:

(i) The weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer), or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. In addition, when requested by the operator, this information must be provided to the operator prior to the lift; or

(ii) The operator must begin hoisting the load to determine, using a load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter, if it exceeds 75 percent of the maximum rated capacity at the longest radius that will be used during the lift operation. If it does, the operator must not proceed with the lift until he/she verifies the weight of the load in accordance with paragraph (o)(3)(i) of this section.

(p) The boom or other parts of the equipment must not contact any obstruction.

(q) The equipment must not be used to drag or pull loads sideways.

(r) On wheel-mounted equipment, no loads must be lifted over the front area, except as permitted by the manufacturer.

(s) The operator must test the brakes each time a load that is 90% or more of the maximum line pull is handled by lifting the load a few inches and applying the brakes. In duty cycle and repetitive lifts where each lift is 90% or more of the maximum line pull, this requirement applies to the first lift but not to successive lifts.

(t) Neither the load nor the boom must be lowered below the point where less than two full wraps of rope remain on their respective drums.

(u) *Traveling with a load.*

(1) Traveling with a load is prohibited if the practice is prohibited by the manufacturer.

(2) Where traveling with a load, the employer must ensure that:

(i) A competent person supervises the operation, determines if it is necessary to reduce rated capacity, and makes determinations regarding load position, boom location, ground support, travel route, overhead obstructions, and speed of movement necessary to ensure safety.

(ii) The determinations of the competent person required in paragraph (u)(2)(i) of this section are implemented.

(iii) For equipment with tires, tire pressure specified by the manufacturer is maintained.

(v) Rotational speed of the equipment must be such that the load does not swing out beyond the radius at which it can be controlled.

(w) A tag or restraint line must be used if necessary to prevent rotation of the load that would be hazardous.

(x) The brakes must be adjusted in accordance with manufacturer procedures to prevent unintended movement.

(y) The operator must obey a stop (or emergency stop) signal, irrespective of who gives it.

(z) *Swinging locomotive cranes.* A locomotive crane must not be swung into a position where railway cars on an adjacent track could strike it, until it is determined that cars are not being moved on the adjacent track and that proper flag protection has been established.

(aa) *Counterweight/ballast.*

(1) The following applies to equipment other than tower cranes:

(i) Equipment must not be operated without the counterweight or ballast in place as specified by the manufacturer.

(ii) The maximum counterweight or ballast specified by the manufacturer for the equipment must not be exceeded.

(2) Counterweight/ballast requirements for tower cranes are specified in § 1926.1435(b)(8).

§ 1926.1418 Authority to stop operation.

Whenever there is a concern as to safety, the operator must have the authority to stop and refuse to handle loads until a qualified person has determined that safety has been assured.

§ 1926.1419 Signals—general requirements.

(a) A signal person must be provided in each of the following situations:

(1) The point of operation, meaning the load travel or the area near or at load placement, is not in full view of the operator.

(2) When the equipment is traveling, the view in the direction of travel is obstructed.

(3) Due to site specific safety concerns, either the operator or the person handling the load determines that it is necessary.

(b) *Types of signals.* Signals to operators must be by hand, voice, audible, or new signals.

(c) *Hand signals.*

(1) When using hand signals, the Standard Method must be used (*see* Appendix A of this subpart). *Exception:* Where use of the Standard Method for hand signals is infeasible, or where an operation or use of an attachment is not covered in the Standard Method, non-standard hand signals may be used in accordance with paragraph (c)(2) of this section.

(2) *Non-standard hand signals.* When using non-standard hand signals, the signal person, operator, and lift director (where there is one) must contact each other prior to the operation and agree on the non-standard hand signals that will be used.

(d) *New signals.* Signals other than hand, voice, or audible signals may be used where the employer demonstrates that:

(1) The new signals provide at least equally effective communication as voice, audible, or Standard Method hand signals, or

(2) The new signals comply with a national consensus standard that provides at least equally effective communication as voice, audible, or Standard Method hand signals.

(e) *Suitability.* The signals used (hand, voice, audible, or new), and means of transmitting the signals to the operator (such as direct line of sight, video, radio, *etc.*), must be appropriate for the site conditions.

(f) During operations requiring signals, the ability to transmit signals between the operator and signal person must be maintained. If that ability is interrupted at any time, the operator must safely stop operations requiring signals until it is reestablished and a proper signal is given and understood.

(g) If the operator becomes aware of a safety problem and needs to communicate with the signal person, the operator must safely stop operations. Operations must not resume until the operator and signal person agree that the problem has been resolved.

(h) Only one person may give signals to a crane/derrick at a time, except in circumstances covered by paragraph (j) of this section.

(i) [*Reserved.*]

(j) Anyone who becomes aware of a safety problem must alert the operator or signal person by giving the stop or emergency stop signal. (**Note:** § 1926.1417(y) requires the operator to obey a stop or emergency stop signal).

(k) All directions given to the operator by the signal person must be given from the operator's direction perspective.

(l) [*Reserved.*]

(m) *Communication with multiple cranes/derricks.* Where a signal person(s) is in communication with more than one crane/derrick, a system must be used for identifying the crane/derrick each signal is for, as follows:

(1) for each signal, prior to giving the function/direction, the signal person must identify the crane/derrick the signal is for, or

(2) must use an equally effective method of identifying which crane/derrick the signal is for.

§ 1926.1420 Signals—radio, telephone or other electronic transmission of signals.

(a) The device(s) used to transmit signals must be tested on site before beginning operations to ensure that the signal transmission is effective, clear, and reliable.

(b) Signal transmission must be through a dedicated channel, except:

(1) Multiple cranes/derricks and one or more signal persons may share a dedicated channel for the purpose of coordinating operations.

(2) Where a crane is being operated on or adjacent to railroad tracks, and the actions of the crane operator need to be coordinated with the movement of other equipment or trains on the same or adjacent tracks.

(c) The operator's reception of signals must be by a hands-free system.

§ 1926.1421 Signals—voice signals—additional requirements.

(a) Prior to beginning operations, the operator, signal person and lift director (if there is one), must contact each other and agree on the voice signals that will be used. Once the voice signals are agreed upon, these workers need not meet again to discuss voice signals unless another worker is added or substituted, there is confusion about the voice signals, or a voice signal is to be changed.

(b) Each voice signal must contain the following three elements, given in the following order: function (such as hoist, boom, *etc.*), direction; distance and/or speed; function, stop command.

(c) The operator, signal person and lift director (if there is one), must be able to effectively communicate in the language used.

§ 1926.1422 Signals—hand signal chart.

Hand signal charts must be either posted on the equipment or conspicuously posted in the vicinity of the hoisting operations.

§ 1926.1423 Fall protection.

(a) *Application.*

(1) Paragraphs (b), (c)(3), (e) and (f) of this section apply to all equipment covered by this subpart except tower cranes.

(2) Paragraphs (c)(1), (c)(2), (d), (g), (j) and (k) of this section apply to all equipment covered by this subpart.

(3) Paragraphs (c)(4) and (h) of this section apply only to tower cranes.

(b) *Boom walkways.*

(1) Equipment manufactured after November 8, 2011 with lattice booms must be equipped with walkways on the boom(s) if the vertical profile of the boom (from cord centerline to cord centerline) is 6 or more feet.

(2) *Boom walkway criteria.*

(i) The walkways must be at least 12 inches wide.

(ii) Guardrails, railings and other permanent fall protection attachments along walkways are:

(A) Not required.

(B) Prohibited on booms supported by pendant ropes or bars if the guardrails/railings/attachments could be snagged by the ropes or bars.

(C) Prohibited if of the removable type (designed to be installed and removed each time the boom is assembled/disassembled).

(D) Where not prohibited, guardrails or railings may be of any height up to, but not more than, 45 inches.

(c) *Steps, handholds, ladders, grabrails, guardrails and railings.*

(1) Section 1926.502(b) does not apply to equipment covered by this subpart.

(2) The employer must maintain in good condition originally-equipped steps, handholds, ladders and guardrails/railings/grabrails.

(3) Equipment manufactured after November 8, 2011 must be equipped so as to provide safe access and egress between the ground and the operator work station(s), including the forward and rear positions, by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These devices must meet the following criteria:

(i) Steps, handholds, ladders and guardrails/railings/grabrails must meet the criteria of SAE J185 (May 2003) (incorporated by reference, *see* § 1926.6) or ISO 11660–2:1994(E) (incorporated by reference, *see* § 1926.6) except where infeasible.

(ii) Walking/stepping surfaces, except for crawler treads, must have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint).

(4) Tower cranes manufactured after November 8, 2011 must be equipped so as to provide safe access and egress between the ground and the cab, machinery platforms, and tower (mast), by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These devices must meet the following criteria:

(i) Steps, handholds, ladders, and guardrails/railings/grabrails must meet the criteria of ISO 11660–1:2008(E) (incorporated by reference, *see* § 1926.6) and ISO 11660–3:2008(E) (incorporated by reference, *see* § 1926.6) or SAE J185 (May 2003) (incorporated by reference, *see* § 1926.6) except where infeasible.

(ii) Walking/stepping surfaces must have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint).

(d) *Personal fall arrest and fall restraint systems.* Personal fall arrest system components must be used in personal fall arrest and fall restraint systems and must conform to the criteria in § 1926.502(d) except that § 1926.502(d)(15) does not apply to components used in personal fall arrest and fall restraint systems. Either body belts or body harnesses must be used in personal fall arrest and fall restraint systems.

(e) For non-assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level as follows:

(1) When moving point-to-point:

(i) On non-lattice booms (whether horizontal or not horizontal).

(ii) On lattice booms that are not horizontal.

(iii) On horizontal lattice booms where the fall distance is 15 feet or more.

(2) While at a work station on any part of the equipment (including the boom, of any type), except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

(f) For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

(g) *Anchorage criteria.*

(1) Sections 1926.502(d)(15) and 1926.502(e)(2) apply to equipment covered by this subpart only to the extent delineated in paragraph (g)(2) of this section.

(2) *Anchorages for personal fall arrest and positioning device systems.*

(i) Personal fall arrest systems must be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the criteria in § 1926.502(d)(15) would not be met.

(ii) Positioning device systems must be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the criteria in § 1926.502(e)(2) would not be met.

(iii) Attachable anchor devices (portable anchor devices that are attached to the equipment) must meet the anchorage criteria in § 1926.502(d)(15) for personal fall arrest systems and § 1926.502(e)(2) for positioning device systems.

(3) *Anchorages for fall restraint systems.* Fall restraint systems must be anchored to any part of the equipment that is capable of withstanding twice the maximum load that an employee may impose on it during reasonably anticipated conditions of use.

(h) *Tower cranes.*

(1) For work other than erecting, climbing, and dismantling, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

(2) For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level.

(i) [*Reserved.*]

(j) *Anchoring to the load line.* A personal fall arrest system is permitted to be anchored to the crane/derrick's hook (or other part of the load line) where all of the following requirements are met:

(1) A qualified person has determined that the set-up and rated capacity of the crane/derrick (including the hook, load line and rigging) meets or exceeds the requirements in § 1926.502(d)(15).

(2) The equipment operator must be at the work site and informed that the equipment is being used for this purpose.

(3) No load is suspended from the load line when the personal fall arrest system is anchored to the crane/derrick's hook (or other part of the load line).

(k) *Training.* The employer must train each employee who may be exposed to fall hazards while on, or hoisted by, equipment covered by this subpart on all of the following:

(1) the requirements in this subpart that address fall protection.

(2) the applicable requirements in §§ 1926.500 and 1926.502.

§ 1926.1424 Work area control.

(a) *Swing radius hazards.*

(1) The requirements in paragraph (a)(2) of this section apply where there are accessible areas in which the equipment's rotating superstructure (whether permanently or temporarily

mounted) poses a reasonably foreseeable risk of:

(i) Striking and injuring an employee; or

(ii) Pinching/crushing an employee against another part of the equipment or another object.

(2) To prevent employees from entering these hazard areas, the employer must:

(i) Train each employee assigned to work on or near the equipment ("authorized personnel") in how to recognize struck-by and pinch/crush hazard areas posed by the rotating superstructure.

(ii) Erect and maintain control lines, warning lines, railings or similar barriers to mark the boundaries of the hazard areas. *Exception:* When the employer can demonstrate that it is neither feasible to erect such barriers on the ground nor on the equipment, the hazard areas must be clearly marked by a combination of warning signs (such as "Danger—Swing/Crush Zone") and high visibility markings on the equipment that identify the hazard areas. In addition, the employer must train each employee to understand what these markings signify.

(3) *Protecting employees in the hazard area.*

(i) Before an employee goes to a location in the hazard area that is out of view of the operator, the employee (or someone instructed by the employee) must ensure that the operator is informed that he/she is going to that location.

(ii) Where the operator knows that an employee went to a location covered by paragraph (a)(1) of this section, the operator must not rotate the superstructure until the operator is informed in accordance with a pre-arranged system of communication that the employee is in a safe position.

(b) Where any part of a crane/derrick is within the working radius of another crane/derrick, the controlling entity must institute a system to coordinate operations. If there is no controlling entity, the employer (if there is only one employer operating the multiple pieces of equipment), or employers, must institute such a system.

§ 1926.1425 Keeping clear of the load.

(a) Where available, hoisting routes that minimize the exposure of employees to hoisted loads must be used, to the extent consistent with public safety.

(b) While the operator is not moving a suspended load, no employee must be within the fall zone, except for employees:

(1) Engaged in hooking, unhooking or guiding a load;

(2) Engaged in the initial attachment of the load to a component or structure; or

(3) Operating a concrete hopper or concrete bucket.

(c) When employees are engaged in hooking, unhooking, or guiding the load, or in the initial connection of a load to a component or structure and are within the fall zone, all of the following criteria must be met:

(1) The materials being hoisted must be rigged to prevent unintentional displacement.

(2) Hooks with self-closing latches or their equivalent must be used. *Exception:* "J" hooks are permitted to be used for setting wooden trusses.

(3) The materials must be rigged by a qualified rigger.

(d) *Receiving a load.* Only employees needed to receive a load are permitted to be within the fall zone when a load is being landed.

(e) During a tilt-up or tilt-down operation:

(1) No employee must be directly under the load.

(2) Only employees essential to the operation are permitted in the fall zone (but not directly under the load). An employee is essential to the operation if the employee is conducting one of the following operations and the employer can demonstrate it is infeasible for the employee to perform that operation from outside the fall zone: (1) Physically guide the load; (2) closely monitor and give instructions regarding the load's movement; or (3) either detach it from or initially attach it to another component or structure (such as, but not limited to, making an initial connection or installing bracing).

Note: Boom free fall is prohibited when an employee is in the fall zone of the boom or load, and load line free fall is prohibited when an employee is directly under the load; *see* § 1926.1426.

§ 1926.1426 Free fall and controlled load lowering.

(a) *Boom free fall prohibitions.*

(1) The use of equipment in which the boom is designed to free fall (live boom) is prohibited in each of the following circumstances:

(i) An employee is in the fall zone of the boom or load.

(ii) An employee is being hoisted.

(iii) The load or boom is directly over a power line, or over any part of the area extending the Table A of § 1926.1408 clearance distance to each side of the power line; or any part of the area extending the Table A clearance distance to each side of the power line is within the radius of vertical travel of the boom or the load.

(iv) The load is over a shaft, except where there are no employees in the shaft.

(v) The load is over a cofferdam, except where there are no employees in the fall zone of the boom or the load.

(vi) Lifting operations are taking place in a refinery or tank farm.

(2) The use of equipment in which the boom is designed to free fall (live boom) is permitted only where none of the circumstances listed in paragraph (a)(1) of this section are present and:

(i) The equipment was manufactured prior to October 31, 1984; or

(ii) The equipment is a floating crane/derrick or a land crane/derrick on a vessel/flotation device.

(b) *Preventing boom free fall.* Where the use of equipment with a boom that is designed to free fall (live boom) is prohibited, the boom hoist must have a secondary mechanism or device designed to prevent the boom from falling in the event the primary system used to hold or regulate the boom hoist fails, as follows:

(1) Friction drums must have:

(i) A friction clutch and, in addition, a braking device, to allow for controlled boom lowering.

(ii) A secondary braking or locking device, which is manually or automatically engaged, to back-up the primary brake while the boom is held (such as a secondary friction brake or a ratchet and pawl device).

(2) Hydraulic drums must have an integrally mounted holding device or internal static brake to prevent boom hoist movement in the event of hydraulic failure.

(3) Neither clutches nor hydraulic motors must be considered brake or locking devices for purposes of this subpart.

(4) Hydraulic boom cylinders must have an integrally mounted holding device.

(c) *Preventing uncontrolled retraction.* Hydraulic telescoping booms must have an integrally mounted holding device to prevent the boom from retracting in the event of hydraulic failure.

(d) *Load line free fall.* In each of the following circumstances, controlled load lowering is required and free fall of the load line hoist is prohibited:

(1) An employee is directly under the load.

(2) An employee is being hoisted.

(3) The load is directly over a power line, or over any part of the area extending the Table A of § 1926.1408 clearance distance to each side of the power line; or any part of the area extending the Table A of § 1926.1408

clearance distance to each side of the power line is within the radius of vertical travel of the load.

(4) The load is over a shaft.

(5) The load is over a cofferdam, except where there are no employees in the fall zone of the load.

§ 1926.1427 Operator qualification and certification.

(a) The employer must ensure that, prior to operating any equipment covered under subpart CC, the person is operating the equipment during a training period in accordance with paragraph (f) of this section, or the operator is qualified or certified to operate the equipment in accordance with the following:

(1) When a non-military government entity issues operator licenses for equipment covered under subpart CC, and that government licensing program meets the requirements of paragraphs (e)(2) and (j) of this section, the equipment operator must either be:

(i) Licensed by that government entity for operation of equipment within that entity's jurisdiction; or

(ii) qualified in compliance with paragraph (d) of this section.

(2) Where paragraph (a)(1) of this section is not applicable, the certification or qualification must comply with one of the options in paragraphs (b) through (d) of this section.

(3) *Exceptions:* Operator qualification or certification under this section is not required for operators of derricks (*see* § 1926.1436), sideboom cranes (*see* § 1926.1440), or equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less (*see* § 1926.1441).

(4) Whenever operator qualification or certification is required under § 1926.1427, the employer must provide the qualification or certification at no cost to operators who are employed by the employer on November 8, 2010.

(b) *Option (1): Certification by an accredited crane operator testing organization.*

(1) For a testing organization to be considered accredited to certify operators under this subpart, it must:

(i) Be accredited by a nationally recognized accrediting agency based on that agency's determination that industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel have been met.

(ii) Administer written and practical tests that:

(A) Assess the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(B) Provide different levels of certification based on equipment capacity and type.

(iii) Have procedures for operators to re-apply and be re-tested in the event an operator applicant fails a test or is decertified.

(iv) Have testing procedures for re-certification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) Have its accreditation reviewed by the nationally recognized accrediting agency at least every three years.

(2) An operator will be deemed qualified to operate a particular piece of equipment if the operator is certified under paragraph (b) of this section for that type and capacity of equipment or for higher-capacity equipment of that type. If no accredited testing agency offers certification examinations for a particular type and/or capacity of equipment, an operator will be deemed qualified to operate that equipment if the operator has been certified for the type/capacity that is most similar to that equipment and for which a certification examination is available. The operator's certificate must state the type/capacity of equipment for which the operator is certified.

(3) A certification issued under this option is portable and meets the requirements of paragraph (a)(2) of this section.

(4) A certification issued under this paragraph is valid for 5 years.

(c) *Option (2): Qualification by an audited employer program.* The employer's qualification of its employee must meet the following requirements:

(1) The written and practical tests must be either:

(i) Developed by an accredited crane operator testing organization (*see* paragraph (b) of this section); or

(ii) Approved by an auditor in accordance with the following requirements:

(A) The auditor is certified to evaluate such tests by an accredited crane operator testing organization (*see* paragraph (b) of this section).

(B) The auditor is not an employee of the employer.

(C) The approval must be based on the auditor's determination that the written and practical tests meet nationally recognized test development criteria and are valid and reliable in assessing the operator applicants regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(D) The audit must be conducted in accordance with nationally recognized auditing standards.

(2) *Administration of tests.*

(i) The written and practical tests must be administered under circumstances approved by the auditor as meeting nationally recognized test administration standards.

(ii) The auditor must be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization (*see* paragraph (b) of this section).

(iii) The auditor must not be an employee of the employer.

(iv) The audit must be conducted in accordance with nationally recognized auditing standards.

(3) The employer program must be audited within 3 months of the beginning of the program and at least every 3 years thereafter.

(4) The employer program must have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section. The re-qualification procedures must be audited in accordance with paragraphs (c)(1) and (2) of this section.

(5) *Deficiencies.* If the auditor determines that there is a significant deficiency ("deficiency") in the program, the employer must ensure that:

(i) No operator is qualified until the auditor confirms that the deficiency has been corrected.

(ii) The program is audited again within 180 days of the confirmation that the deficiency was corrected.

(iii) The auditor files a documented report of the deficiency to the appropriate Regional Office of the Occupational Safety and Health Administration within 15 days of the auditor's determination that there is a deficiency.

(iv) Records of the audits of the employer's program are maintained by the auditor for three years and are made available by the auditor to the Secretary of Labor or the Secretary's designated representative upon request.

(6) A qualification under this paragraph is:

(i) Not portable. Such a qualification meets the requirements of paragraph (a) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.

(ii) Valid for 5 years.

(d) *Option (3): Qualification by the U.S. military.*

(1) For purposes of this section, an operator who is an employee of the U.S.

military is considered qualified if he/she has a current operator qualification issued by the U.S. military for operation of the equipment. An employee of the U.S. military is a Federal employee of the Department of Defense or Armed Forces and does not include employees of private contractors.

(2) A qualification under this paragraph is:

(i) Not portable. Such a qualification meets the requirements of paragraph (a) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.

(ii) Valid for the period of time stipulated by the issuing entity.

(e) *Option (4): Licensing by a government entity.*

(1) For purposes of this section, a government licensing department/office that issues operator licenses for operating equipment covered by this standard is considered a government accredited crane operator testing organization if the criteria in paragraph (e)(2) of this section are met.

(2) *Licensing criteria.*

(i) The requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(ii) The testing meets industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel.

(iii) The government authority that oversees the licensing department/office, has determined that the requirements in paragraphs (e)(2)(i) and (ii) of this section have been met.

(iv) The licensing department/office has testing procedures for re-licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(3) A license issued by a government accredited crane operator testing organization that meets the requirements of this option:

(i) Meets the operator qualification requirements of this section for operation of equipment only within the jurisdiction of the government entity.

(ii) Is valid for the period of time stipulated by the licensing department/office, but no longer than 5 years.

(f) *Pre-qualification/certification training period.* An employee who is not qualified or certified under this section is permitted to operate equipment only as an operator-in-training and only where the requirements of this paragraph are met.

(1) The employer must provide each operator-in-training with sufficient training prior to operating the equipment to enable the operator-in-training to operate the equipment safely under limitations established by this section (including continuous monitoring) and any additional limitations established by the employer.

(2) The tasks performed by the operator-in-training while operating the equipment must be within the operator-in-training's ability.

(3) *Trainer.* While operating the equipment, the operator-in-training must be continuously monitored by an individual ("operator's trainer") who meets all of the following requirements:

(i) The operator's trainer is an employee or agent of the operator-in-training's employer.

(ii) The operator's trainer is either a certified operator under this section, or has passed the written portion of a certification test under one of the options in paragraphs (b) through (e) of this section, and is familiar with the proper use of the equipment's controls.

(iii) While monitoring the operator-in-training, the operator's trainer performs no tasks that detract from the trainer's ability to monitor the operator-in-training.

(iv) For equipment other than tower cranes: The operator's trainer and the operator-in-training must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signals. For tower cranes: The operator's trainer and the operator-in-training must be in direct communication with each other.

(4) *Continuous monitoring.* The operator-in-training must be monitored by the operator's trainer at all times, except for short breaks where all of the following are met:

(i) The break lasts no longer than 15 minutes and there is no more than one break per hour.

(ii) Immediately prior to the break the operator's trainer informs the operator-in-training of the specific tasks that the operator-in-training is to perform and limitations to which he/she must adhere during the operator trainer's break.

(iii) The specific tasks that the operator-in-training will perform during the operator trainer's break are within the operator-in-training's abilities.

(5) The operator-in-training must not operate the equipment in any of the following circumstances unless the exception stated in paragraph (f)(5)(v) of this section is applicable:

(i) If any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone (*see* § 1926.1408(a)(1)), could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV.

(ii) If the equipment is used to hoist personnel.

(iii) In multiple-equipment lifts.

(iv) If the equipment is used over a shaft, cofferdam, or in a tank farm.

(v) In multiple-lift rigging operations, except where the operator's trainer determines that the operator-in-training skills are sufficient for this high-skill work.

(g) Under this section, a testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable accrediting agency (in the option selected) for an organization providing both services are met.

(h) *Language and Literacy Requirements.*

(1) Tests under this section may be administered verbally, with answers given verbally, where the operator candidate:

(i) Passes a written demonstration of literacy relevant to the work.

(ii) Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification.

(2) Tests under this section may be administered in any language the operator candidate understands, and the operator's certificate must note the language in which the test was given. The operator is qualified under paragraph (b)(2) of this section to operate equipment that is furnished with materials required by this subpart that are written in the language of the certification. The operator may only operate equipment furnished with such materials.

(i) [*Reserved.*]

(j) *Certification criteria.* Qualifications and certifications must be based, at a minimum, on the following:

(1) A determination through a written test that:

(i) The individual knows the information necessary for safe operation of the specific type of equipment the individual will operate, including all of the following:

(A) The controls and operational/performance characteristics.

(B) Use of, and the ability to calculate (manually or with a calculator), load/capacity information on a variety of configurations of the equipment.

(C) Procedures for preventing and responding to power line contact.

(D) Technical knowledge similar to the subject matter criteria listed in

Appendix C of this subpart applicable to the specific type of equipment the individual will operate. Use of the Appendix C criteria meets the requirements of this provision.

(E) Technical knowledge applicable to:

(1) The suitability of the supporting ground and surface to handle expected loads.

(2) Site hazards.

(3) Site access.

(F) This subpart, including applicable incorporated materials.

(ii) The individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in paragraph (j)(1)(i) of this section.

(2) A determination through a practical test that the individual has the skills necessary for safe operation of the equipment, including the following:

(i) Ability to recognize, from visual and auditory observation, the items listed in § 1926.1412(d) (shift inspection).

(ii) Operational and maneuvering skills.

(iii) Application of load chart information.

(iv) Application of safe shut-down and securing procedures.

(k) *Phase-in.*

(1) The provisions of this section are applicable November 8, 2010, except for paragraphs (a)(2) and (f) which are applicable November 10, 2014.

(2) When § 1926.1427(a)(1) is not applicable, all of the requirements in paragraphs (k)(2)(i) and (ii) of this section apply until November 10, 2014:

(i) The employer must ensure that operators of equipment covered by this standard are competent to operate the equipment safely.

(ii) Where an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employer must train that employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he/she understands the information provided in the training.

§ 1926.1428 Signal person qualifications.

(a) The employer of the signal person must ensure that each signal person meets the Qualification Requirements (paragraph (c) of this section) prior to giving any signals. This requirement must be met by using either Option (1) or Option (2) of this section.

(1) *Option (1)—Third party qualified evaluator.* The signal person has documentation from a third party qualified evaluator (*see* Qualified Evaluator (third party), § 1926.1401 for definition) showing that the signal person meets the Qualification Requirements (*see* paragraph (c) of this section).

(2) *Option (2)—Employer's qualified evaluator.* The employer's qualified (*see* Qualified Evaluator (not a third party), § 1926.1401 for definition) evaluator assesses the individual and determines that the individual meets the Qualification Requirements (*see* paragraph (c) of this section) and provides documentation of that determination. An assessment by an employer's qualified evaluator under this option is not portable—other employers are not permitted to use it to meet the requirements of this section.

(3) The employer must make the documentation for whichever option is used available at the site while the signal person is employed by the employer. The documentation must specify each type of signaling (*e.g.* hand signals, radio signals, *etc.*) for which the signal person meets the requirements of paragraph (c) of this section.

(b) If subsequent actions by the signal person indicate that the individual does not meet the Qualification Requirements (*see* paragraph (c) of this section), the employer must not allow the individual to continue working as a signal person until re-training is provided and a re-assessment is made in accordance with paragraph (a) of this section that confirms that the individual meets the Qualification Requirements.

(c) *Qualification Requirements.* Each signal person must:

(1) Know and understand the type of signals used. If hand signals are used, the signal person must know and understand the Standard Method for hand signals.

(2) Be competent in the application of the type of signals used.

(3) Have a basic understanding of equipment operation and limitations, including the crane dynamics involved in swinging and stopping loads and boom deflection from hoisting loads.

(4) Know and understand the relevant requirements of § 1926.1419 through § 1926.1422 and § 1926.1428.

(5) Demonstrate that he/she meets the requirements in paragraphs (c)(1) through (4) of this section through an oral or written test, and through a practical test.

§ 1926.1429 Qualifications of maintenance & repair employees.

(a) Maintenance, inspection and repair personnel are permitted to operate the equipment only where all of the following requirements are met:

(1) The operation is limited to those functions necessary to perform maintenance, inspect the equipment, or verify its performance.

(2) The personnel either:

(i) Operate the equipment under the direct supervision of an operator who meets the requirements of § 1926.1427 (Operator qualification and certification); or

(ii) Are familiar with the operation, limitations, characteristics and hazards associated with the type of equipment.

(b) Maintenance and repair personnel must meet the definition of a qualified person with respect to the equipment and maintenance/repair tasks performed.

§ 1926.1430 Training.

The employer must provide training as follows:

(a) *Overhead powerlines.* The employer must train each employee specified in § 1926.1408(g) and § 1926.1410(m) in the topics listed in § 1926.1408(g).

(b) *Signal persons.* The employer must train each employee who will be assigned to work as a signal persons who does not meet the requirements of § 1926.1428(c) in the areas addressed in that paragraph.

(c) *Operators.*

(1) *Operators-in-Training for equipment where certification or qualification is required by this subpart.* The employer must train each operator-in-training in the areas addressed in § 1926.1427(j). The employer must provide re-training if the operator-in-training does not pass a qualification or certification test.

(2) *Transitional Period.* During the four-year phase-in period for operator certification or qualification, as provided in § 1926.1427(k), employers must train each operator who has not yet been certified or qualified in the areas addressed in § 1926.1427(j).

(3) *Operators excepted from the requirements of § 1926.1427.* The employer must train each operator excepted under § 1926.1427(a) from the requirements of § 1926.1427 on the safe operation of the equipment the operator will be using.

(4) The employer must train each operator of the equipment covered by this subpart in the following practices:

(i) On friction equipment, whenever moving a boom off a support, first raise the boom a short distance (sufficient to take the load of the boom) to determine if the boom hoist brake needs to be adjusted. On other types of equipment with a boom, the same practice is applicable, except that typically there is no means of adjusting the brake; if the

brake does not hold, a repair is necessary. *See* § 1926.1417(f) and (j) for additional requirements.

(ii) Where available, the manufacturer's emergency procedures for halting unintended equipment movement.

(d) *Competent persons and qualified persons.* The employer must train each competent person and each qualified person regarding the requirements of this subpart applicable to their respective roles.

(e) *Crush/pinch points.* The employer must train each employee who works with the equipment to keep clear of holes, and crush/pinch points and the hazards addressed in § 1926.1424 (Work area control).

(f) *Tag-out.* The employer must train each operator and each additional employee authorized to start/energize equipment or operate equipment controls (such as maintenance and repair employees), in the tag-out and start-up procedures in §§ 1926.1417(f) and (g).

(g) *Training administration.*

(1) The employer must evaluate each employee required to be trained under this subpart to confirm that the employee understands the information provided in the training.

(2) The employer must provide refresher training in relevant topics for each employee when, based on the conduct of the employee or an evaluation of the employee's knowledge, there is an indication that retraining is necessary.

(3) Whenever training is required under subpart CC, the employer must provide the training at no cost to the employee.

§ 1926.1431 Hoisting personnel.

The requirements of this section are supplemental to the other requirements in this subpart and apply when one or more employees are hoisted.

(a) The use of equipment to hoist employees is prohibited except where the employer demonstrates that the erection, use, and dismantling of conventional means of reaching the work area, such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform, or scaffold, would be more hazardous, or is not possible because of the project's structural design or worksite conditions. This paragraph does not apply to work covered by subpart R (Steel Erection) of this part.

(b) *Use of personnel platform.*

(1) When using equipment to hoist employees, the employees must be in a personnel platform that meets the requirements of paragraph (e) of this section.

(2) *Exceptions:* A personnel platform is not required for hoisting employees:

(i) Into and out of drill shafts that are up to and including 8 feet in diameter (*see* paragraph (o) of this section for requirements for hoisting these employees).

(ii) In pile driving operations (*see* paragraph (p) of this section for requirements for hoisting these employees).

(iii) Solely for transfer to or from a marine worksite in a marine-hoisted personnel transfer device (*see* paragraph (r) of this section for requirements for hoisting these employees).

(iv) In storage-tank (steel or concrete), shaft and chimney operations (*see* paragraph (s) of this section for requirements for hoisting these employees).

(c) *Equipment set-up.*

(1) The equipment must be uniformly level, within one percent of level grade, and located on footing that a qualified person has determined to be sufficiently firm and stable.

(2) Equipment with outriggers or stabilizers must have them all extended and locked. The amount of extension must be the same for all outriggers and stabilizers and in accordance with manufacturer procedures and load charts.

(d) *Equipment criteria.*

(1) *Capacity: Use of suspended personnel platforms.* The total load (with the platform loaded, including the hook, load line and rigging) must not exceed 50 percent of the rated capacity for the radius and configuration of the equipment, except during proof testing.

(2) *Capacity: Use of boom-attached personnel platforms.* The total weight of the loaded personnel platform must not exceed 50 percent of the rated capacity for the radius and configuration of the equipment (except during proof testing).

(3) *Capacity: Hoisting personnel without a personnel platform.* When hoisting personnel without a personnel platform pursuant to paragraph (b)(2) of this section, the total load (including the hook, load line, rigging and any other equipment that imposes a load) must not exceed 50 percent of the rated capacity for the radius and configuration of the equipment, except during proof testing.

(4) When the occupied personnel platform is in a stationary working position, the load and boom hoist brakes, swing brakes, and operator actuated secondary braking and locking features (such as pawls or dogs) or automatic secondary brakes must be engaged.

(5) *Devices.*

(i) Equipment (except for derricks and articulating cranes) with a variable angle boom must be equipped with all of the following:

(A) A boom angle indicator, readily visible to the operator, and

(B) A boom hoist limiting device.

(ii) Articulating cranes must be equipped with a properly functioning automatic overload protection device.

(iii) Equipment with a luffing jib must be equipped with:

(A) A jib angle indicator, readily visible to the operator, and.

(B) A jib hoist limiting device.

(iv) Equipment with telescoping booms must be equipped with a device to indicate the boom's extended length clearly to the operator, or must have measuring marks on the boom.

(v) *Anti two-block.* A device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component) must be used. The device(s) must prevent such damage/failure at all points where two-blocking could occur. *Exception:* This device is not required when hoisting personnel in pile driving operations. Instead, paragraph (p)(2) of this section specifies how to prevent two-blocking during such operations.

(vi) *Controlled load lowering.* The load line hoist drum must have a system, other than the load line hoist brake, which regulates the lowering rate of speed of the hoist mechanism. This system or device must be used when hoisting personnel.

Note: Free fall of the load line hoist is prohibited (*see* § 1926.1426(d); the use of equipment in which the boom hoist mechanism can free fall is also prohibited (*see* § 1926.1426(a)(1).

(vii) *Proper operation required.* Personnel hoisting operations must not begin unless the devices listed in this section are in proper working order. If a device stops working properly during such operations, the operator must safely stop operations. Personnel hoisting operations must not resume until the device is again working properly. Alternative measures are not permitted. (*See* § 1926.1417 for tag-out and related requirements.)

(6) Direct attachment of a personnel platform to a luffing jib is prohibited.

(e) *Personnel platform criteria.*

(1) A qualified person familiar with structural design must design the personnel platform and attachment/suspension system used for hoisting personnel.

(2) The system used to connect the personnel platform to the equipment

must allow the platform to remain within 10 degrees of level, regardless of boom angle.

(3) The suspension system must be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(4) The personnel platform itself (excluding the guardrail system and personal fall arrest system anchorages), must be capable of supporting, without failure, its own weight and at least five times the maximum intended load.

(5) All welding of the personnel platform and its components must be performed by a certified welder familiar with the weld grades, types and material specified in the platform design.

(6) The personnel platform must be equipped with a guardrail system which meets the requirements of subpart M of this part, and must be enclosed at least from the toeboard to mid-rail with either solid construction material or expanded metal having openings no greater than ½ inch (1.27 cm). Points to which personal fall arrest systems are attached must meet the anchorage requirements in subpart M of this part.

(7) A grab rail must be installed inside the entire perimeter of the personnel platform except for access gates/doors.

(8) *Access gates/doors.* If installed, access gates/doors of all types (including swinging, sliding, folding, or other types) must:

(i) Not swing outward. If due to the size of the personnel platform, such as a 1-person platform, it is infeasible for the door to swing inward and allow safe entry for the platform occupant, then the access gate/door may swing outward.

(ii) Be equipped with a device that prevents accidental opening.

(9) Headroom must be sufficient to allow employees to stand upright in the platform.

(10) In addition to the use of hard hats, employees must be protected by overhead protection on the personnel platform when employees are exposed to falling objects. The platform overhead protection must not obscure the view of the operator or platform occupants (such as wire mesh that has up to ½ inch openings), unless full protection is necessary.

(11) All edges exposed to employee contact must be smooth enough to prevent injury.

(12) The weight of the platform and its rated capacity must be conspicuously posted on the platform with a plate or other permanent marking.

(f) *Personnel platform loading.*

(1) The personnel platform must not be loaded in excess of its rated capacity.

(2) *Use.*

(i) Personnel platforms must be used only for employees, their tools, and the materials necessary to do their work. Platforms must not be used to hoist materials or tools when not hoisting personnel.

(ii) *Exception:* Materials and tools to be used during the lift, if secured and distributed in accordance with paragraph (f)(3) of this section may be in the platform for trial lifts.

(3) Materials and tools must be:

(i) Secured to prevent displacement.

(ii) Evenly distributed within the confines of the platform while it is suspended.

(4) The number of employees occupying the personnel platform must not exceed the maximum number the platform was designed to hold or the number required to perform the work, whichever is less.

(g) *Attachment and rigging.*

(1) *Hooks and other detachable devices.*

(i) Hooks used in the connection between the hoist line and the personnel platform (including hooks on overhaul ball assemblies, lower load blocks, bridle legs, or other attachment assemblies or components) must be:

(A) Of a type that can be closed and locked, eliminating the throat opening.

(B) Closed and locked when attached.

(ii) Shackles used in place of hooks must be of the alloy anchor type, with either:

(A) A bolt, nut and retaining pin, in place; or

(B) Of the screw type, with the screw pin secured from accidental removal.

(iii) Where other detachable devices are used, they must be of the type that can be closed and locked to the same extent as the devices addressed in paragraphs (g)(1)(i) and (ii) of this section. Such devices must be closed and locked when attached.

(2) *Rope bridle.* When a rope bridle is used to suspend the personnel platform, each bridle leg must be connected to a master link or shackle (*see* paragraph (g)(1) of this section) in a manner that ensures that the load is evenly divided among the bridle legs.

(3) Rigging hardware (including wire rope, shackles, rings, master links, and other rigging hardware) and hooks must be capable of supporting, without failure, at least five times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings must be capable of supporting without failure at least ten times the maximum intended load.

(4) Eyes in wire rope slings must be fabricated with thimbles.

(5) Bridles and associated rigging for suspending the personnel platform must be used only for the platform and the necessary employees, their tools and materials necessary to do their work. The bridles and associated rigging must not have been used for any purpose other than hoisting personnel.

(h) *Trial lift and inspection.*

(1) A trial lift with the unoccupied personnel platform loaded at least to the anticipated liftweight must be made from ground level, or any other location where employees will enter the platform, to each location at which the platform is to be hoisted and positioned. Where there is more than one location to be reached from a single set-up position, either individual trial lifts for each location, or a single trial lift, in which the platform is moved sequentially to each location, must be performed; the method selected must be the same as the method that will be used to hoist the personnel.

(2) The trial lift must be performed immediately prior to each shift in which personnel will be hoisted. In addition, the trial lift must be repeated prior to hoisting employees in each of the following circumstances:

(i) The equipment is moved and set up in a new location or returned to a previously used location.

(ii) The lift route is changed, unless the competent person determines that the new route presents no new factors affecting safety.

(3) The competent person must determine that:

(i) Safety devices and operational aids required by this section are activated and functioning properly. Other safety devices and operational aids must meet the requirements of § 1926.1415 and § 1926.1416.

(ii) Nothing interferes with the equipment or the personnel platform in the course of the trial lift.

(iii) The lift will not exceed 50 percent of the equipment's rated capacity at any time during the lift.

(iv) The load radius to be used during the lift has been accurately determined.

(4) Immediately after the trial lift, the competent person must:

(i) Conduct a visual inspection of the equipment, base support or ground, and personnel platform, to determine whether the trial lift has exposed any defect or problem or produced any adverse effect.

(ii) Confirm that, upon the completion of the trial lift process, the test weight has been removed.

(5) Immediately prior to each lift:

(i) The platform must be hoisted a few inches with the personnel and materials/tools on board and inspected by a competent person to ensure that it is secure and properly balanced.

(ii) The following conditions must be determined by a competent person to exist before the lift of personnel proceeds:

(A) Hoist ropes must be free of deficiencies in accordance with § 1926.1413(a).

(B) Multiple part lines must not be twisted around each other.

(C) The primary attachment must be centered over the platform.

(D) If the load rope is slack, the hoisting system must be inspected to ensure that all ropes are properly seated on drums and in sheaves.

(6) Any condition found during the trial lift and subsequent inspection(s) that fails to meet a requirement of this standard or otherwise creates a safety hazard must be corrected before hoisting personnel. (*See* § 1926.1417 for tag-out and related requirements.)

(i) [*Reserved.*]

(j) *Proof testing.*

(1) At each jobsite, prior to hoisting employees on the personnel platform, and after any repair or modification, the platform and rigging must be proof tested to 125 percent of the platform's rated capacity. The proof test may be done concurrently with the trial lift.

(2) The platform must be lowered by controlled load lowering, braked, and held in a suspended position for a minimum of five minutes with the test load evenly distributed on the platform.

(3) After proof testing, a competent person must inspect the platform and rigging to determine if the test has been passed. If any deficiencies are found that pose a safety hazard, the platform and rigging must not be used to hoist personnel unless the deficiencies are corrected, the test is repeated, and a competent person determines that the test has been passed. (*See* § 1926.1417 for tag-out and related requirements.)

(4) Personnel hoisting must not be conducted until the competent person determines that the platform and rigging have successfully passed the proof test.

(k) *Work practices.*

(1) Hoisting of the personnel platform must be performed in a slow, controlled, cautious manner, with no sudden movements of the equipment or the platform.

(2) Platform occupants must:

(i) Keep all parts of the body inside the platform during raising, lowering, and horizontal movement. This provision does not apply to an occupant of the platform when necessary to position the platform or while performing the duties of a signal person.

(ii) Not stand, sit on, or work from the top or intermediate rail or toeboard, or use any other means/device to raise their working height.

(iii) Not pull the platform out of plumb in relation to the hoisting equipment.

(3) Before employees exit or enter a hoisted personnel platform that is not landed, the platform must be secured to the structure where the work is to be performed, unless the employer can demonstrate that securing to the structure would create a greater hazard.

(4) If the platform is tied to the structure, the operator must not move the platform until the operator receives confirmation that it is freely suspended.

(5) Tag lines must be used when necessary to control the platform.

(6) *Platforms without controls.* Where the platform is not equipped with controls, the equipment operator must remain at the equipment controls, on site, and in view of the equipment, at all times while the platform is occupied.

(7) *Platforms with controls.* Where the platform is equipped with controls, all of the following must be met at all times while the platform is occupied:

(i) The occupant using the controls in the platform must be a qualified person with respect to their use, including the safe limitations of the equipment and hazards associated with its operation.

(ii) The equipment operator must be at a set of equipment controls that include boom and swing functions of the equipment, and must be on site and in view of the equipment.

(iii) The platform operating manual must be in the platform or on the equipment.

(8) *Environmental conditions.*

(i) *Wind.* When wind speed (sustained or gusts) exceeds 20 mph at the personnel platform, a qualified person must determine if, in light of the wind conditions, it is not safe to lift personnel. If it is not, the lifting operation must not begin (or, if already in progress, must be terminated).

(ii) *Other weather and environmental conditions.* A qualified person must determine if, in light of indications of dangerous weather conditions, or other impending or existing danger, it is not safe to lift personnel. If it is not, the lifting operation must not begin (or, if already in progress, must be terminated).

(9) Employees being hoisted must remain in direct communication with the signal person (where used), or the operator.

(10) *Fall protection.*

(i) Except over water, employees occupying the personnel platform must be provided and use a personal fall arrest system. The system must be attached to a structural member within the personnel platform. When working over or near water, the requirements of § 1926.106 apply.

(ii) The fall arrest system, including the attachment point (anchorage) used to comply with paragraph (i) of this section, must meet the requirements in § 1926.502.

(11) *Other load lines.*

(i) No lifts must be made on any other of the equipment's load lines while personnel are being hoisted, except in pile driving operations.

(ii) *Factory-produced boom-mounted personnel platforms that incorporate a winch as original equipment.* Loads are permitted to be hoisted by such a winch while employees occupy the personnel platform only where the load on the winch line does not exceed 500 pounds and does not exceed the rated capacity of the winch and platform.

(12) *Traveling—equipment other than derricks.*

(i) Hoisting of employees while the equipment is traveling is prohibited, except for:

(A) Equipment that travels on fixed rails; or

(B) Where the employer demonstrates that there is no less hazardous way to perform the work.

(C) This exception does not apply to rubber-tired equipment.

(ii) Where employees are hoisted while the equipment is traveling, all of the following criteria must be met:

(A) Equipment travel must be restricted to a fixed track or runway.

(B) Where a runway is used, it must be a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the equipment being used to lift and travel with the personnel platform. An existing surface may be used as long as it meets these criteria.

(C) Equipment travel must be limited to boom length.

(D) The boom must be parallel to the direction of travel, except where it is safer to do otherwise.

(E) A complete trial run must be performed to test the route of travel before employees are allowed to occupy the platform. This trial run can be performed at the same time as the trial lift required by paragraph (h) of this section which tests the lift route.

(13) *Traveling—derricks.* Derricks are prohibited from traveling while personnel are hoisted.

(l) [*Reserved.*]

(m) *Pre-lift meeting.* A pre-lift meeting must be:

(1) Held to review the applicable requirements of this section and the procedures that will be followed.

(2) Attended by the equipment operator, signal person (if used for the

lift), employees to be hoisted, and the person responsible for the task to be performed.

(3) Held prior to the trial lift at each new work location, and must be repeated for any employees newly assigned to the operation.

(n) *Hoisting personnel near power lines.* Hoisting personnel within 20 feet of a power line that is up to 350 kV, and hoisting personnel within 50 feet of a power line that is over 350 kV, is prohibited, except for work covered by subpart V of this part (Power Transmission and Distribution).

(o) *Hoisting personnel in drill shafts.* When hoisting employees into and out of drill shafts that are up to and including 8 feet in diameter, all of the following requirements must be met:

(1) The employee must be in either a personnel platform or on a boatswain's chair.

(2) If using a personnel platform, paragraphs (a) through (n) of this section apply.

(3) If using a boatswain's chair:

(i) The following paragraphs of this section apply: (a), (c), (d)(1), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (f)(1), (f)(2)(i), (f)(3)(i), (g), (h), (k)(1), (k)(6), (k)(8), (k)(9), (k)(11)(i), (m), (n). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "boatswain's chair."

(ii) A signal person must be stationed at the shaft opening.

(iii) The employee must be hoisted in a slow, controlled descent and ascent.

(iv) The employee must use personal fall protection equipment, including a full body harness, attached independent of the crane/derrick.

(v) The fall protection equipment must meet the applicable requirements in § 1926.502.

(vi) The boatswain's chair itself (excluding the personal fall arrest system anchorages), must be capable of supporting, without failure, its own weight and at least five times the maximum intended load.

(vii) No more than one person must be hoisted at a time.

(p) *Hoisting personnel for pile driving operations.* When hoisting an employee in pile driving operations, the following requirements must be met:

(1) The employee must be in a personnel platform or boatswain's chair.

(2) For lattice boom cranes: Clearly mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter who is in direct communication with the operator to inform the operator when this point is reached. For telescopic boom cranes: Clearly mark the cable (so that it can be easily seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, and use a spotter who is in direct communication with the operator to inform the operator when this point is reached.

(3) If using a personnel platform, paragraphs (b) through (n) of this section apply.

(4) If using a boatswain's chair:

(i) The following paragraphs of this section apply: (a), (c), (d)(1), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (f)(1), (f)(2)(i), (f)(3)(i), (g), (h), (j), (k)(1), (k)(6), (k)(8), (k)(9), (k)(11)(i), (m), and (n). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "boatswains chair."

(ii) The employee must be hoisted in a slow, controlled descent and ascent.

(iii) The employee must use personal fall protection equipment, including a full body harness, independently attached to the lower load block or overhaul ball.

(iv) The fall protection equipment must meet the applicable requirements in § 1926.502.

(v) The boatswain's chair itself (excluding the personal fall arrest system anchorages), must be capable of supporting, without failure, its own weight and at least five times the maximum intended load.

(vi) No more than one person must be hoisted at a time.

(q) [*Reserved.*]

(r) *Hoisting personnel for marine transfer.* When hoisting employees solely for transfer to or from a marine worksite, the following requirements must be met:

(1) The employee must be in either a personnel platform or a marine-hoisted personnel transfer device.

(2) If using a personnel platform, paragraphs (a) through (n) of this section apply.

(3) If using a marine-hoisted personnel transfer device:

(i) The following paragraphs of this section apply: (a), (c)(2), (d)(1), (d)(3), (d)(4), (e)(1) through (5), (e)(12), (f)(1), (g), (h), (j), (k)(1), (k)(8), (k)(9), (k)(10)(ii), (k)(11)(i), (k)(12), (m), and (n). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "marine-hoisted personnel transfer device."

(ii) The transfer device must be used only for transferring workers.

(iii) The number of workers occupying the transfer device must not exceed the maximum number it was designed to hold.

(iv) Each employee must wear a U.S. Coast Guard personal flotation device approved for industrial use.

(s) *Hoisting personnel for storage-tank (steel or concrete), shaft and chimney operations.* When hoisting an employee in storage tank (steel or concrete), shaft and chimney operations, the following requirements must be met:

(1) The employee must be in a personnel platform except when the employer can demonstrate that use of a personnel platform is infeasible; in such a case, a boatswain's chair must be used.

(2) If using a personnel platform, paragraphs (a) through (n) of this section apply.

(3) If using a boatswain's chair:

(i) The following paragraphs of this section apply: (a), (c), (d)(1), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (f)(1), (f)(2)(i), (f)(3)(i), (g), (h), (k)(1), (k)(6), (k)(8), (k)(9), (k)(11)(i), (m), (n). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "boatswains chair."

(ii) The employee must be hoisted in a slow, controlled descent and ascent.

(iii) The employee must use personal fall protection equipment, including a full body harness, attached independent of the crane/derrick. When there is no adequate structure for attachment of personal fall arrest equipment as required in § 1926.502(d)(15), the attachment must be to the lower load block or overhaul ball.

(iv) The fall protection equipment must meet the applicable requirements in § 1926.502.

(v) The boatswain's chair itself (excluding the personal fall arrest system anchorages), must be capable of supporting, without failure, its own weight and at least five times the maximum intended load.

(vi) No more than one person must be hoisted at a time.

§ 1926.1432 Multiple-crane/derrick lifts—supplemental requirements.

(a) *Plan development.* Before beginning a crane/derrick operation in which more than one crane/derrick will be supporting the load, the operation must be planned. The planning must meet the following requirements:

(1) The plan must be developed by a qualified person.

(2) The plan must be designed to ensure that the requirements of this subpart are met.

(3) Where the qualified person determines that engineering expertise is needed for the planning, the employer must ensure that it is provided.

(b) *Plan implementation.*

(1) The multiple-crane/derrick lift must be directed by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by

one or more qualified persons (lift director).

(2) The lift director must review the plan in a meeting with all workers who will be involved with the operation.

§ 1926.1433 Design, construction and testing.

The following requirements apply to equipment that has a manufacturer-rated hoisting/lifting capacity of more than 2,000 pounds.

(a) Crawler, truck and locomotive cranes manufactured prior to November 8, 2010 must meet the applicable requirements for design, construction, and testing as prescribed in ANSI B30.5–1968 (incorporated by reference, *see* § 1926.6), PCSA Std. No. 2 (1968) (incorporated by reference, *see* § 1926.6), the requirements in paragraph (b) of this section, or the applicable DIN standards that were in effect at the time of manufacture.

(b) Mobile (including crawler and truck) and locomotive cranes manufactured on or after November 8, 2010 must meet the following portions of ASME B30.5–2004 (incorporated by reference, *see* § 1926.6) as applicable:

(1) In section 5–1.1.1 ("Load Ratings—Where Stability Governs Lifting Performance"), paragraphs (a)—(d) (including subparagraphs).

(2) In section 5–1.1.2 ("Load Ratings—Where Structural Competence Governs Lifting Performance"), paragraph (b).

(3) Section 5–1.2 ("Stability (Backward and Forward)").

(4) In section 5–1.3.1 ("Boom Hoist Mechanism"), paragraphs (a), (b)(1) and (b)(2), except that when using rotation resistant rope, § 1926.1414(c)(4)(ii)(A) applies.

(5) In section 5–1.3.2 ("Load Hoist Mechanism"), paragraphs (a)(2) through (a)(4) (including subparagraphs), (b) (including subparagraphs), (c) (first sentence only) and (d).

(6) Section 5–1.3.3 ("Telescoping Boom").

(7) Section 5–1.4 ("Swing Mechanism").

(8) In section 5–1.5 ("Crane Travel"), all provisions except 5–1.5.3(d).

(9) In section 5–1.6 ("Controls"), all provisions except 5–1.6.1 (c).

(10) Section 5–1.7.4 ("Sheaves").

(11) Section 5–1.7.5 ("Sheave sizes").

(12) In section 5–1.9.1 ("Booms"), paragraph (f).

(13) Section 5–1.9.3 ("Outriggers").

(14) Section 5–1.9.4 ("Locomotive Crane Equipment").

(15) Section 5–1.9.7 ("Clutch and Brake Protection").

(16) In section 5–1.9.11 ("Miscellaneous equipment"), paragraphs (a), (c), (e), and (f).

(c) Prototype testing: mobile (including crawler and truck) and locomotive cranes manufactured on or after November 8, 2010 must meet the prototype testing requirements in Test Option A or Test Option B of this section. Tower cranes manufactured on or after November 8, 2010 must meet the prototype testing requirements in BS EN 14439:2006 (incorporated by reference, *see* § 1926.6).

Note: Prototype testing of crawler, locomotive and truck cranes manufactured prior to November 8, 2010 must conform to paragraph (a) of this section.

(1) *Test Option A.*

(i) The following applies to equipment with cantilevered booms (such as hydraulic boom cranes): All the tests listed in SAE J1063 (Nov. 1993) Table 1 (incorporated by reference, *see* § 1926.6) must be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J1063 (Nov. 1993) Table 2 (incorporated by reference, *see* § 1926.6) must be met.

(ii) The following applies to equipment with pendant supported lattice booms: All the tests listed in SAE J987 (Jun. 2003) Table 1 (incorporated by reference, *see* § 1926.6) must be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J987 (Jun. 2003) Table 2 (incorporated by reference, *see* § 1926.6) must be met.

(2) *Test Option B.* The testing and verification requirements of BS EN 13000:2004 (incorporated by reference, *see* § 1926.6) must be met. In applying BS EN 13000:2004, the following additional requirements must be met:

(i) The following applies to equipment with cantilevered booms (such as hydraulic boom cranes): The analysis methodology (computer modeling) must demonstrate that all load cases listed in SAE J1063 (Nov. 1993) (incorporated by reference, *see* § 1926.6) meet the strength margins listed in SAE J1063 (Nov. 1993) Table 2.

(ii) The following applies to equipment with pendant supported lattice booms: The analysis methodology (computer modeling) must demonstrate that all load cases listed in SAE J987 (Jun. 2003) (incorporated by reference, *see* § 1926.6) meet the strength margins listed in SAE J987 (Jun. 2003) Table 2.

(iii) *Analysis verification.* The physical testing requirements under SAE J1063 (Nov. 1993) (incorporated by reference, *see* § 1926.6) and SAE J987 (Jun. 2003) (incorporated by reference, *see* § 1926.6) must be met unless the reliability of the analysis methodology (computer modeling) has been demonstrated by a documented history of verification through strain gauge measuring or strain gauge measuring in combination with other physical testing.

(d) All equipment covered by this subpart must meet the following requirements:

(1) *Rated capacity and related information.* The information available in the cab (*see* § 1926.1417(c)) regarding "rated capacity" and related information must include, at a minimum, the following information:

(i) A complete range of the manufacturer's equipment rated capacities, as follows:

(A) At all manufacturer approved operating radii, boom angles, work areas, boom lengths and configurations, jib lengths and angles (or offset).

(B) Alternate ratings for use and nonuse of option equipment which affects rated capacities, such as outriggers, stabilizers, and extra counterweights.

(ii) A work area chart for which capacities are listed in the load chart. (**Note:** An example of this type of chart is in ASME B30.5–2004, section 5–1.1.3, Figure 11).

(iii) The work area figure and load chart must clearly indicate the areas where no load is to be handled.

(iv) Recommended reeving for the hoist lines must be shown.

(v) Recommended parts of hoist reeving, size, and type of wire rope for various equipment loads.

(vi) Recommended boom hoist reeving diagram, where applicable; size, type and length of wire rope.

(vii) Tire pressure (where applicable).

(viii) Caution or warnings relative to limitations on equipment and operating procedures, including an indication of the least stable direction.

(ix) Position of the gantry and requirements for intermediate boom suspension (where applicable).

(x) Instructions for boom erection and conditions under which the boom, or boom and jib combinations, may be raised or lowered.

(xi) Whether the hoist holding mechanism is automatically or manually controlled, whether free fall is available, or any combination of these.

(xii) The maximum telescopic travel length of each boom telescopic section.

(xiii) Whether sections are telescoped manually or with power.

(xiv) The sequence and procedure for extending and retracting the telescopic boom section.

(xv) Maximum loads permitted during the boom extending operation, and any limiting conditions or cautions.

(xvi) Hydraulic relief valve settings specified by the manufacturer.

(2) Load hooks (including latched and unlatched types), ball assemblies and load blocks must be of sufficient weight to overhaul the line from the highest hook position for boom or boom and jib lengths and the number of parts of the line in use.

(3) Hook and ball assemblies and load blocks must be marked with their rated capacity and weight.

(4) *Latching hooks.*

(i) Hooks must be equipped with latches, except where the requirements of paragraph (d)(4)(ii) of this section are met.

(ii) Hooks without latches, or with latches removed or disabled, must not be used unless:

(A) A qualified person has determined that it is safer to hoist and place the load without latches (or with the latches removed/tied-back).

(B) Routes for the loads are pre-planned to ensure that no employee is required to work in the fall zone except for employees necessary for the hooking or unhooking of the load.

(iii) The latch must close the throat opening and be designed to retain slings or other lifting devices/accessories in the hook when the rigging apparatus is slack.

(5) *Posted warnings.* Posted warnings required by this subpart as well as those originally supplied with the equipment by the manufacturer must be maintained in legible condition.

(6) An accessible fire extinguisher must be on the equipment.

(7) *Cabs.* Equipment with cabs must meet the following requirements:

(i) Cabs must be designed with a form of adjustable ventilation and method for clearing the windshield for maintaining visibility and air circulation. Examples of means for adjustable ventilation include air conditioner or window that can be opened (for ventilation and air circulation); examples of means for maintaining visibility include heater (for preventing windshield icing), defroster, fan, windshield wiper.

(ii) Cab doors (swinging, sliding) must be designed to prevent inadvertent opening or closing while traveling or operating the machine. Swinging doors adjacent to the operator must open outward. Sliding operator doors must open rearward.

(iii) *Windows.*

(A) The cab must have windows in front and on both sides of the operator. Forward vertical visibility must be sufficient to give the operator a view of the boom point at all times.

(B) Windows may have sections designed to be opened or readily removed. Windows with sections designed to be opened must be designed so that they can be secured to prevent inadvertent closure.

(C) Windows must be of safety glass or material with similar optical and safety properties, that introduce no visible distortion or otherwise obscure visibility that interferes with the safe operation of the equipment.

(iv) A clear passageway must be provided from the operator's station to an exit door on the operator's side.

(v) Areas of the cab roof that serve as a workstation for rigging, maintenance or other equipment-related tasks must be capable of supporting 250 pounds without permanent distortion.

(8) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, and other parts or components that reciprocate, rotate or otherwise move must be guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.

(9) All exhaust pipes, turbochargers, and charge air coolers must be insulated or guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.

(10) Hydraulic and pneumatic lines must be protected from damage to the extent feasible.

(11) The equipment must be designed so that exhaust fumes are not discharged in the cab and are discharged in a direction away from the operator.

(12) *Friction mechanisms.* Where friction mechanisms (such as brakes and clutches) are used to control the boom hoist or load line hoist, they must be:

(i) Of a size and thermal capacity sufficient to control all rated loads with the minimum recommended reeving.

(ii) Adjustable to permit compensation for lining wear to maintain proper operation.

(13) *Hydraulic load hoists.* Hydraulic drums must have an integrally mounted holding device or internal static brake to prevent load hoist movement in the event of hydraulic failure.

(e) The employer's obligations under paragraphs (a) through (c) and (d)(7) through (13) of this section are met where the equipment has not changed (except in accordance with § 1926.1434 (Equipment modifications)) and it can refer to documentation from the manufacturer showing that the equipment has been designed, constructed and tested in accordance with those paragraphs.

§ 1926.1434 Equipment modifications.

(a) Modifications or additions which affect the capacity or safe operation of the equipment are prohibited except where the requirements of paragraphs (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section are met.

(1) *Manufacturer review and approval.*

(i) The manufacturer approves the modifications/additions in writing.

(ii) The load charts, procedures, instruction manuals and instruction plates/tags/decals are modified as necessary to accord with the modification/addition.

(iii) The original safety factor of the equipment is not reduced.

(2) *Manufacturer refusal to review request.* The manufacturer is provided a detailed description of the proposed modification/addition, is asked to approve the modification/addition, but it declines to review the technical merits of the proposal or fails, within 30 days, to acknowledge the request or initiate the review, and all of the following are met:

(i) A registered professional engineer who is a qualified person with respect to the equipment involved:

(A) Approves the modification/addition and specifies the equipment configurations to which that approval applies, and

(B) Modifies load charts, procedures, instruction manuals and instruction plates/tags/decals as necessary to accord with the modification/addition.

(ii) The original safety factor of the equipment is not reduced.

(3) *Unavailable manufacturer.* The manufacturer is unavailable and the requirements of paragraphs (a)(2)(i) and (ii) of this section are met.

(4) *Manufacturer does not complete the review within 120 days of the request.* The manufacturer is provided a detailed description of the proposed modification/addition, is asked to approve the modification/addition, agrees to review the technical merits of the proposal, but fails to complete the review of the proposal within 120 days of the date it was provided the detailed description of the proposed modification/addition, and the requirements of paragraphs (a)(2)(i) and (ii) of this section are met.

(5) *Multiple manufacturers of equipment designed for use on marine work sites.* The equipment is designed for marine work sites, contains major structural components from more than one manufacturer, and the requirements of paragraphs (a)(2)(i) and (ii) of this section are met.

(b) Modifications or additions which affect the capacity or safe operation of the equipment are prohibited where the manufacturer, after a review of the technical safety merits of the proposed modification/addition, rejects the proposal and explains the reasons for

the rejection in a written response. If the manufacturer rejects the proposal but does not explain the reasons for the rejection in writing, the employer may treat this as a manufacturer refusal to review the request under paragraph (a)(2) of this section.

(c) The provisions in paragraphs (a) and (b) of this section do not apply to modifications made or approved by the U.S. military.

§ 1926.1435 Tower cranes.

(a) This section contains supplemental requirements for tower cranes; all sections of this subpart apply to tower cranes unless specified otherwise.

(b) *Erecting, climbing and dismantling.*

(1) Section 1926.1403 (Assembly/Disassembly—selection of manufacturer or employer procedures), § 1926.1404 (Assembly/Disassembly—general requirements (applies to all assembly and disassembly operations)), § 1926.1405 (Disassembly—additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures)), and § 1926.1406 (Assembly/Disassembly—employer procedures—general requirements), apply to tower cranes (except as otherwise specified), except that the term "assembly/disassembly" is replaced by "erecting, climbing and dismantling," and the term "disassembly" is replaced by "dismantling."

(2) *Dangerous areas (self-erecting tower cranes).* In addition to the requirements in § 1926.1404(e), for self-erecting tower cranes, the following applies: Employees must not be in or under the tower, jib, or rotating portion of the crane during erecting, climbing and dismantling operations until the crane is secured in a locked position and the competent person in charge indicates it is safe to enter this area, unless the manufacturer's instructions direct otherwise and only the necessary personnel are permitted in this area.

(3) *Foundations and structural supports.* Tower crane foundations and structural supports (including both the portions of the structure used for support and the means of attachment) must be designed by the manufacturer or a registered professional engineer.

(4) *Addressing specific hazards.* The requirements in § 1926.1404(h)(1) through (9) apply. In addition, the A/D director must address the following:

(i) *Foundations and structural supports.* The A/D director must determine that tower crane foundations and structural supports are installed in accordance with their design.

(ii) *Loss of backward stability.* Backward stability before swinging self erecting cranes or cranes on traveling or static undercarriages.

(iii) *Wind speed.* Wind must not exceed the speed recommended by the manufacturer or, where manufacturer does not specify this information, the speed determined by a qualified person.

(5) *Plumb tolerance.* Towers must be erected plumb to the manufacturer's tolerance and verified by a qualified person. Where the manufacturer does not specify plumb tolerance, the crane tower must be plumb to a tolerance of at least 1:500 (approximately 1 inch in 40 feet).

(6) *Multiple tower crane jobsites.* On jobsites where more than one fixed jib (hammerhead) tower crane is installed, the cranes must be located such that no crane can come in contact with the structure of another crane. Cranes are permitted to pass over one another.

(7) *Climbing procedures.* Prior to, and during, all climbing procedures (including inside climbing and top climbing), the employer must:

(i) Comply with all manufacturer prohibitions.

(ii) Have a registered professional engineer verify that the host structure is strong enough to sustain the forces imposed through the braces, brace anchorages and supporting floors.

(8) *Counterweight/ballast.*

(i) Equipment must not be erected, dismantled or operated without the amount and position of counterweight and/or ballast in place as specified by the manufacturer or a registered professional engineer familiar with the equipment.

(ii) The maximum counterweight and/or ballast specified by the manufacturer or registered professional engineer familiar with the equipment must not be exceeded.

(c) *Signs.* The size and location of signs installed on tower cranes must be in accordance with manufacturer specifications. Where these are unavailable, a registered professional engineer familiar with the type of equipment involved must approve in writing the size and location of any signs.

(d) *Safety devices.*

(1) Section 1926.1415 does not apply to tower cranes.

(2) The following safety devices are required on all tower cranes unless otherwise specified:

(i) Boom stops on luffing boom type tower cranes.

(ii) Jib stops on luffing boom type tower cranes if equipped with a jib attachment.

(iii) Travel rail end stops at both ends of travel rail.

(iv) Travel rail clamps on all travel bogies.

(v) Integrally mounted check valves on all load supporting hydraulic cylinders.

(vi) Hydraulic system pressure limiting device.

(vii) The following brakes, which must automatically set in the event of pressure loss or power failure, are required:

(A) A hoist brake on all hoists.

(B) Swing brake.

(C) Trolley brake.

(D) Rail travel brake.

(viii) Deadman control or forced neutral return control (hand) levers.

(ix) Emergency stop switch at the operator's station.

(x) Trolley end stops must be provided at both ends of travel of the trolley.

(3) *Proper operation required.* Operations must not begin unless the devices listed in this section are in proper working order. If a device stops working properly during operations, the operator must safely stop operations. The equipment must be taken out of service, and operations must not resume until the device is again working properly. *See* § 1926.1417(f). Alternative measures are not permitted to be used.

(e) *Operational aids.*

(1) Section 1926.1416 does not apply to tower cranes.

(2) The devices listed in this section ("operational aids") are required on all tower cranes covered by this subpart, unless otherwise specified.

(3) Operations must not begin unless the operational aids are in proper working order, except where the employer meets the specified temporary alternative measures. More protective alternative measures specified by the tower crane manufacturer, if any, must be followed. *See* § 1926.1417(j) for additional requirements.

(4) If an operational aid stops working properly during operations, the operator must safely stop operations until the temporary alternative measures are implemented or the device is again working properly. If a replacement part is no longer available, the use of a substitute device that performs the same type of function is permitted and is not considered a modification under § 1926.1434.

(5) *Category I operational aids and alternative measures.* Operational aids listed in this paragraph that are not working properly must be repaired no later than 7 calendar days after the deficiency occurs. *Exception:* If the employer documents that it has ordered

the necessary parts within 7 calendar days of the occurrence of the deficiency, the repair must be completed within 7 calendar days of receipt of the parts.

(i) *Trolley travel limiting device.* The travel of the trolley must be restricted at both ends of the jib by a trolley travel limiting device to prevent the trolley from running into the trolley end stops. *Temporary alternative measures:*

(A) *Option A.* The trolley rope must be marked (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the trolley prior to the end stops.

(B) *Option B.* A spotter who is in direct communication with the operator must be used when operations are conducted within 10 feet of the outer or inner trolley end stops.

(ii) *Boom hoist limiting device.* The range of the boom must be limited at the minimum and maximum radius. *Temporary alternative measures:* Clearly mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the boom hoist within the minimum and maximum boom radius, or use a spotter who is in direct communication with the operator to inform the operator when this point is reached.

(iii) *Anti two-blocking device.* The tower crane must be equipped with a device which automatically prevents damage from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device(s) must prevent such damage at all points where two-blocking could occur. *Temporary alternative measures:* Clearly mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two-blocking, or use a spotter who is in direct communication with the operator to inform the operator when this point is reached.

(iv) *Hoist drum lower limiting device.* Tower cranes manufactured after November 8, 2011 must be equipped with a device that prevents the last 2 wraps of hoist cable from being spooled off the drum. *Temporary alternative measures:* Mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the hoist prior to last 2 wraps of hoist cable being spooled off the drum, or use a spotter who is in direct communication with the operator to inform the operator when this point is reached

(v) *Load moment limiting device.* The tower crane must have a device that prevents moment overloading. *Temporary alternative measures:* A radius indicating device must be used (if the tower crane is not equipped with a radius indicating device, the radius must be measured to ensure the load is within the rated capacity of the crane). In addition, the weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer), or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information must be provided to the operator prior to the lift.

(vi) *Hoist line pull limiting device.* The capacity of the hoist must be limited to prevent overloading, including each individual gear ratio if equipped with a multiple speed hoist transmission. *Temporary alternative measures:* The operator must ensure that the weight of the load does not exceed the capacity of the hoist (including for each individual gear ratio if equipped with a multiple speed hoist transmission).

(vii) *Rail travel limiting device.* The travel distance in each direction must be limited to prevent the travel bogies from running into the end stops or buffers. *Temporary alternative measures:* A spotter who is in direct communication with the operator must be used when operations are conducted within 10 feet of either end of the travel rail end stops; the spotter must inform the operator of the distance of the travel bogies from the end stops or buffers.

(viii) *Boom hoist drum positive locking device and control.* The boom hoist drum must be equipped with a control that will enable the operator to positively lock the boom hoist drum from the cab. *Temporary alternative measures:* The device must be manually set when required if an electric, hydraulic or automatic control is not functioning.

(6) *Category II operational aids and alternative measures.* Operational aids listed in this paragraph that are not working properly must be repaired no later than 30 calendar days after the deficiency occurs. *Exception:* If the employer documents that it has ordered the necessary parts within 7 calendar days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 calendar days, the repair must be completed within 7 calendar days of receipt of the parts.

(i) *Boom angle or hook radius indicator.*

(A) Luffing boom tower cranes must have a boom angle indicator readable from the operator's station.

(B) Hammerhead tower cranes manufactured after November 8, 2011 must have a hook radius indicator readable from the operator's station.

(C) *Temporary alternative measures:* Hook radii or boom angle must be determined by measuring the hook radii or boom angle with a measuring device.

(ii) *Trolley travel deceleration device.* The trolley speed must be automatically reduced prior to the trolley reaching the end limit in both directions. *Temporary alternative measure:* The employer must post a notice in the cab of the crane notifying the operator that the trolley travel deceleration device is malfunctioning and instructing the operator to take special care to reduce the trolley speed when approaching the trolley end limits.

(iii) *Boom hoist deceleration device.* The boom speed must be automatically reduced prior to the boom reaching the minimum or maximum radius limit. *Temporary alternative measure:* The employer must post a notice in the cab of the crane notifying the operator that the boom hoist deceleration device is malfunctioning and instructing the operator to take special care to reduce the boom speed when approaching the minimum or maximum radius limits.

(iv) *Load hoist deceleration device.* The load speed must be automatically reduced prior to the hoist reaching the upper limit. *Temporary alternative measure:* The employer must post a notice in the cab of the crane notifying the operator that the load hoist deceleration device is malfunctioning and instructing the operator to take special care to reduce the load speed when approaching the upper limits.

(v) *Wind speed indicator.* A device must be provided to display the wind speed and must be mounted above the upper rotating structure on tower cranes. On self erecting cranes, it must be mounted at or above the jib level. *Temporary alternative measures:* Use of wind speed information from a properly functioning indicating device on another tower crane on the same site, or a qualified person estimates the wind speed.

(vi) *Load indicating device.* Cranes manufactured after November 8, 2011 must have a device that displays the magnitude of the load on the hook. Displays that are part of load moment limiting devices that display the load on the hook meet this requirement. *Temporary alternative measures:* The weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer), or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable

means. This information must be provided to the operator prior to the lift.

(f) *Inspections.*

(1) Section 1926.1412 (Inspections) applies to tower cranes, except that the term "assembly" is replaced by "erection." Section 1926.1413 (Wire rope—inspection) applies to tower cranes.

(2) *Pre-erection inspection.* Before each crane component is erected, it must be inspected by a qualified person for damage or excessive wear.

(i) The qualified person must pay particular attention to components that will be difficult to inspect thoroughly during shift inspections.

(ii) If the qualified person determines that a component is damaged or worn to the extent that it would create a safety hazard if used on the crane, that component must not be erected on the crane unless it is repaired and, upon reinspection by the qualified person, found to no longer create a safety hazard.

(iii) If the qualified person determines that, though not presently a safety hazard, the component needs to be monitored, the employer must ensure that the component is checked in the monthly inspections. Any such determination must be documented, and the documentation must be available to any individual who conducts a monthly inspection.

(3) *Post-erection inspection.* In addition to the requirements in § 1926.1412(c), the following requirements must be met:

(i) A load test using certified weights, or scaled weights using a certified scale with a current certificate of calibration, must be conducted after each erection.

(ii) The load test must be conducted in accordance with the manufacturer's instructions when available. Where these instructions are unavailable, the test must be conducted in accordance with written load test procedures developed by a registered professional engineer familiar with the type of equipment involved.

(4) *Monthly.* The following additional items must be included:

(i) Tower (mast) bolts and other structural bolts (for loose or dislodged condition) from the base of the tower crane up or, if the crane is tied to or braced by the structure, those above the upper-most brace support.

(ii) The upper-most tie-in, braces, floor supports and floor wedges where the tower crane is supported by the structure, for loose or dislodged components.

(5) *Annual.* In addition to the items that must be inspected under § 1926.1412(f), all turntable and tower bolts must be inspected for proper condition and torque.

§ 1926.1436 Derricks.

(a) This section contains supplemental requirements for derricks, whether temporarily or permanently mounted; all sections of this subpart apply to derricks unless specified otherwise. A derrick is powered equipment consisting of a mast or equivalent member that is held at or near the end by guys or braces, with or without a boom, and its hoisting mechanism. The mast/equivalent member and/or the load is moved by the hoisting mechanism (typically base-mounted) and operating ropes. Derricks include: A-frame, basket, breast, Chicago boom, gin pole (except gin poles used for erection of communication towers), guy, shearleg, stiffleg, and variations of such equipment.

(b) *Operation—procedures.*

(1) Section 1926.1417 (Operation) applies except for § 1926.1417(c) (Accessibility of procedures).

(2) *Load chart contents.* Load charts must contain at least the following information:

(i) Rated capacity at corresponding ranges of boom angle or operating radii.

(ii) Specific lengths of components to which the rated capacities apply.

(iii) Required parts for hoist reeving.

(iv) Size and construction of rope must be included on the load chart or in the operating manual.

(3) *Load chart location.*

(i) *Permanent installations.* For permanently installed derricks with fixed lengths of boom, guy, and mast, a load chart must be posted where it is visible to personnel responsible for the operation of the equipment.

(ii) *Non-permanent installations.* For derricks that are not permanently installed, the load chart must be readily available at the job site to personnel responsible for the operation of the equipment.

(c) Construction.

(1) *General requirements.*

(i) Derricks must be constructed to meet all stresses imposed on members and components when installed and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.

(ii) Welding of load sustaining members must conform to recommended practices in ANSI/AWS D14.3–94 (incorporated by reference, *see* § 1926.6) or AWS D1.1/D1.1M:2002 (incorporated by reference, *see* § 1926.6).

(2) *Guy derricks.*

(i) The minimum number of guys must be 6, with equal spacing, except where a qualified person or derrick manufacturer approves variations from these requirements and revises the rated capacity to compensate for such variations.

(ii) Guy derricks must not be used unless the employer has the following guy information from the manufacturer or a qualified person, when not available from the manufacturer:

(A) The number of guys.

(B) The spacing around the mast.

(C) The size, grade, and construction of rope to be used for each guy.

(iii) For guy derricks manufactured after December 18, 1970, in addition to the information required in paragraph (c)(2)(ii) of this section, the employer must have the following guy information from the manufacturer or a qualified person, when not available from the manufacturer:

(A) The amount of initial sag or tension.

(B) The amount of tension in guy line rope at anchor.

(iv) The mast base must permit the mast to rotate freely with allowance for slight tilting of the mast caused by guy slack.

(v) The mast cap must:

(A) Permit the mast to rotate freely.

(B) Withstand tilting and cramping caused by the guy loads.

(C) Be secured to the mast to prevent disengagement during erection.

(D) Be provided with means for attaching guy ropes.

(3) *Stiffleg derricks.*

(i) The mast must be supported in the vertical position by at least two stiffleggs; one end of each must be connected to the top of the mast and the other end securely anchored.

(ii) The stiffleggs must be capable of withstanding the loads imposed at any point of operation within the load chart range.

(iii) The mast base must:

(A) Permit the mast to rotate freely (when necessary).

(B) Permit deflection of the mast without binding.

(iv) The mast must be prevented from lifting out of its socket when the mast is in tension.

(v) The stiffleg connecting member at the top of the mast must:

(A) Permit the mast to rotate freely (when necessary).

(B) Withstand the loads imposed by the action of the stiffleggs.

(C) Be secured so as to oppose separating forces.

(4) *Gin pole derricks.*

(i) Guy lines must be sized and spaced so as to make the gin pole stable in both boomed and vertical positions. *Exception:* Where the size and/or

spacing of guy lines do not result in the gin pole being stable in both boomed and vertical positions, the employer must ensure that the derrick is not used in an unstable position.

(ii) The base of the gin pole must permit movement of the pole (when necessary).

(iii) The gin pole must be anchored at the base against horizontal forces (when such forces are present).

(5) *Chicago boom derricks.* The fittings for stepping the boom and for attaching the topping lift must be arranged to:

(i) Permit the derrick to swing at all permitted operating radii and mounting heights between fittings.

(ii) Accommodate attachment to the upright member of the host structure.

(iii) Withstand the forces applied when configured and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.

(iv) Prevent the boom or topping lift from lifting out under tensile forces.

(d) *Anchoring and guying.*

(1) Load anchoring data developed by the manufacturer or a qualified person must be used.

(2) *Guy derricks.*

(i) The mast base must be anchored.

(ii) The guys must be secured to the ground or other firm anchorage.

(iii) The anchorage and guying must be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular guy slope and spacing specified for the application.

(3) *Stiffleg derricks.*

(i) The mast base and stifflegs must be anchored.

(ii) The mast base and stifflegs must be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular stiffleg spacing and slope specified for the application.

(e) *Swingers and hoists.*

(1) The boom, swinger mechanisms and hoists must be suitable for the derrick work intended and must be anchored to prevent displacement from the imposed loads.

(2) *Hoists.*

(i) Base mounted drum hoists must meet the requirements in the following sections of ASME B30.7–2001 (incorporated by reference, *see* § 1926.6):

(A) Sections 7–1.1 ("Load ratings and markings").

(B) Section 7–1.2 ("Construction"), except: 7–1.2.13 ("Operator's cab"); 7–1.2.15 ("Fire extinguishers").

(C) Section 7–1.3 ("Installation").

(D) Applicable terms in section 7–0.2 ("Definitions").

(ii) *Load tests for new hoists.* The employer must ensure that new hoists are load tested to a minimum of 110% of rated capacity, but not more than 125% of rated capacity, unless otherwise recommended by the manufacturer. This requirement is met where the manufacturer has conducted this testing.

(iii) *Repaired or modified hoists.* Hoists that have had repairs, modifications or additions affecting their capacity or safe operation must be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing must be conducted in accordance with paragraphs (e)(2)(ii) and (iv) of this section.

(iv) *Load test procedure.* Load tests required by paragraphs (e)(2)(ii) or (e)(2)(iii) of this section must be conducted as follows:

(A) The test load must be hoisted a vertical distance to assure that the load is supported by the hoist and held by the hoist brake(s).

(B) The test load must be lowered, stopped and held with the brake(s).

(C) The hoist must not be used unless a competent person determines that the test has been passed.

(f) *Operational aids.*

(1) Section 1926.1416 (Operational aids) applies, except for § 1926.1416(d)(1) (Boom hoist limiting device), § 1926.1416(e)(1) (Boom angle or radius indicator), and § 1926.1416(e)(4) (Load weighing and similar devices).

(2) *Boom angle aid.* A boom angle indicator is not required but if the derrick is not equipped with a functioning one, the employer must ensure that either:

(i) The boom hoist cable must be marked with caution and stop marks. The stop marks must correspond to maximum and minimum allowable boom angles. The caution and stop marks must be in view of the operator, or a spotter who is in direct communication with the operator; or

(ii) An electronic or other device that signals the operator in time to prevent the boom from moving past its maximum and minimum angles, or automatically prevents such movement, is used.

(3) *Load weight/capacity devices.*

(i) Derricks manufactured more than one year after November 8, 2010 with a maximum rated capacity over 6,000 pounds must have at least one of the following: load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter. *Temporary alternative measures:* The weight of the load must be determined from a source recognized by the industry (such as the load's manufacturer), or by a calculation method recognized by the industry (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information must be provided to the operator prior to the lift. *See* § 1926.1417(j) for additional requirements.

(ii) A load weight/capacity device that is not working properly must be repaired no later than 30 days after the deficiency occurs. *Exception:* If the employer documents that it has ordered the necessary parts within 7 days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 days, the repair must be completed within 7 days of receipt of the parts.

(g) *Post-assembly approval and testing—new or reinstalled derricks.*

(1) *Anchorages.*

(i) Anchorages, including the structure to which the derrick is attached (if applicable), must be approved by a qualified person.

(ii) If using a rock or hairpin anchorage, the qualified person must determine if any special testing of the anchorage is needed. If so, it must be tested accordingly.

(2) *Functional test.* Prior to initial use, new or reinstalled derricks must be tested by a competent person with no hook load to verify proper operation. This test must include:

(i) Lifting and lowering the hook(s) through the full range of hook travel.

(ii) Raising and lowering the boom through the full range of boom travel.

(iii) Swinging in each direction through the full range of swing.

(iv) Actuating the anti two-block and boom hoist limit devices (if provided).

(v) Actuating locking, limiting and indicating devices (if provided).

(3) *Load test.* Prior to initial use, new or reinstalled derricks must be load tested by a competent person. The test load must meet the following requirements:

(i) Test loads must be at least 100% and no more than 110% of the rated capacity, unless otherwise recommended by the manufacturer or qualified person, but in no event must the test load be less than the maximum anticipated load.

(ii) The test must consist of:

(A) Hoisting the test load a few inches and holding to verify that the load is supported by the derrick and held by the hoist brake(s).

(B) Swinging the derrick, if applicable, the full range of its swing, at

the maximum allowable working radius for the test load.

(C) Booming the derrick up and down within the allowable working radius for the test load.

(D) Lowering, stopping and holding the load with the brake(s).

(iii) The derrick must not be used unless the competent person determines that the test has been passed.

(4) *Documentation.* Tests conducted under this paragraph must be documented. The document must contain the date, test results and the name of the tester. The document must be retained until the derrick is re-tested or dismantled, whichever occurs first. All such documents must be available, during the applicable document retention period, to all persons who conduct inspections in accordance with § 1926.1412.

(h) *Load testing repaired or modified derricks.* Derricks that have had repairs, modifications or additions affecting the derrick's capacity or safe operation must be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing must be conducted and documented in accordance with paragraph (g) of this section.

(i) [*Reserved.*]

(j) *Power failure procedures.* If power fails during operations, the derrick operator must safely stop operations. This must include:

(1) Setting all brakes or locking devices.

(2) Moving all clutch and other power controls to the off position.

(k) *Use of winch heads.*

(1) Ropes must not be handled on a winch head without the knowledge of the operator.

(2) While a winch head is being used, the operator must be within reach of the power unit control lever.

(l) [*Reserved.*]

(m) *Securing the boom.*

(1) When the boom is being held in a fixed position, dogs, pawls, or other positive holding mechanisms on the boom hoist must be engaged.

(2) When taken out of service for 30 days or more, the boom must be secured by one of the following methods:

(i) Laid down.

(ii) Secured to a stationary member, as nearly under the head as possible, by attachment of a sling to the load block.

(iii) For guy derricks, lifted to a vertical position and secured to the mast.

(iv) For stiffleg derricks, secured against the stiffleg.

(n) The process of jumping the derrick must be supervised by the A/D director.

(o) Derrick operations must be supervised by a competent person.

(p) *Inspections.* In addition to the requirements in § 1926.1412, the following additional items must be included in the inspections:

(1) *Daily:* Guys for proper tension.

(2) *Annual.*

(i) Gudgeon pin for cracks, wear, and distortion.

(ii) Foundation supports for continued ability to sustain the imposed loads.

(q) *Qualification and Training.* The employer must train each operator of a derrick on the safe operation of equipment the individual will operate. Section 1926.1427 of this subpart (Operator qualification and certification) does not apply.

§ 1926.1437 Floating cranes/derricks and land cranes/derricks on barges.

(a) This section contains supplemental requirements for floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation (*i.e.,* vessel/flotation device). The sections of this subpart apply to floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation, unless specified otherwise. The requirements of this section do not apply when using jacked barges when the jacks are deployed to the river, lake, or sea bed and the barge is fully supported by the jacks.

(b) *General requirements.* The requirements in paragraphs (c) through (k) of this section apply to both floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.

(c) *Work area control.*

(1) The requirements of § 1926.1424 (Work area control) apply, except for § 1926.1424(a)(2)(ii).

(2) The employer must either:

(i) Erect and maintain control lines, warning lines, railings or similar barriers to mark the boundaries of the hazard areas; or

(ii) Clearly mark the hazard areas by a combination of warning signs (such as, "Danger—Swing/Crush Zone") and high visibility markings on the equipment that identify the hazard areas. In addition, the employer must train each employee to understand what these markings signify.

(d) *Keeping clear of the load.* Section 1926.1425 does not apply.

(e) *Additional safety devices.* In addition to the safety devices listed in § 1926.1415, the following safety devices are required:

(1) Barge, pontoon, vessel or other means of flotation list and trim device. The safety device must be located in the cab or, when there is no cab, at the operator's station.

(2) Positive equipment house lock.

(3) *Wind speed and direction indicator.* A competent person must determine if wind is a factor that needs to be considered; if wind needs to be considered, a wind speed and direction indicator must be used.

(f) *Operational aids.*

(1) An anti two-block device is required only when hoisting personnel or hoisting over an occupied cofferdam or shaft.

(2) Section 1926.1416(e)(4) (Load weighing and similar devices) does not apply to dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, and pile driving work performed under this section.

(g) *Accessibility of procedures applicable to equipment operation.* If the crane/derrick has a cab, the requirements of § 1926.1417(c) apply. If the crane/derrick does not have a cab, the employer must ensure that:

(1) Rated capacities (load charts) are posted at the operator's station. If the operator's station is moveable (such as with pendant-controlled equipment), the load charts are posted on the equipment.

(2) Procedures applicable to the operation of the equipment (other than load charts), recommended operating speeds, special hazard warnings, instructions and operators manual, must be readily available on board the vessel/flotation device.

(h) *Inspections.* In addition to meeting the requirements of § 1926.1412 for inspecting the crane/derrick, the employer must inspect the barge, pontoons, vessel or other means of flotation used to support a floating crane/derrick or land crane/derrick, and ensure that:

(1) *Shift.* For each shift inspection, the means used to secure/attach the equipment to the vessel/flotation device is in proper condition, including wear, corrosion, loose or missing fasteners, defective welds, and (when applicable) insufficient tension.

(2) *Monthly.* For each monthly inspection:

(i) The means used to secure/attach the equipment to the vessel/flotation device is in proper condition, including inspection for wear, corrosion, and, when applicable, insufficient tension.

(ii) The vessel/flotation device is not taking on water.

(iii) The deckload is properly secured.

(iv) The vessel/flotation device is watertight based on the condition of the chain lockers, storage, fuel compartments, and hatches.

(v) The firefighting and lifesaving equipment is in place and functional.

(3) The shift and monthly inspections are conducted by a competent person, and:

(i) If any deficiency is identified, an immediate determination is made by a qualified person whether the deficiency constitutes a hazard.

(ii) If the deficiency is determined to constitute a hazard, the vessel/flotation device is removed from service until the deficiency has been corrected.

(4) *Annual: external vessel/flotation device inspection.* For each annual inspection:

(i) The external portion of the barge, pontoons, vessel or other means of flotation used is inspected annually by a qualified person who has expertise with respect to vessels/flotation devices and that the inspection includes the following items:

(A) The items identified in paragraphs (h)(1) (*Shift*) and (h)(2) (*Monthly*) of this section.

(B) Cleats, bitts, chocks, fenders, capstans, ladders, and stanchions, for significant corrosion, wear, deterioration, or deformation that could impair the function of these items.

(C) External evidence of leaks and structural damage; evidence of leaks and damage below the waterline may be determined through internal inspection of the vessel/flotation device.

(D) Four-corner draft readings.

(E) Firefighting equipment for serviceability.

(ii) Rescue skiffs, lifelines, work vests, life preservers and ring buoys are inspected for proper condition.

(iii) If any deficiency is identified, an immediate determination is made by the qualified person whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly inspections.

(A) If the qualified person determines that the deficiency constitutes a hazard, the vessel/flotation device is removed from service until it has been corrected. *See* requirements in § 1926.1417(f).

(B) If the qualified person determines that, though not presently a hazard, the deficiency needs to be monitored, the deficiency is checked in the monthly inspections.

(5) *Four-year: internal vessel/flotation device inspection.* For each four-year inspection:

(i) A marine engineer, marine architect, licensed surveyor, or other qualified person who has expertise with respect to vessels/flotation devices surveys the internal portion of the barge, pontoons, vessel, or other means of flotation.

(ii) If the surveyor identifies a deficiency, an immediate determination is made by the surveyor as to whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly or annual inspections, as appropriate.

(A) If the surveyor determines that the deficiency constitutes a hazard, the vessel/flotation device is removed from service until it has been corrected.

(B) If the surveyor determines that, though not presently a hazard, the deficiency needs to be monitored, the deficiency is checked in the monthly or annual inspections, as appropriate.

(6) *Documentation.* The monthly and annual inspections required in paragraphs (h)(2) and (h)(4) of this section are documented in accordance with §§ 1926.1412 (e)(3) and 1926.1412(f)(7), respectively, and that the four-year inspection required in paragraph (h)(5) of this section is documented in accordance with § 1926.1412(f)(7), except that the documentation for that inspection must be retained for a minimum of 4 years. All such documents must be made available, during the applicable document retention period, to all persons who conduct inspections in accordance with § 1926.1412.

(i) [*Reserved.*]

(j) *Working with a diver.* The employer must meet the following additional requirements when working with a diver in the water:

(1) If a crane/derrick is used to get a diver into and out of the water, it must not be used for any other purpose until the diver is back on board. When used for more than one diver, it must not be used for any other purpose until all divers are back on board.

(2) The operator must remain at the controls of the crane/derrick at all times.

(3) In addition to the requirements in §§ 1926.1419 through 1926.1422 (Signals), either:

(i) A clear line of sight must be maintained between the operator and tender; or

(ii) The signals between the operator and tender must be transmitted electronically.

(4) The means used to secure the crane/derrick to the vessel/flotation device (*see* paragraph (n)(5) of this section) must not allow any amount of shifting in any direction.

(k) Manufacturer's specifications and limitations.

(1) The employer must ensure that the barge, pontoons, vessel, or other means of flotation must be capable of withstanding imposed environmental, operational and in-transit loads when used in accordance with the manufacturer's specifications and limitations.

(2) The employer must ensure that the manufacturer's specifications and limitations with respect to environmental, operational, and in-transit loads for a barge, pontoon, vessel, or other means of flotation are not exceeded or violated.

(3) When the manufacturer's specifications and limitations are unavailable, the employer must ensure that the specifications and limitations established by a qualified person with respect to environmental, operational and in-transit loads for the barge, pontoons, vessel, or other means of flotation are not exceeded or violated.

(l) [*Reserved.*]

(m) *Floating cranes/derricks.* For equipment designed by the manufacturer (or employer) for marine use by permanent attachment to barges, pontoons, vessels or other means of flotation:

(1) *Load charts.*

(i) The employer must not exceed the manufacturer load charts applicable to operations on water. When using these charts, the employer must comply with all parameters and limitations (such as dynamic and environmental parameters) applicable to the use of the charts.

(ii) The employer must ensure that load charts take into consideration a minimum wind speed of 40 miles per hour.

(2) The employer must ensure that the requirements for maximum allowable list and maximum allowable trim as specified in Table M1 of this section are met.

TABLE M1

Rated capacity	Maximum allowable list (degrees)	Maximum allowable trim (degrees)
Equipment designed for marine use by permanent attachment (other than derricks):		
25 tons or less	5	5
Over 25 tons	7	7
Derricks designed for marine use by permanent attachment:		
Any rated capacity	10	10

(3) The employer must ensure that the equipment is stable under the conditions specified in Tables M2 and M3 of this section. (**Note**: Freeboard is the vertical distance between the water line and the main deck of the vessel.)

TABLE M2

Operated at	Wind speed (mph)	Minimum freeboard (ft)
Rated capacity	60	2
Rated capacity plus 25%	60	1
High boom, no load ..	60	2

TABLE M3

Operated at	Wind speed
For backward stability of the boom: High boom, no load, full back list (least stable condition).	90 mph.

(4) If the equipment is employer-made, it must not be used unless the employer has documents demonstrating that the load charts and applicable parameters for use meet the requirements of paragraphs (m)(1) through (3) of this section. Such documents must be signed by a registered professional engineer who is a qualified person with respect to the design of this type of equipment (including the means of flotation).

(5) The employer must ensure that the barge, pontoons, vessel or other means of flotation used:

(i) Are structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all planned and actual deck loads and ballasted compartments.

(ii) Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free-surface effect.

(iii) Have access to void compartments to allow for inspection and pumping.

(n) *Land cranes/derricks.* For land cranes/derricks used on barges, pontoons, vessels or other means of flotation, the employer must ensure that:

(1) The rated capacity of the equipment (including but not limited to modification of load charts) applicable for use on land is reduced to:

(i) Account for increased loading from list, trim, wave action, and wind.

(ii) Be applicable to a specified location(s) on the specific barge, pontoons, vessel or other means of flotation that will be used, under the environmental conditions expected and encountered.

(iii) The conditions required in paragraphs (n)(3) and (n)(4) of this section are met.

(2) The rated capacity modification required in paragraph (n)(1) of this section is performed by the equipment manufacturer, or a qualified person who has expertise with respect to both land crane/derrick capacity and the stability of vessels/flotation devices.

(3) For list and trim.

(i) The maximum allowable list and the maximum allowable trim for the barge, pontoon, vessel or other means of flotation must not exceed the amount necessary to ensure that the conditions in paragraph (n)(4) of this section are met. In addition, the maximum allowable list and the maximum allowable trim does not exceed the least of the following: 5 degrees, the amount specified by the crane/derrick manufacturer, or, when, an amount is not so specified, the amount specified by the qualified person.

(ii) The maximum allowable list and the maximum allowable trim for the land crane/derrick does not exceed the amount specified by the crane/derrick manufacturer, or, when, an amount is not so specified, the amount specified by the qualified person.

(4) For the following conditions:

(i) All deck surfaces of the barge, pontoons, vessel or other means of flotation used are above water.

(ii) The entire bottom area of the barge, pontoons, vessel or other means of flotation used is submerged.

(5) Physical attachment, corralling, rails system and centerline cable system meet the requirements in Option (1), Option (2), Option (3), or Option (4) of this section, and that whichever option is used also meets the requirements of paragraph (n)(5)(v) of this section.

(i) *Option (1)—Physical attachment.* The crane/derrick is physically attached to the barge, pontoons, vessel or other means of flotation. Methods of physical attachment include crossed-cable systems attached to the crane/derrick and vessel/flotation device, bolting or welding the crane/derrick to the vessel/flotation device, strapping the crane/derrick to the vessel/flotation device with chains, or other methods of physical attachment.

(ii) *Option (2)—Corralling.* The crane/derrick is prevented from shifting by installing barricade restraints (*i.e.,* a corralling system). Employers must ensure that corralling systems do not allow the equipment to shift by any amount of shifting in any direction.

(iii) *Option (3)—Rails.* The crane/derrick must be prevented from shifting by being mounted on a rail system. Employers must ensure that rail clamps and rail stops are used unless the system is designed to prevent movement during operation by other means.

(iv) *Option (4)—Centerline cable system.* The crane/derrick is prevented from shifting by being mounted to a wire rope system. The employer must ensure that the wire rope system meets the following requirements:

(A) The wire rope and attachments are of sufficient size and strength to support the side load of crane/derrick.

(B) The wire rope is attached physically to the vessel/flotation device.

(C) The wire rope is attached to the crane/derrick by appropriate attachment methods (such as shackles or sheaves) on the undercarriage, and that the method used will allow the crew to secure the crane/derrick from movement during operation and to move the crane/derrick longitudinally along the vessel/flotation device for repositioning.

(D) Means are installed to prevent the crane/derrick from passing the forward or aft end of the wire rope attachments.

(E) The crane/derrick is secured from movement during operation.

(v) The systems/means used to comply with Option (1), Option (2), Option (3), or Option (4) of this section are designed by a marine engineer, registered professional engineer familiar with floating crane/derrick design, or qualified person familiar with floating crane/derrick design.

(6) *Exception.* For mobile auxiliary cranes used on the deck of a floating crane/derrick, the requirement specified by paragraph (n)(5) of this section to use Option (1), Option (2), Option (3), or Option (4) does not apply when the employer demonstrates implementation of a plan and procedures that meet the following requirements:

(i) A marine engineer or registered professional engineer familiar with floating crane/derrick design develops and signs a written plan for the use of the mobile auxiliary crane.

(ii) The plan is designed so that the applicable requirements of this section are met despite the position, travel, operation, and lack of physical attachment (or corralling, use of rails or cable system) of the mobile auxiliary crane.

(iii) The plan specifies the areas of the deck where the mobile auxiliary crane is permitted to be positioned, travel, and operate, and the parameters and limitations of such movements and operation.

(iv) The deck is marked to identify the permitted areas for positioning, travel, and operation.

(v) The plan specifies the dynamic and environmental conditions that must be present for use of the plan.

(vi) If the dynamic and environmental conditions in paragraph (n)(6)(v) of this section are exceeded, the mobile auxiliary crane is attached physically or corralled in accordance with Option (1),

Option (2) or Option (4) of paragraph (n)(5) of this section.

(7) The barge, pontoons, vessel or other means of flotation used:

(i) Are structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all anticipated deck loads and ballasted compartments.

(ii) Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free surface effect.

(iii) Have access to void compartments to allow for inspection and pumping.

§ 1926.1438 Overhead & gantry cranes.

(a) *Permanently installed overhead and gantry cranes.* The requirements of § 1910.179, except for § 1910.179(b)(1), and not the requirements of this subpart CC, apply to the following equipment when used in construction and permanently installed in a facility: overhead and gantry cranes, including semigantry, cantilever gantry, wall cranes, storage bridge cranes, and others having the same fundamental characteristics.

(b) *Overhead and gantry cranes that are not permanently installed in a facility.*

(1) This paragraph applies to the following equipment when used in construction and not permanently installed in a facility: Overhead and gantry cranes, overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment having the same fundamental characteristics, irrespective of whether it travels on tracks, wheels, or other means.

(2) The following requirements apply to equipment identified in paragraph (b)(1) of this section:

(i) Sections 1926.1400 through 1926.1414; §§ 1926.1417 through 1926.1425; § 1926.1426(d), §§ 1926.1427 through 1926.1434; § 1926.1437, § 1926.1439, and § 1926.1441.

(ii) The following portions of § 1910.179:

(A) Paragraphs (b)(5),(6),(7); (e)(1),(3),(5),(6); (f)(1),(4); (g); (h)(1),(3); (k); and (n) of § 1910.179.

(B) The definitions in § 1910.179(a) except for "hoist" and "load." For those words, the definitions in § 1926.1401 apply.

(C) Section 1910.179(b)(2), but only where the equipment identified in paragraph (b)(1) of this section (§ 1926.1438) was manufactured before September 19, 2001.

(iii) For equipment manufactured on or after September 19, 2001, the following sections of ASME B30.2–2005 (incorporated by reference, *see* § 1926.6) apply: 2–1.3.1; 2–1.3.2; 2–1.4.1; 2–1.6; 2–1.7.2; 2–1.8.2; 2–1.9.1; 2–1.9.2; 2–1.11; 2–1.12.2; 2–1.13.7; 2–1.14.2; 2–1.14.3; 2–1.14.5; 2–1.15.; 2–2.2.2; 2–3.2.1.1. In addition, 2–3.5 applies, except in 2–3.5.1(b), "29 CFR 1910.147" is substituted for "ANSI Z244.1."

§ 1926.1439 Dedicated pile drivers.

(a) The provisions of subpart CC apply to dedicated pile drivers, except as specified in this section.

(b) Section 1926.1416(d)(3) (Anti two-blocking device) does not apply.

(c) Section 1926.1416(e)(4) (Load weighing and similar devices) applies only to dedicated pile drivers manufactured after November 8, 2011.

(d) In § 1926.1433, only §§ 1926.1433(d) and (e) apply to dedicated pile drivers.

§ 1926.1440 Sideboom cranes.

(a) The provisions of this standard apply, except § 1926.1402 (Ground conditions), § 1926.1415 (Safety devices), § 1926.1416 (Operational aids), and § 1926.1427 (Operator qualification and certification).

(b) Section 1926.1426 (Free fall and controlled load lowering) applies, except § 1926.1426(a)(2)(i). Sideboom cranes in which the boom is designed to free fall (live boom) are permitted only if manufactured prior to November 8, 2010.

(c) Sideboom cranes mounted on wheel or crawler tractors must meet all of the following requirements of ASME B30.14–2004 (incorporated by reference, *see* § 1926.6):

(1) Section 14–1.1 ("Load Ratings").

(2) Section 14–1.3 ("Side Boom Tractor Travel").

(3) Section 14–1.5 ("Ropes and Reeving Accessories").

(4) Section 14–1.7.1 ("Booms").

(5) Section 14–1.7.2 ("General Requirements—Exhaust Gases").

(6) Section 14–1.7.3 ("General Requirements—Stabilizers (Wheel-Type Side Boom Tractors)").

(7) Section 14–1.7.4 ("General Requirements—Welded Construction").

(8) Section 14–1.7.6 ("General Requirements—Clutch and Brake Protection").

(9) Section 14–2.2.2 ("Testing—Rated Load Test"), except that it applies only to equipment that has been altered or modified.

(10) In section 14–3.1.2 ("Operator Qualifications"), paragraph (a), except the phrase "When required by law."

(11) In section 14–3.1.3 ("Operating Practices"), paragraphs (e), (f)(1)—(f)(4), (f)(6), (f)(7), (h), and (i).

(12) In section 14–3.2.3 ("Moving the Load"), paragraphs (j), (l), and (m).

§ 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less.

The following paragraphs of this section specify requirements for employers using equipment with a maximum rated hoisting/lifting capacity of 2,000 pounds or less.

(a) The employer using this equipment must comply with the following provisions of this subpart: § 1926.1400 (Scope); § 1926.1401 (Definitions); § 1926.1402 (Ground conditions); § 1926.1403 (Assembly/disassembly—selection of manufacturer or employer procedures); § 1926.1406 (Assembly/disassembly—employer procedures); §§ 1926.1407 through 1926.1411 (Power line safety); § 1926.1412(c) (*Post-assembly*); §§ 1926.1413 through 1926.1414 (Wire rope); § 1926.1418 (Authority to stop operation); §§ 1926.1419 through 1926.1422 (Signals); § 1926.1423 (Fall protection); § 1926.1425 (Keeping clear of the load) (except for § 1926.1425(c)(3) (qualified rigger)); § 1926.1426 (Free fall and controlled load lowering); § 1926.1432 (Multiple crane/derrick lifts—supplemental requirements); § 1926.1434 (Equipment modifications); § 1926.1435 (Tower cranes); § 1926.1436 (Derricks); § 1926.1437 (Floating cranes/derricks and land cranes/derricks on barges); § 1926.1438 (Overhead & gantry cranes).

(b) *Assembly/disassembly.*

(1) In addition to compliance with §§ 1926.1403 (Assembly/disassembly—selection of manufacturer or employer procedures) and 1926.1406 (Assembly/disassembly—employer procedures), the employer must also comply with § 1926.1441(b)(2)–(3).

(2) *Components and configuration.* The employer must ensure that:

(i) The selection of components, and the configuration of the equipment, that affect the capacity or safe operation of the equipment complies with either the:

(A) Manufacturer instructions, recommendations, limitations, and specifications. When these documents and information are unavailable, a registered professional engineer familiar with the type of equipment involved must approve, in writing, the selection and configuration of components; or

(B) Approved modifications that meet the requirements of § 1926.1434 (Equipment modifications).

(ii) *Post-assembly inspection.* Upon completion of assembly, the equipment is inspected to ensure that it is in compliance with paragraph (b)(2)(i) of

this section (*see* § 1926.1412(c) for post-assembly inspection requirements).

(3) *Manufacturer prohibitions.* The employer must comply with applicable manufacturer prohibitions.

(c) *Operation—procedures.*

(1) The employer must comply with all manufacturer procedures applicable to the operational functions of the equipment, including its use with attachments.

(2) *Unavailable operation procedures.* The employer must:

(i) When the manufacturer's procedures are unavailable, develop, and ensure compliance with, all procedures necessary for the safe operation of the equipment and attachments.

(ii) Ensure that procedures for the operational controls are developed by a qualified person.

(iii) Ensure that procedures related to the capacity of the equipment are developed and signed by a registered professional engineer familiar with the equipment.

(3) *Accessibility.* The employer must ensure that:

(i) The load chart is available to the operator at the control station;

(ii) Procedures applicable to the operation of the equipment, recommended operating speeds, special hazard warnings, instructions, and operator's manual are readily available for use by the operator.

(iii) When rated capacities are available at the control station only in electronic form and a failure occurs that makes the rated capacities inaccessible, the operator immediately ceases operations or follows safe shut-down procedures until the rated capacities (in electronic or other form) are available.

(d) *Safety devices and operational aids.*

(1) The employer must ensure that safety devices and operational aids that are part of the original equipment are maintained in accordance with manufacturer procedures.

(2) *Anti two-blocking.* The employer must ensure that equipment covered by this section manufactured more than one year after November 8, 2010 have either an anti two-block device that meets the requirements of § 1926.1416(d)(3), or is designed so that, in the event of a two-block situation, no damage or load failure will occur (for example, by using a power unit that stalls in response to a two-block situation).

(e) *Operator qualifications.* The employer must train each operator, prior to operating the equipment, on the safe operation of the type of equipment the operator will be using.

(f) *Signal person qualifications.* The employer must train each signal person in the proper use of signals applicable to the use of the equipment.

(g) [*Reserved.*]

(h) *Inspections.* The employer must ensure that equipment is inspected in accordance with manufacturer procedures.

(i) [*Reserved.*]

(j) *Hoisting personnel.* The employer must ensure that equipment covered by this section is not used to hoist personnel.

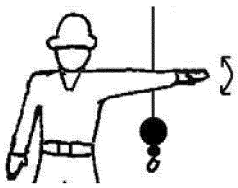
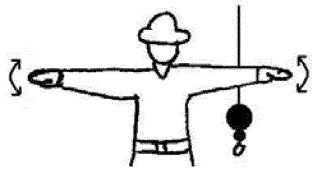
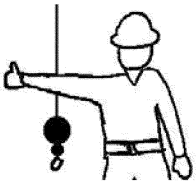
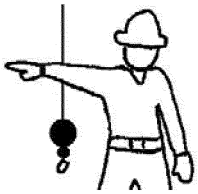
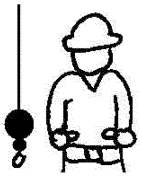
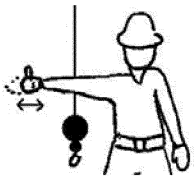
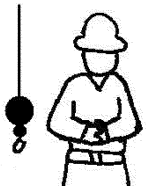
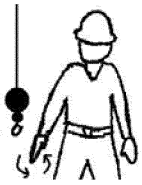
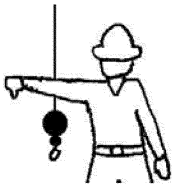
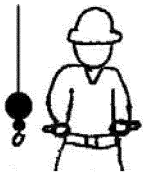
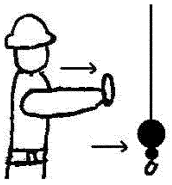
(k) *Design.* The employer must ensure that the equipment is designed by a qualified engineer.

§ 1926.1442 Severability.

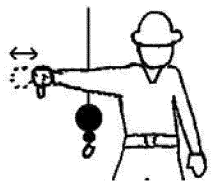
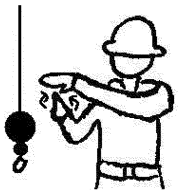
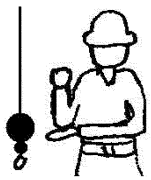
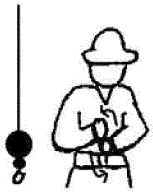
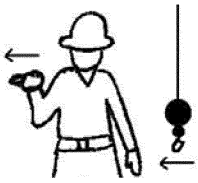
Should a court of competent jurisdiction hold any provision(s) of subpart CC to be invalid, such action shall not affect any other provision of the subpart.

BILLING CODE 4510–26–P

Appendix A to Subpart CC of Part 1926—Standard Hand Signals

 **STOP –** With arm extended horizontally to the side, palm down, arm is swung back and forth.	 **EMERGENCY STOP** – With both arms extended horizontally to the side, palms down, arms are swung back and forth.	 **HOIST –** With upper arm extended to the side, forearm and index finger pointing straight up, hand and finger make small circles.
 **RAISE BOOM –** With arm extended horizontally to the side, thumb points up with other fingers closed.	 **SWING –** With arm extended horizontally, index finger points in direction that boom is to swing.	 **RETRACT TELESCOPING BOOM –** With hands to the front at waist level, thumbs point at each other with other fingers closed.
 **RAISE THE BOOM AND LOWER THE LOAD –** With arm extended horizontally to the side and thumb pointing up, fingers open and close while load movement is desired.	 **DOG EVERYTHING –** Hands held together at waist level.	 **LOWER –** With arm and index finger pointing down, hand and finger make small circles.
 **LOWER BOOM –** With arm extended horizontally to the side, thumb points down with other fingers closed.	 **EXTEND TELESCOPING BOOM –** With hands to the front at waist level, thumbs point outward with other fingers closed.	 **TRAVEL/TOWER TRAVEL** – With all fingers pointing up, arm is extended horizontally out and back to make a pushing motion in the direction of travel.

BILLING CODE 4510–26–C

 **LOWER THE BOOM AND RAISE THE LOAD** – With arm extended horizontally to the side and thumb pointing down, fingers open and close while load movement is desired.	 **MOVE SLOWLY** – A hand is placed in front of the hand that is giving the action signal.	 **USE AUXILIARY HOIST** (whipline) – With arm bent at elbow and forearm vertical, elbow is tapped with other hand. Then regular signal is used to indicate desired action.
 **CRAWLER CRANE TRAVEL, BOTH TRACKS** – Rotate fists around each other in front of body; direction of rotation away from body indicates travel forward; rotation towards body indicates travel backward.	 **USE MAIN HOIST** – A hand taps on top of the head. Then regular signal is given to indicate desired action.	 **CRAWLER CRANE TRAVEL, ONE TRACK** – Indicate track to be locked by raising fist on that side. Rotate other fist in front of body in direction that other track is to travel.
 **TROLLEY TRAVEL** – With palm up, fingers closed and thumb pointing in direction of motion, hand is jerked horizontally in direction trolley is to travel.		

Appendix B to Subpart CC of Part 1926—Assembly/Disassembly: Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement

1. Section 1926.1404(f)(1) provides that when pins (or similar devices) are being removed, employees must not be under the boom, jib, or other components, except where the requirements of § 1926.1404(f)(2) are met. The exception in § 1926.1404(f)(2) applies when the employer demonstrates that site constraints require one or more employees to be under the boom, jib, or other components when pins (or similar devices) are being removed. In such a situation, the A/D director must implement procedures that minimize the risk of unintended dangerous movement and minimize the duration and extent of exposure under the boom.

The following scenario is an example of how the exception applies: A boom cannot be disassembled on the ground because of aboveground piping (as might be found, for example, in an oil refinery) that precludes lowering the boom to the ground. The boom must therefore be disassembled in the air, and the employees who remove the pins must perform that work from an aerial lift whose base is positioned on one side (the near side) of the boom. To gain access to the pins on the far side, the aerial lift basket must move under the boom, since, due to lack of room, the aerial lift cannot be repositioned on the far side. Due to lack of room, the aerial lift cannot be repositioned on the far side, so the aerial basket must move under the boom to gain access to the pins on the far side.

To minimize the risk of unintended dangerous movement while the pins are removed, the A/D director uses an assist crane that is rigged to support the boom section that is being detached, using particular care to ensure that the section end that is near the employee(s) removing the pins is well supported. The duration and extent of exposure is minimized by removing the far side pins first, moving the aerial lift basket as soon as possible to the near side so that the employees are no longer under the boom, and then removing the near side pins.

2. Section 1926.1404(h)(6)(i) provides that, during assembly/disassembly, the center of gravity of the load must be identified if that is necessary for the method used for maintaining stability. Section 1926.1404(h)(6)(ii) states that, where there is insufficient information to accurately identify the center of gravity, measures designed to prevent unintended dangerous movement resulting from an inaccurate

identification of the center of gravity must be used.

An example of the application of § 1926.1404(h)(6)(ii) is as follows: The boom is assembled by lowering boom sections sequentially into place using an assist crane. The A/D director's plan is to keep the boom sections stable while they are lowered into place by attaching the assist crane hoist line above the center of gravity of each section. However, in assembling the non-symmetrical top section of the boom, the A/D director is not able to determine where to attach the assist crane hoist line so that it is above the center of gravity. In this situation, before raising the section, all personnel are kept clear of the section and the section is first raised a few inches to determine whether it tips when raised (if it did tip, it would indicate it is not rigged over the center of gravity). If this occurs, the hoist line is repositioned and the procedure repeated (with employees kept clear of the section while it is raised) until the A/D director determines that it is rigged over the center of gravity and can be moved into place without dangerous movement.

Appendix C to Subpart CC of Part 1926—Operator Certification: Written Examination: Technical Knowledge Criteria

This appendix contains information for employers, accredited testing organizations, auditors and government entities developing criteria for a written examination to test an individual's technical knowledge relating to the operation of cranes.

(a) General technical information.

(1) The functions and limitations of the crane and attachments.

(2) Wire rope:

(i) Background information necessary to understand the inspection and removal from service criteria in § 1926.1413 and § 1926.1414.

(ii) Capacity and when multi-part rope is needed.

(iii) Relationship between line pull and safe working load.

(iv) How to determine the manufacturer's recommended rope for the crane.

(3) Rigging devices and their use, such as:

(i) Slings.

(ii) Spreaders.

(iii) Lifting beams.

(iv) Wire rope fittings, such as clips, shackles and wedge sockets.

(v) Saddles (softeners).

(vi) Clamps (beams).

(4) The technical limitations of protective measures against electrical hazards:

(i) Grounding.

(ii) Proximity warning devices.

(iii) Insulated links.

(iv) Boom cages.

(v) Proximity to electric power lines, radii, and microwave structures.

(5) The effects of load share and load transfer in multi-crane lifts.

(6) Basic crane terms.

(7) The basics of machine power flow systems.

(i) Mechanical.

(ii) Electrical.

(iii) Pneumatic.

(iv) Hydraulic.

(v) Combination.

(8) The significance of the instruments and gauge readings.

(9) The effects of thermal expansion and contraction in hydraulic cylinders.

(10) Background information necessary to understand the requirements of pre-operation and inspection.

(11) How to use the safety devices and operational aids required under § 1926.1415 and § 1926.1416.

(12) The difference between duty-cycle and lifting operations.

(13) How to calculate net capacity for every possible configuration of the equipment using the manufacturer's load chart.

(14) How to use manufacturer-approved attachments and their effect on the equipment.

(15) How to obtain dimensions, weight, and center of gravity of the load.

(16) The effects of dynamic loading from:

(i) Wind.

(ii) Stopping and starting.

(iii) Impact loading.

(iv) Moving with the load.

(17) The effect of side loading.

(18) The principles of backward stability.

(b) Site information.

(1) How to identify the suitability of the supporting ground/surface to support the expected loads of the operation. Elements include:

(i) Weaknesses below the surface (such as voids, tanks, loose fill).

(ii) Weaknesses on the surface (such as retaining walls, slopes, excavations, depressions).

(2) Proper use of mats, blocking/cribbing, outriggers, stabilizers, or crawlers.

(3) Identification of site hazards such as power lines, piping, and traffic.

(4) How to review operation plans with supervisors and other workers (such as the signal person), including how to determine working height, boom length, load radius, and travel clearance.

(5) How to determine if there is adequate room for extension of crawlers or outriggers/stabilizers and counterweights.

(c) Operations.

(1) How to pick, carry, swing and place the load smoothly and safely on rubber tires and on outriggers/stabilizers or crawlers (where applicable).

(2) How to communicate at the site with supervisors, the crew and the signal person.

(3) Proper procedures and methods of reeving wire ropes and methods of reeving multiple-part lines and selecting the proper load block and/or ball.

(4) How to react to changes in conditions that affect the safe operation of the equipment.

(5) How to shut down and secure the equipment properly when leaving it unattended.

(6) Know how to apply the manufacturer's specifications for operating in various weather conditions, and understand how environmental conditions affect the safe operation of the equipment.

(7) How to properly level the equipment.

(8) How to verify the weight of the load and rigging prior to initiating the lift.

(9) How to determine where the load is to be picked up and placed and how to verify the radii.

(10) Know basic rigging procedures.

(11) How to carry out the shift inspection required in this subpart.

(12) Know that the following operations require specific procedures and skill levels:

(i) Multi-crane lifts.

(ii) Hoisting personnel.

(iii) Clamshell/dragline operations.

(iv) Pile driving and extracting.

(v) Concrete operations, including poured-in-place and tilt-up.

(vi) Demolition operations.

(vii) Operations on water.

(viii) Magnet operations.

(ix) Multi-drum operations.

(13) Know the proper procedures for operating safely under the following conditions:

(i) Traveling with suspended loads.

(ii) Approaching a two-block condition.

(iii) Operating near power lines.

(iv) Hoisting personnel.

(v) Using other than full outrigger/crawler or stabilizer extensions.

(vi) Lifting loads from beneath the surface of the water.

(vii) Using various approved counterweight configurations.

(viii) Handling loads out of the operator's vision ("operating in the blind").

(ix) Using electronic communication systems for signal communication.

(14) Know the proper procedures for load control and the use of hand-held tag lines.

(15) Know the emergency response procedure for:

(i) Fires.

(ii) Power line contact.

(iii) Loss of stability.

(iv) Control malfunction.

(v) Two-blocking.

(vi) Overload.

(vii) Carrier or travel malfunction.

(16) Know how to properly use outriggers and stabilizers in accordance with manufacturer specifications.

(d) Use of load charts.

(1) Know the terminology necessary to use load charts.

(2) Know how to ensure that the load chart is the appropriate chart for the equipment in its particular configuration and application.

(3) Know how to use load charts. This includes knowing:

(i) The operational limitations of load charts and footnotes.

(ii) How to relate the chart to the configuration of the crane, crawlers, or outriggers/stabilizers extended or retracted, jib erected or offset, and various counterweight configurations.

(iii) The difference between structural capacity and capacity limited by stability.

(iv) What is included in capacity ratings.

(v) The range diagram and its relationship to the load chart.

(vi) The work area chart and its relationship to the load chart.

(vii) Where to find and how to use the "parts-of-line" information.

(4) Know how to use the load chart together with the load indicators and/or load moment devices.

[FR Doc. 2010–17818 Filed 7–28–10; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Monday,
August 9, 2010

Part III

Department of Health and Human Services

Food and Drug Administration

Comprehensive List of Guidance Documents at the Food and Drug Administration; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1998–N–0050] (formerly Docket No. 1998N–0046)

Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a comprehensive list of all guidance documents currently in use at the agency. This list is being published under FDA's Good Guidance Practices (GGPs). It is intended to inform the public of the existence and availability of all of our current guidance documents. It also provides information on guidance documents that have been added or withdrawn in the past 5 years.

DATES: We welcome general comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

For information on a specific guidance or to obtain a paper copy, please refer to each Center's section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's GGPs were published in the **Federal Register** of September 19, 2000 (65 FR 56468), and became effective October 19, 2000. GGPs (21 CFR 10.115) are intended to ensure involvement of the public in the development of guidance documents, and to enhance understanding of the availability, nature, and legal effect of such guidance.

FDA has adopted a new format for the publication of its comprehensive guidance list. This new format is intended to increase the timeliness of the comprehensive list. For information on a specific guidance or to obtain a paper copy, please refer to each Center's section of this document. The lists of guidance documents are either a printout of FDA's Web site as of April 2010 or a list compiled by the issuing office. You should note that some guidance documents pertain to more than one product area (e.g., drugs and biologics), and are, therefore, listed under both Centers involved or pertain to more than one subject matter (e.g., "Food Defense and Emergency Response" and "Imports"), and are, therefore, listed under more than one category within a Center. So there may be some duplication in the guidance lists. You are encouraged to use FDA's Web site as the most up-to-date source for all current guidance documents in use by the agency, as the Web site is updated on a daily basis.

In accordance with the agency's general policy on guidances, you may comment on this list and on any FDA guidance document at any time.

We have organized the guidance documents by the issuing Center or Office within FDA. The dates in the list refer to the date we issued the guidances or, where applicable, the last date we revised a document. Because each issuing Center or Office maintains its own database, there are slight variations in the way in which they provide the information.

II. Center for Biologics Evaluation and Research (CBER)

For information a specific guidance document or to obtain a paper copy, contact:

Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, e-mail: *ocod@fda.hhs.gov*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

The following is a list of CBER guidance documents that have been withdrawn:

Title of Document	Date of Issuance	Date of Withdrawal
Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	3/15/2000	4/10/2006
Draft Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier	7/11/2001	4/11/2006
Draft Guidance for Industry: Submitting Type V Drug Master Files to the Center for Biologics Evaluation and Research	8/23/2001	August 9, 2010.

The following list of current CBER guidance documents was obtained from FDA's Web site on April 20, 2010:

Administrative

- Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications (PDF - 316KB)
  9/2009
- Formal Meetings Between the FDA and Sponsors or Applicants (PDF - 89KB)
  5/2009
- Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices
  1/2009
- Guidance for Industry, FDA Staff, and FDA-Accredited Third Parties - Manufacturer's Notification of the Intent to Use an Accredited Person under the Accredited Persons Inspection Program Authorized by Section 228 of the Food and Drug Administration Amendments Act of 2007 (FDAAA)
  9/15/2005

- Guidance for Industry, FDA Staff, and Third Parties - Inspection by Accredited Persons Under The Medical Device User Fee and Modernization Act of 2002 and the FDA Amendments Act of 2007; Accreditation Criteria
  10/4/2004
- Guidance for Industry and FDA Staff - User Fees and Refunds for Premarket Notification Submissions (510(k)s)
  5/28/2004
- FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment
  5/21/2004
- Guidance for Industry and FDA: User Fees and Refunds for Premarket Approval Applications
  11/24/2003
- Premarket Approval Application Modular Review
  11/3/2003

Adverse Events and Product Deviation Guidances

- Guidance for Clinical Investigators, Sponsors, and IRBs: Adverse Event Reporting to IRBs—Improving Human Subject Protection (PDF - 61KB)
  1/2009
- Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic (PDF - 246KB)
  12/2008
- Providing Regulatory Submissions in Electronic Format—Postmarketing Individual Case Safety Reports (PDF - 107KB)
  6/2008
- Guidance for Industry: Biological Product Deviation Reporting for Licensed Manufacturers of Biological Products Other than Blood and Blood Components
  10/2006
- Adverse Reactions Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 52KB)
  1/2006
- Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines (PDF - 375KB)
  3/2001
- Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report (PDF - 95KB)
  8/1997

Allergenic Guidance Documents

- Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts
  11/20/2008
- Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol
  11/20/2000
- Guidance for Industry On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test
  4/23/1999

Application Submissions

- Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes (PDF - 73KB)
  2/2010
- SPL Standard for Content of Labeling Technical Qs & As (PDF - 58KB)
  10/2009
- Investigator Responsibilities—Protecting the Rights, Safety, and Welfare of Study Subjects (PDF - 163KB)
  10/2009
- Providing Regulatory Submissions in Electronic Format—(PDF - 123KB)
  5/2009
- Guidance for Industry and FDA Staff - Modifications to Devices Subject to Premarket Approval (PMA) - The PMA Supplement Decision-Making Process (PDF Version) (PDF - 180KB)
  12/2008
- Contents of a Complete Submission for the Evaluation of Proprietary Names (PDF - 306KB)
  11/2008
- Tropical Disease Priority Review Vouchers (PDF - 112KB)
  10/2008
- Integrated Summary of Effectiveness (PDF - 95KB)
  8/2008
- Draft Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and FDA Staff - Humanitarian Device Exemption (HDE) Regulation: Questions and Answers (PDF Version) (PDF - 121KB)
  8/2008
- Providing Regulatory Submissions in Electronic Format—Postmarketing Individual Case Safety Reports (PDF - 107KB)
  6/2008
- Providing Regulatory Submissions in Electronic Format -Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (PDF - 133KB)
  6/2008
- Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Goals (PDF Version) (PDF - 155KB)
  6/2008
- Guidance for Industry and FDA Staff: Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements (PDF Version) (PDF - 103KB)
  2/2008
- Guidance for Industry and FDA Staff: Expedited Review of Premarket Submissions for Devices (PDF Version) (PDF - 127KB)
  2/2008
- Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format - Lot Release Protocols (PDF - 76KB)
  11/2007

- In Vitro Diagnostic (IVD) Device Studies—Frequently Asked Questions (PDF - 268KB)
  10/2007
- Pharmacogenomic Data Submissions—Companion Guidance (PDF - 211KB)
  8/2007
- Guidance for Industry and FDA Staff: Bundling Multiple Devices or Multiple Indications in a Single Submission (PDF Version) (PDF - 145KB)
  6/2007
- Providing Regulatory Submissions in Electronic Format—Receipt Date (PDF - 59KB)
  6/2007
- Draft Guidance for Industry and FDA Staff - Annual Reports for Approved Premarket Approval Applications (PMA) (PDF Version) (PDF - 127KB)
  10/2006
- Real-Time Premarket Approval Application (PMA) Supplements - Guidance for Industry and FDA Staff (PDF Version) (PDF - 82KB)
  4/2006
- Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997 (PDF - 456KB)
  2/2006
- Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims (PDF - 295KB)
  2/2006
- Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP (PDF - 110KB)
  2/2006
- Fast Track Drug Development Programs - Designation, Development, and Application Review (PDF - 83KB)
  2/2006
- How to Comply with the Pediatric Research Equity Act (PDF - 116KB)
  9/2005
- Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients (PDF - 230KB)
  5/2005
- Guidance for Industry and FDA Staff: Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices (PDF version) (PDF - 342KB)
  5/2005
- Providing Regulatory Submissions in Electronic Format—Content of Labeling (PDF - 28KB)
  4/2005
- Good Review Management Principles and Practices for PDUFA Products (PDF - 683KB)
  4/2005
- Pharmacogenomic Data Submissions (PDF - 96KB)
  3/2005
- Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees (PDF - 211KB)
  12/2004
- Guidance for Industry and FDA Staff: Resolution of Disputes Concerning Payment or Refund of Medical Device User Fees Under MDUFMA (PDF Version) (PDF - 97KB)
  11/2004
- Guidance for Industry, FDA Staff, and Third Parties - Inspection by Accredited Persons Under The Medical Device User Fee and Modernization Act of 2002 and the FDA Amendments Act of 2007; Accreditation Criteria (PDF Version) (PDF - 175KB)
  10/2004
- Guidance for Industry and FDA Staff: User Fees and Refunds for Premarket Notification Submissions (510(k)s) (PDF Version) (PDF - 109KB)
  5/2004
- Guidance for Industry and FDA Staff - FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment (PDF Version) (PDF - 515KB)
  5/2004
- Guidance for Industry and FDA: User Fees and Refunds for Premarket Approval Applications (PDF Version) (PDF - 87KB)
  11/2003
- Guidance for Industry and FDA Staff: Premarket Approval Application Modular Review (PDF Version) (PDF - 159KB)
  11/2003
- Providing Regulatory Submissions in Electronic Format - General Considerations (PDF - 288KB)
  10/2003
- Part 11, Electronic Records; Electronic Signatures—Scope and Application (PDF - 215KB)
  8/2003
- Guidance for Industry and FDA Staff: Premarket Approval Application Filing Review (PDF Version) (PDF - 529KB)
  5/2003
- Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products
  2/2003
- Comparability Protocols—Chemistry, Manufacturing, and Controls Information (PDF - 240KB)
  2/2003
- Quality System Information for Certain Premarket Application Reviews; Guidance for Industry and FDA Staff - PDF (PDF - 548KB)
  2/2003
- Special Protocol Assessment (PDF - 36KB)
  5/2002
- Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs) (PDF) (PDF - 80KB)
  3/2002
- Cancer Drug and Biological Products - Clinical Data in Marketing Applications (PDF - 39KB)
  10/2001
- Draft Guidance for Industry - Submitting Type V Drug Master Files to the Center for Biologics Evaluation and Research
  9/2001

- Submitting Marketing Applications According to the ICH/CTD Format: General Considerations (PDF - 50KB)
  8/2001
- Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (PDF - 32KB)
  4/2001
- Acceptance of Foreign Clinical Studies (PDF - 12KB)
  3/2001
- Recommendations for Complying with the Pediatric Rule (21 CFR 314.55(a) and 601.27(a)) (PDF - 56KB)
  11/2000
- Submitting and Reviewing Complete Responses to Clinical Holds (Revised) (PDF - 26KB)
  10/2000
- Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products (PDF - 14KB)
  10/2000
- Formal Meetings With Sponsors and Applicants for PDUFA Products (PDF - 30KB)
  2/2000
- Formal Dispute Resolution: Appeals Above the Division Level (PDF - 30KB)
  2/2000
- Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act (PDF - 57KB)
  9/1999
- Submission of Abbreviated Reports and Synopses in Support of Marketing Applications (PDF - 43KB)
  8/1999
- Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format - Biologics Marketing Applications (PDF - 582KB)
  11/1999
- Implementation of Section 120 of the Food and Drug Administration Modernization Act of 1997–Advisory Committees (PDF - 62KB)
  10/1998
- Submitting Debarment Certification Statements (PDF - 144KB)
  9/1998
- Standards for Prompt Review of Efficacy Supplements (PDF - 76KB)
  5/1998
- Classifying Resubmissions in Response to Action Letters (PDF - 76KB)
  4/1998
- Pediatric Use Supplements—Content and Format (PDF - 24KB)
  5/1996
- Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs (PDF - 41KB)
  11/1995
- Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products (PDF - 42KB)
  11/1995
- FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products; Availability (PDF - 34KB)
  7/1995
- Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products (PDF - 57KB)
  11/1994
- Preparation of Investigational New Drug Products (Human and Animal) (PDF - 795KB)
  3/1991
- Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007

Blood Guidance Documents

- Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components, October 2009 (PDF - 858KB)
  10/2009, Updated: 12/2009
- Draft Guidance for Industry: Recommendations for the Assessment of Blood Donor Suitability, Blood Product Safety, and Preservation of the Blood Supply in Response to Pandemic (H1N1) 2009 Virus (PDF - 80KB)
  11/13/2009
- Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion (PDF - 68KB)
  11/6/2009
- Draft Guidance for Industry and FDA Staff - Investigational New Drug Applications (INDs) for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications (PDF - 91KB)
  10/2009
- Guidance for Industry - Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications (PDF - 462KB)
  10/2009
- Guidance for Industry - Recommendations for Management of Donors at Increased Risk for Human Immunodeficiency Virus Type 1 (HIV-1) Group O Infection
  8/2009
- Guidance for Industry: Nucleic Acid Testing (NAT) to Reduce the Possible Risk of Parvovirus B19 Transmission by Plasma-Derived Products
  7/28/2009
- Draft Guidance for Industry: Use of Serological Tests to Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products
  3/2009
- Assay Migration Studies for In Vitro Diagnostic Devices
  1/5/2009

- Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency
  7/17/2008
- Draft Guidance for Industry: Requalification Method for Reentry of Blood Donors Deferred Because of Reactive Test Results for Antibody to Hepatitis B Core Antigen (Anti-HBc)
  5/20/2008
- Draft Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  4/25/2008
- Guidance for Industry and FDA Review Staff: Collection of Platelets by Automated Methods
  12/17/2007
- Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle
  11/29/2007
- Guidance for Industry: Adequate and Appropriate Donor Screening Tests for Hepatitis B; Hepatitis B Surface Antigen (HBsAg) Assays Used to Test Donors of Whole Blood and Blood Components, Including Source Plasma and Source Leukocytes
  11/21/2007
- Draft Guidance for Industry: Blood Establishment Computer System Validation in the User's Facility
  10/26/2007
- Guidance for Industry: "Lookback" for Hepatitis C Virus (HCV): Product Quarantine, Consignee Notification, Further Testing, Product Disposition, and Notification of Transfusion Recipients Based on Donor Test Results Indicating Infection with HCV
  8/24/2007
- Guidance for Industry: Class II Special Controls Guidance Document: In Vitro HIV Drug Resistance Genotype Assay
  8/08/2007
- Guidance for Industry: Informed Consent Recommendations for Source Plasma Donors Participating in Plasmapheresis and Immunization Programs
  6/20/2007
- Draft Guidance for Industry: "Computer Crossmatch" (Electronic Based Testing for the Compatibility between the Donor's Cell Type and the Recipient's Serum or Plasma Type)
  6/20/2007
- Guidance for Industry: Implementation of Acceptable Full-Length Donor History Questionnaire and Accompanying Materials for Use in Screening Donors of Blood and Blood Components
  10/27/2006
- Guidance for Industry: Biological Product Deviation Reporting for Blood and Plasma Establishments
  10/18/2006
- Guidance for Industry: Bar Code Label Requirements - Questions and Answers
  10/5/2006
- Guidance for Industry: Recognition and Use of a Standard for Uniform Blood and Blood Component Container Labels
  9/22/2006
- United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128 (PDF - 1665KB)
  9/22/2006
- Guidance for Industry: Implementing a Collection Program for Source Plasma Containing Disease-Associated and Other Immunoglobulin (IgG) Antibodies
  8/08/2006
- Draft Guidance for Industry: Amendment (Donor Deferral for Transfusion in France Since 1980) to "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products"
  8/08/2006
- Draft Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV-1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry
  7/19/2005
- Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection
  6/23/2005
- Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  11/24/2004
- Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use
  11/30/2004
- Draft Guidance for Industry: Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Blood Cell Substitutes
  10/28/2004
- Guidance for Industry: Use of Nucleic Acid Tests on Pooled and Individual Samples from Donors of Whole Blood and Blood Components (including Source Plasma and Source Leukocytes) to Adequately and Appropriately Reduce the Risk of Transmission of HIV-1 and HCV
  10/21/2004
- Questions and Answers on "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products"
  1/22/2004
- Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus - Guidance for Industry and FDA Staff
  10/30/2003
- Guidance for Industry: Notifying FDA of Fatalities Related to Blood Collection or Transfusion
  9/22/2003
- Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS
  9/16/2003

- Guidance for Industry: Streamlining the Donor Interview Process: Recommendations for Self-Administered Questionnaires
7/3/2003
- Draft Guidance for Industry: Revised Recommendations for Donor and Product Management Based on Screening Tests for Syphilis
6/25/2003
- Question and Answer on FDA Guidance Entitled "Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Suspected and Probable Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS"
4/25/2003
- Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS
4/17/2003
- Questions and Answers on FDA Guidance Entitled "Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients"
1/15/2003
- Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients
12/30/2002
- Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Intimate Contacts
2/1/2002
- General Principles of Software Validation; Final Guidance for Industry and FDA Staff
1/11/2002
- Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products
1/9/2002
- Guidance for Industry: Use of Sterile Connecting Devices in Blood Bank Practices
11/22/2001
- Guidance for Industry - Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax
10/17/2001
- Guidance for Industry: Variances for Blood Collection from Individuals with Hereditary Hemochromatosis
8/22/2001
- Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture
8/07/2001
- Guidance for FDA Reviewers: Premarket Notification Submissions for Blood and Plasma Warmers
7/19/2001
- Guidance for FDA Reviewers: Premarket Notification Submissions for Transfer Sets (Excluding Sterile Connecting Devices)
7/19/2001
- Guidance for FDA Reviewers: Premarket Notification Submissions for Empty Containers for the Collection and Processing of Blood and Blood Components
7/19/2001
- Guidance for Industry: Revised Recommendations Regarding Invalidation of Test Results of Licensed and 510(k) Cleared Bloodborne Pathogen Assays Used to Test Donors
7/11/2001
- Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing
3/29/2001
- Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods - Technical Correction February 2001
2/13/2001
- Draft Guidance for Industry: Pre-Storage Leukocyte Reduction of Whole Blood and Blood Components Intended for Transfusion
1/23/2001
- Guidance for Industry: Availability of Licensed Donor Screening Tests Labeled for Use with Cadaveric Blood Specimens
6/23/2000
- Draft Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria
6/8/2000
- Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Contacts
12/23/1999
- Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2
12/14/1999
- Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations (PDF - 26KB)
7/15/1999
- Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use
5/20/1999
- Draft Guidance for Industry For Platelet Testing and Evaluation of Platelet Substitute Products
5/20/1999
- Guidance for Industry For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h "Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use"
5/10/1999
- Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product
3/8/1999

- Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products
  2/17/1999
- Withdrawal of "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)"
  9/8/1998
- Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing
  6/11/1998
- Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)
  3/20/1998
- Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products
  1/08/1998
- Guidance for Industry: Donor Screening for Antibodies to HTLV-II
  8/15/1997
- Guidance for Industry: Changes to an Approved Application: Biological Products (PDF - 39KB)
  7/1997
- Guideline for Quality Assurance in Blood Establishments (PDF - 77KB)
  7/11/1995
- Draft Recommended Methods for Blood Grouping Reagents Evaluation (PDF - 2101KB)
  3/1992
- Draft Recommended Methods for Evaluating Potency, Specificity, and Reactivity of Anti-Human Globulin (PDF - 1161KB)
  3/1992
- Draft Points to Consider in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin (PDF - 211KB)
  1992
- Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers ("High Risk" Donors) (PDF - 176KB)
  10/26/1989
- Draft Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus Type 1 (PDF - 1784KB)
  8/08/1989
- Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test For Human and Animal Parenteral Drugs, Biological Products and Medical Devices (PDF - 2874KB)
  12/1987
- Guideline for the Uniform Labeling of Blood and Blood Components (PDF - 1189KB)
  8/1985
- Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances (PDF - 368KB)
  6/1980

Cellular & Gene Therapy Guidance Documents

- Draft Guidance for Industry and FDA Staff - Investigational New Drug Applications (INDs) for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications (PDF - 91KB)
  10/2009
- Guidance for Industry - Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications (PDF - 462KB)
  10/2009
- Draft Guidance for Industry: Clinical Considerations for Therapeutic Cancer Vaccines
  9/2009
- Guidance for Industry: Considerations for Allogeneic Pancreatic Islet Cell Products
  09/2009
- Draft Guidance for Industry: Somatic Cell Therapy for Cardiac Disease
  03/2009
- Draft Guidance for Industry: Potency Tests for Cellular and Gene Therapy Products
  10/9/2008
- Guidance for FDA Reviewers and Sponsors: Content and Review of Chemistry, Manufacturing, and Control (CMC) Information for Human Gene Therapy Investigational New Drug Applications (INDs)
  4/9/2008
- Guidance for FDA Reviewers and Sponsors: Content and Review of Chemistry, Manufacturing, and Control (CMC) Information for Human Somatic Cell Therapy Investigational New Drug Applications (INDs)
  4/9/2008
- Draft Guidance for Industry: Validation of Growth-Based Rapid Microbiological Methods for Sterility Testing of Cellular and Gene Therapy Products
  2/11/2008
- Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products
  8/8/2007
- Draft Guidance for Industry: Preparation of IDEs and INDs for Products Intended to Repair or Replace Knee Cartilage
  7/6/2007
- Guidance for Industry: Gene Therapy Clinical Trials - Observing Subjects for Delayed Adverse Events
  11/28/2006
- Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors
  11/28/2006
- Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy
  3/30/1998

- Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products (TXT - 59KB)
  01/1997

CMC & GMP

- Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes (PDF - 73KB)
  2/2010
- Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics (PDF - 91KB)
  11/2008
- Process Validation: General Principles and Practices (PDF - 194KB)
  11/2008
- Current Good Manufacturing Practice for Phase 1 Investigational Drugs (PDF - 132KB)
  7/2008
- Guidance for Industry: Manufacturing Biological Intermediates and Biological Drug Substances Using Spore-Forming Microorganisms (PDF - 184KB)
  9/6/2007
- Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations (PDF - 443KB)
  9/2006
- Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling (PDF - 253KB)
  9/2006
- Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP (PDF - 110KB)
  1/2006
- Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients (PDF - 230KB)
  5/2005
- Sterile Drug Products Produced by Aseptic Processing—Current Good Manufacturing Practice (PDF - 734KB)
  9/2004
- Comparability Protocols - Protein Drug Products and Biological Products - Chemistry, Manufacturing, and Controls Information (PDF - 82KB)
  9/2003
- Comparability Protocols—Chemistry, Manufacturing, and Controls Information (PDF - 240KB)
  2/2003
- CVM GFI #153 Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals (PDF - 88KB)
  9/2002
- Container Closure Systems for Packaging Human Drugs and Biologics—Questions and Answers (PDF - 15KB)
  5/2002
- IND Meetings for Human Drugs and Biologics Chemistry, Manufacturing, and Controls Information (PDF - 30KB)
  5/2001
- Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing (PDF - 30KB)
  3/2001
- Analytical Procedures and Methods Validation Chemistry, Manufacturing, and Controls Documentation (PDF - 91KB)
  8/2000
- Possible Dioxin/PCB Contamination of Drug and Biological Products (PDF - 8KB)
  8/1999
- Container Closure Systems for Packaging Human Drugs and Biologics (PDF - 164KB)
  5/1999
- Environmental Assessment of Human Drug and Biologics Applications (PDF - 188KB)
  7/1998
- Manufacturing, Processing, or Holding Active Pharmaceutical Ingredients (PDF - 150KB)
  3/1998
- Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In Vivo Use (PDF - 44KB)
  8/1996
- Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products (PDF - 57KB)
  11/1994
- Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test For Human and Animal Parenteral Drugs, Biological Products and Medical Devices (PDF - 2874KB)
  12/1987
- Guidance on Alternatives to Lot Release for Licensed Biological Products (PDF - 305KB)
  7/14/1993

Clinical

- Drug-Induced Liver Injury: Premarketing Clinical Evaluation (PDF - 206KB)
  7/2009
- Postmarketing Studies and Clinical Trials—Implementation of Section 505(o) of the Federal Food, Drug, and Cosmetic Act (PDF - 173KB)
  7/2009
- The Radioactive Drug Research Committee: Human Research Without An Investigational New Drug Application (PDF - 421KB)
  6/2009
- Animal Models—Essential Elements to Address Efficacy Under the Animal Rule (PDF - 135KB)
  2/2009
- Guidance for Clinical Investigators, Sponsors, and IRBs: Adverse Event Reporting to IRBs—Improving Human Subject Protection (PDF - 61KB)
  1/2009
- Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics (PDF - 145KB)
  5/2007
- Computerized Systems Used in Clinical Trials (PDF - 53KB)
  5/2007

- Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling (PDF - 253KB)
  9/2006
- Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment (PDF - 205KB)
  6/2006
- Guidance on Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable (PDF Version) (PDF - 65KB)
  4/25/2006
- The Establishment and Operation of Clinical Trial Data Monitoring Committees for Clinical Trial Sponsors
  3/2006
- Using a Centralized IRB Review Process in Multicenter Clinical Trials (PDF - 87KB)
  3/2006
- Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997 (PDF - 456KB)
  2/2006
- Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 127KB)
  2/2006
- Collection of Race and Ethnicity Data in Clinical Trials (PDF - 70KB)
  9/2005
- Estimating the Maximum Safe Starting Dose in Initial Clinical Trials for Therapeutics in Adult Healthy Volunteers (PDF - 702KB)
  7/2005
- Evaluating the Risks of Drug Exposure in Human Pregnancies (PDF - 3151KB)
  4/2005
- Premarketing Risk Assessment (PDF - 88KB)
  3/2005
- Development and Use of Risk Minimization Action Plans (PDF - 225KB)
  3/2005
- Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment (PDF - 220KB)
  3/2005
- Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling (PDF - 363KB)
  2/2005
- Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees (PDF - 211KB)
  12/2004
- Available Therapy (PDF - 176KB)
  7/2004
- Vaccinia Virus—Developing Drugs to Mitigate Complications from Smallpox Vaccination (PDF - 139KB)
  3/2004
- Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (PDF - 40KB)
  1/2004
- IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer (PDF - 188KB)
  1/2004
- Guidance for Industry and FDA Staff: Premarket Assessment of Pediatric Medical Devices (PDF Version) (PDF - 389KB)
  7/2003
- Pharmacokinetics in Patients with Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling (PDF - 222KB)
  5/2003
- Exposure-Response Relationships—Study Design, Data Analysis, and Regulatory Applications (PDF - 221KB)
  4/2003
- Establishing Pregnancy Exposure Registries (PDF - 268KB)
  8/2002
- Special Protocol Assessment (PDF - 36KB)
  5/2002
- FDA Guidance on Clinical Trial Data Monitoring Committees (DMC's) Open Public Meeting (PDF - 394KB)
  11/2001
- Cancer Drug and Biological Products - Clinical Data in Marketing Applications (PDF - 39KB)
  10/2001
- IDE Financial Disclosure
- Acceptance of Foreign Clinical Studies (PDF - 12KB)
  3/2001
- Recommendations for Complying with the Pediatric Rule (21 CFR 314.55(a) and 601.27(a)) (PDF - 56KB)
  11/2000
- Submitting and Reviewing Complete Responses to Clinical Holds (Revised) (PDF - 26KB)
  10/2000
- Pediatric Oncology Studies In Response to a Written Request (PDF - 30KB)
  6/2000
- In Vivo Drug Metabolism/Drug Interaction Studies - Study Design, Data Analysis, and Recommendations for Dosing and Labeling (PDF - 44KB)
  11/2009
- Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (PDF - 40KB)
  7/1999
- Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA) (PDF - 369KB)
  2/1999
- Population Pharmacokinetics (PDF - 135KB)
  2/1999
- FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products (PDF - 58KB)
  12/1998

- General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products (PDF - 37KB) 11/1998
- Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products (PDF - 129KB) 5/1998
- Pharmacokinetics in Patients with Impaired Renal Function (PDF - 128KB) 5/1998
- Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products (PDF - 42KB) 11/1995

Devices

- Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials (PDF Version) (PDF - 388KB)
- Guidance for Industry, FDA Staff, and Third Parties - Inspection by Accredited Persons Under The Medical Device User Fee and Modernization Act of 2002 and the FDA Amendments Act of 2007; Accreditation Criteria (PDF Version) (PDF - 175KB)
- Guidance for Industry and FDA Staff: User Fees and Refunds for Premarket Notification Submissions (510(k)s) (PDF Version) (PDF - 109KB)
- Technical Considerations for Pen, Jet, and Related Injectors Intended for Use with Drugs and Biological Products (PDF - 112KB)
- Guidance for Industry and FDA Staff - Modifications to Devices Subject to Premarket Approval (PMA) - The PMA Supplement Decision-Making Process (PDF Version) (PDF - 180KB)
- Guidance for Industry and FDA Staff - Modifications to Devices Subject to Premarket Approval (PMA) - The PMA Supplement Decision-Making Process (PDF Version) (PDF - 180KB)
- Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Goals (PDF Version) (PDF - 155KB)
- Guidance for Industry and FDA Staff - Humanitarian Device Exemption (HDE) Regulation: Questions and Answers (PDF Version) (PDF - 196KB)
- Guidance for Industry and FDA Staff: Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements (PDF Version) (PDF - 103KB)
- Guidance for Industry and FDA Staff: Expedited Review of Premarket Submissions for Devices (PDF Version) (PDF - 127KB)
- In Vitro Diagnostic (IVD) Device Studies—Frequently Asked Questions (PDF - 268KB)
- Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions (PDF Version) (PDF - 139KB)
- In Vitro Diagnostic Multivariate Index Assays (PDF version) (PDF - 72KB)
- Guidance for Industry and FDA Staff: Bundling Multiple Devices or Multiple Indications in a Single Submission (PDF Version) (PDF - 145KB)
- Draft Guidance for Industry and FDA Staff - Annual Reports for Approved Premarket Approval Applications (PMA) (PDF Version) (PDF - 127KB)
- Guidance for Industry and FDA Staff: Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices (PDF version) (PDF - 342KB)
- Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 127KB)
- Guidance on Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable (PDF Version) (PDF - 65KB)
- Real-Time Premarket Approval Application (PMA) Supplements - Guidance for Industry and FDA Staff (PDF Version) (PDF - 82KB)
- Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use
- Guidance for Industry and FDA Staff: Resolution of Disputes Concerning Payment or Refund of Medical Device User Fees Under MDUFMA (PDF Version) (PDF - 97KB)
- Guidance for Industry and FDA Staff: Premarket Assessment of Pediatric Medical Devices (PDF Version) (PDF - 389KB)
- Guidance for Industry and FDA Staff - FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment (PDF Version) (PDF - 515KB)
- Guidance for Industry and FDA Staff: Premarket Approval Application Modular Review (PDF Version) (PDF - 159KB)
- Guidance for Industry and FDA Staff: Premarket Approval Application Filing Review (PDF Version) (PDF - 529KB)
- Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products
- Quality System Information for Certain Premarket Application Reviews; Guidance for Industry and FDA Staff - PDF (PDF - 548KB)
- Guidance for Industry, FDA Staff, and Third Parties - Inspection by Accredited Persons Under The Medical Device User Fee and Modernization Act of 2002 and the FDA Amendments Act of 2007; Accreditation Criteria (PDF Version) (PDF - 175KB)

Labeling & Promotion

- Content and Format of the Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products (PDF - 163KB)
- Contents of a Complete Submission for the Evaluation of Proprietary Names (PDF - 306KB)
- Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims (PDF - 295KB)
- Labeling for Human Prescription Drug and Biological Products—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information (PDF - 65KB)
- Presenting Risk Information in Prescription Drug and Medical Device Promotion (PDF - 387KB)
- Indexing Structured Product Labeling (PDF - 59KB)
- Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions (PDF Version) (PDF - 139KB)
- Adverse Reactions Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 52KB)
- Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 127KB)
- Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 58KB)
- Labeling for Human Prescription Drug and Biological Products—Implementing the New Content and Format Requirements (PDF - 213KB)
- Providing Regulatory Submissions in Electronic Format—Content of Labeling (PDF - 28KB)
- Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling (PDF - 363KB)
- Guidance for Industry and FDA Staff: Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use (PDF Version) (PDF - 1385KB)
- Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements (PDF - 192KB)
- "Help-Seeking" and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms (PDF - 188KB)
- Pharmacokinetics in Patients with Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling (PDF - 222KB)

- Content and Format for Geriatric Labeling (PDF - 38KB)
- Prescription Drug Advertising and Promotional Labeling (PDF - 28KB)
- In Vivo Drug Metabolism/Drug Interaction Studies - Study Design, Data Analysis, and Recommendations for Dosing and Labeling (PDF - 44KB)
- Consumer-Directed Broadcast Advertisements (PDF - 36KB)
- Accelerated Approval Products—Submission of Promotional Materials (PDF - 17KB)
- Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling (PDF - 86KB)
- Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997 - Elimination of Certain Labeling Requirements (PDF - 979KB)

Tissue Guidance Documents

- Draft Guidance for Industry: Use of Serological Tests to Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products
  3/2009
- Draft Guidance for Industry: Current Good Tissue Practice (CGTP) and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  1/16/2009
- Guidance for Industry: Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) - Small Entity Compliance Guide
  8/24/2007
- Draft Guidance for Industry: Preparation of IDEs and INDs for Products Intended to Repair or Replace Knee Cartilage
  7/6/2007
- Guidance for Industry and FDA Staff: Minimal Manipulation of Structural Tissue Jurisdictional Update
  9/20/2006
- Guidance for Industry: Validation of Procedures for Processing of Human Tissues Intended for Transplantation
  3/8/2002
- Draft Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  4/25/2008
- Guidance for Industry: Certain Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) Recovered from Donors Who Were Tested for Communicable Diseases Using Pooled Specimens or Diagnostic Tests
  4/16/2008
- Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products
  8/8/2007
- Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  11/12/2004
- Guidance for Industry: Availability of Licensed Donor Screening Tests Labeled for Use with Cadaveric Blood Specimens
  6/23/2000
- Guidance for Industry: Compliance with 21 CFR Part 1271.150(c)(1)—Manufacturing Arrangements
  9/8/2006
- Guidance for Industry: MedWatch Form FDA 3500A: Mandatory Reporting of Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
  11/30/2005
- Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs)
  7/23/2007
- Guidance for Industry: Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container
  1/31/2007
- Draft Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution in Patients with Hematological Malignancies
  1/16/2007
- Guidance for Industry: Screening and Testing of Donors of Human Tissue Intended for Transplantation (PDF - 59KB)

Vaccine Guidance Documents

- Guidance for Industry: Characterization and Qualification of Cell Substrates and Other Biological Materials Used in the Production of Viral Vaccines for Infectious Disease Indications (PDF - 406KB)
  3/2010
- Draft Guidance for Industry: Clinical Considerations for Therapeutic Cancer Vaccines
  09/2009
- Guidance for Industry: General Principles for the Development of Vaccines to Protect Against Global Infectious Diseases
  9/8/2008
- Guidance for Industry: Considerations for Plasmid DNA Vaccines for Infectious Disease Indications
  10/29/2007
- Guidance for Industry: Toxicity Grading Scale for Healthy Adult and Adolescent Volunteers Enrolled in Preventive Vaccine Clinical Trials
  9/27/2007
- Guidance for Industry: Clinical Data Needed to Support the Licensure of Pandemic Influenza Vaccines
  5/31/2007
- Guidance for Industry: Clinical Data Needed to Support the Licensure of Seasonal Inactivated Influenza Vaccines
  5/31/2007
- Draft Guidance for Industry: Characterization and Qualification of Cell Substrates and Other Biological Starting Materials Used in the Production of Viral Vaccines for the Prevention and Treatment of Infectious Diseases
  9/28/2006
- Guidance for Industry: Development of Preventive HIV Vaccines for Use in Pediatric Populations
  5/4/2006
- Guidance for Industry: Considerations for Developmental Toxicity Studies for Preventive and Therapeutic Vaccines for Infectious Disease Indications
  2/13/2006

- Draft Guidance for Industry: Considerations for Plasmid DNA Vaccines for Infectious Disease Indications
  2/17/2005
- Guidance for Industry: FDA Review of Vaccine Labeling Requirements for Warnings, Use Instructions, and Precautionary Information
  10/1/2004
- Draft Guidance for Industry: Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines
  3/12/2001
- Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol
  11/20/2000
- Draft Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications
  9/8/2000
- Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product
  1/5/1999
- Guidance for Industry: How to Complete the Vaccine Adverse Event Reporting System Form (VAERS-1) (PDF - 63KB)
  9/8/1998
- Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies (PDF - 49KB)
  4/10/1997

Xenotransplantation Guidance Documents

- Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans
  4/3/2003
- Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Intimate Contacts
  2/1/2002
- Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Contacts
  12/23/1999
- PHS Guideline on Infectious Disease Issues in Xenotransplantation
  1/19/2001
- Guidance For Industry: Public Health Issues Posed by the Use of Non-Human Primate Xenografts in Humans
  4/6/1999

III. Center for Drug Evaluation and Research (CDER)

For information on a specific guidance document or to obtain a paper copy, contact:

Division of Drug Information, Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993, 1–888–463–6332 or 301–796–3400, e-mail: *druginfo@fda.hhs.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/default.htm*.

The following list of withdrawn CDER guidance documents was obtained from FDA's Web site on April 21, 2010:

Title	Subject	Level at Date of Issue	Publication/ Withdrawal Date	Status
Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products under PDUFA	Procedural	Level 1	04/09/2010	Withdrawn
Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions during Development of Fast Track Products under PDUFA	Procedural	Level 1	04/09/2010	Withdrawn
Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions during Development of Fast Track Products under PDUFA; Paperwork Reduction Act Burden Statement	Procedural	Level 1	04/09/2010	Withdrawn
Clinical Evaluation of Lipid-Altering Agents	Clinical Medical Draft	Level 1	04/16/2010	Withdrawn

The following list of current CDER guidance documents was obtained from FDA's Web site on April 21, 2010:

Title and Format	Type	Issue Date
Advertising		
Accelerated Approval Products: Submission of Promotional Materials (PDF - 17 KB)	Draft	3/26/1999
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling (PDF - 84 KB)	Final	12/1997
Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements (PDF - 192 KB)	Draft	2/4/2004
• Labeling Example (PDF - 105 KB)		
• Labeling Example; Consumer-Friendly Version (PDF - 95KB)		

Title and Format	Type	Issue Date
Consumer-Directed Broadcast Advertisements (PDF - 36KB) Questions and Answers (PDF - 83 KB)	Final	8/1999
Consumer-Directed Broadcast Advertising of Restricted Devices (PDF - 41 KB)	Draft	1/26/2004
"Help-Seeking" and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms (PDF - 188 KB)	Draft	1/26/2004
Industry-Supported Scientific and Educational Activities (PDF - 429 KB)	Final	12/3/1997
Presenting Risk Information in Prescription Drug and Medical Device Promotion (PDF - 387 KB)	Draft	5/26/2009
Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling (PDF - 86KB)	Draft	1/1999
Biopharmaceutics		
Bioanalytical Method Validation (PDF - 63 KB)	Final	5/2001
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action (PDF - 519 KB) • Statistical Information from the June 1999 Draft Guidance and Statistical Information for In Vitro Bioequivalence Data (PDF - 186 KB)	Draft	4/2/2003 4/11/2003
Bioavailability and Bioequivalence Studies for Orally Administered Drug Products - General Considerations (PDF - 268 KB)	Final	3/2003
Cholestyramine Powder in Vitro Bioequivalence (PDF - 35 KB) (Intermin Guidance)	Final	7/15/93
Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing (PDF - 78 KB)	Final	6/17/2005
Conjugated Estrogens, USP-LC-MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence.	Draft Withdrawn FR Notice	8/12/2005
Corticosteroids, Dermatologic (topical) In Vivo (PDF - 3 MB) (Issued 6/2/1995, Posted 3/6/1998)	Final	6/2/1995
Dissolution Testing of Immediate Release Solid Oral Dosage Forms (PDF - 130 KB) (Issued 8/1997, Posted 8/25/1997)	Final	8/1997
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations (PDF - 170 KB)	Final	9/1997
Food-Effect Bioavailability and Fed Bioequivalence Studies(PDF - 166 KB)	Final	12/2002
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro (PDF - 744 KB)	Final	6/27/1989
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing (PDF - 718 KB)	Final	6/6/1994
Statistical Approaches to Establishing Bioequivalence (PDF - 130 KB)	Final	2/2001
Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate-Release Solid Oral Dosage Forms Based on a Biopharmaceutics Classification System.(PDF - 143 KB).	Final	8/2000
CMC - Microbiology (Chemistry, Manufacturing, and Controls)		
Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products (PDF - 57 KB)	Final	11/1994
Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes (PDF - 76 KB)	Final	2/25/2010
Chemistry, Manufacturing, and Controls (CMC)		
Analytical Procedures and Methods Validation.(PDF - 91 KB)	Draft	8/2000
Assay Development for Immunogenicity Testing of Therapeutic Proteins (PDF - 161 KB)	Draft	12/3/2009
BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation 2/2001	Final	Withdrawn as per FR notice June 1, 2006
Botanical Drug Products (PDF - 437 KB)	Final	6/2004
Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products (PDF - 33 KB)	Final	7/1997
Changes to an Approved NDA or ANDA (PDF - 108 KB)	Final	4/2004
Changes to an Approved NDA or ANDA: Questions and Answers (PDF - 35 KB)	Final	1/2001
Changes to an Approved NDA or ANDA; Specifications—Use of Enforcement Discretion for Compendial Changes (PDF - 18 KB)	Final	11/19/2004
Comparability Protocols—Chemistry, Manufacturing, and Controls Information (PDF - 240 KB)	Draft	2/2003
Container Closure Systems for Packaging Human Drugs and Biologics (PDF - 164 KB) • [Container Closure Systems for Packaging Human Drugs and Biologics—Questions and Answers (PDF - 15 KB)	Final	5/1999 5/2002
Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-derived Products	Final	4/1996
Development of New Stereoisomeric Drugs	Final	5/1/1992
Drug Master Files Current DMF Information(e.g. lists, addresses, guidances, etc.)	Final	9/1/1989
Drug Master Files for Bulk Antibiotic Drug Substances (PDF - 23 KB)	Final	11/1999
Drug Product: Chemistry, Manufacturing, and Controls Information 1/2003	Draft	Withdrawn as per FR notice June 1, 2006
Drug Substance: Chemistry, Manufacturing, and Controls Information 1/2004	Draft	Withdrawn as per FR notice June 1, 2006
Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals (PDF - 88 KB)	Draft	9/11/2003
Environmental Assessment of Human Drug and Biologics Applications (PDF - 188 KB)	Final	7/1998
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application* 2/1987	Final	Withdrawn as per FR notice June 1, 2006
Format and Content for the CMC Section of an Annual Report (PDF - 29 KB)	Final	9/1/1994

Title and Format	Type	Issue Date
Incorporation of Physical-Chemical Identifiers into Solid Oral Dosage Form Drug Products for Anticounterfeiting (PDF - 79 KB)	Draft	7/13/2009
INDs for Phase 2 and Phase 3 Studies Chemistry, Manufacturing, and Controls Information (PDF - 193 KB)	Final	5/20/2003
IND Meetings for Human Drugs and Biologics Chemistry, Manufacturing, and Controls Information (PDF - 30 KB)	Final	5/2001
Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations (PDF - 26 KB)	Draft	7/24/1999
Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.(PDF - 45 KB)	Draft	7/2002
Monoclonal Antibodies Used as Reagents in Drug Manufacturing (PDF - 29 KB)	Final	3/2001
Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products (PDF - 361 KB)	Draft	11/13/1998
Nasal Spray and Inhalation Solution, Suspension, and Drug Products (PDF - 116 KB)	Final	7/2002
NDAs: Impurities in Drug Substances (PDF - 11 KB)	Final	2/2000
Orally Disintegrating Tablets (PDF - 52 KB)	Final	12/17/2008
PAC-ATLS: Postapproval Changes - Analytical Testing Laboratory Sites (PDF - 76 KB)	Final	4/28/1998
Residual Solvents in Drug Products Marketed in the United States (PDF - 52 KB)	Final	11/24/2009
Reviewer Guidance, Validation of Chromatographic Methods (PDF - 703 KB) (revised to include graphics, 5/14/2007)	Final	11/1994
The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE)(PDF - 790 KB)	Final	12/20/2000
Stability Testing of Drug Substances and Drug Products 6/5/1998	Draft	Withdrawn as per FR notice June 1, 2006
Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances 11/1994	Final	Withdrawn as per FR notice June 1, 2006
Submitting Documentation for the Manufacturing of and Controls for Drug Products*(PDF - 1.02 MB)	Final	2/1987
Submitting Documentation for the Stability of Human Drugs and Biologics* (Issued , Posted 3/2/1998)	Final	Withdrawn as per FR notice June 1, 2006
Submitting Samples and Analytical Data for Methods Validation	Final	2/1987
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances (PDF - 94 KB)	Final	2/1987
SUPAC-IR: Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation (PDF - 60 KB)	Final	11/1995
SUPAC-IR Questions and Answers about SUPAC-IR Guidance	Final	2/18/1997
SUPAC-IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms Manufacturing Equipment Addendum (PDF - 117 KB)	Final	1/1999
SUPAC-MR: Modified Release Solid Oral Dosage Forms Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation (PDF - 215 KB)	Final	Issued 10/6/1997
SUPAC-SS: Nonsterile Semisolid Dosage Forms Manufacturing Equipment Addendum (PDF - 61 KB)	Draft	12/1998
SUPAC-SS: Nonsterile Semisolid Dosage Forms; Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation (PDF - 118 KB)	Final	5/1997
Clinical / Antimicrobial		
Acute Bacterial Exacerbations of Chronic Bronchitis in Patients with Chronic Obstructive Pulmonary Disease: Developing Antimicrobial Drugs for Treatment(PDF - 422 KB)	Draft	8/21/2008
Acute Bacterial Meningitis—Developing Antimicrobial Drugs for Treatment(PDF - 42 KB)	Draft	7/22/1998
Acute Bacterial Sinusitis—Developing Antimicrobial Drugs for Treatment (PDF - 155 KB)	Draft	10/29/2007
Acute or Chronic Bacterial Prostatitis—Developing Antimicrobial Drugs for Treatment (PDF - 42 KB)	Draft	7/22/1998
Acute Bacterial Otitis Media: Developing Drugs for Treatment (PDF - 173 KB)	Draft	1/17/2008
Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval (PDF - 41 KB)	Draft	10/12/2007
Antiviral Product Development—Conducting and Submitting Virology Studies to the Agency (PDF - 208 KB) • Guidance for Submitting HIV Resistance Data (PDF - 293 KB) • Guidance for Submitting Influenza Resistance Data (PDF - 385 KB) • Guidance for Submitting HBV Resistance Data (PDF - 123 KB) • Guidance for Submitting HCV Resistance Data (PDF - 122 KB)	Final	6/2/2006
Antiretroviral Drugs Using Plasma HIV RNA Measurements—Clinical Considerations for Accelerated and Traditional Approval (PDF - 254 KB)	Final	10/2002
Bacterial Vaginosis—Developing Antimicrobial Drugs for Treatment (PDF - 53 KB)	Draft	7/22/1998
Catheter-Related Bloodstream Infections - Developing Antimicrobial Drugs for Treatment (PDF - 54 KB)	Draft	10/1999
Clinical Development and Labeling of Anti-Infective Drug Products (PDF - 5 MB)	Final	10/1992 Revised 2/12/2001
Clinical Evaluation of Anti-Infective Drugs (Systemic)(PDF - 1 MB)	Final	9/77
Community-Acquired Bacterial Pneumonia: Developing Drugs for Treatment (PDF - 418 KB)	Draft	3/19/2009
Complicated Urinary Tract Infections and Pyelonephritis—Developing Antimicrobial Drugs for Treatment (PDF - 35 KB)	Draft	7/22/1998
Developing Antimicrobial Drugs—General Considerations for Clinical Trials (PDF - 134 KB) [Main Document]	Draft	7/22/1998
Developing Antimicrobial Drugs to Treat Inhalational Anthrax (Post Exposure)—(PDF - 51 KB)	Draft	3/15/2002
Empiric Therapy of Febrile Neutropenia—Developing Antimicrobial Drugs for Treatment (PDF - 33 KB)	Draft	7/22/1998
Evaluating Clinical Studies Of Antimicrobials In The Division Of Anti-Infective Drug Products (PDF - 267 KB)	Draft	2/18/1997

Title and Format	Type	Issue Date
Helicobacter pylori-Associated Duodenal Ulcer Disease in Adults: Developing Drugs for Treatment (PDF - 145 KB)	Draft	10/2/2009
Influenza: Developing Drugs for Treatment and/or Prophylaxis(PDF - 225 KB)	Draft	2/19/2009
Lyme Disease—Developing Antimicrobial Drugs for Treatment (PDF - 42 KB)	Draft	7/22/1998
Microbiological Data for Systemic Antibacterial Drug Products—Development, Analysis, and Presentation (PDF - 272 KB)	Draft	9/16/2009
Nosocomial Pneumonia—Developing Antimicrobial Drugs for Treatment (PDF - 49 KB)	Draft	7/22/1998
Role of HIV Drug Resistance Testing in Antiretroviral Drug Development (PDF - 244 KB)	Final	10/30/2007
Secondary Bacterial Infections of Acute Bronchitis—Developing Antimicrobial Drugs for Treatment (PDF - 10 KB)	Draft	7/22/1998
Smallpox (Variola) Infection: Developing Drugs for Treatment or Prevention (PDF - 257 KB)	Draft	11/21/2007
Streptococcal Pharyngitis and Tonsillitis—Developing Antimicrobial Drugs for Treatment (PDF - 29 KB)	Draft	7/22/1998
Uncomplicated and Complicated Skin and Skin Structure Infections—Developing Antimicrobial Drugs for Treatment (PDF - 49 KB)	Draft	7/22/1998
Uncomplicated Gonorrhea—Developing Antimicrobial Drugs for Treatment (PDF - 30 KB)	Draft	7/22/1998,
Uncomplicated Urinary Tract Infections—Developing Antimicrobial Drugs for Treatment (PDF - 42 KB)	Draft	7/22/1998
Vaccinia Virus—Developing Drugs to Mitigate Complications from Smallpox Vaccination (PDF - 139 KB)	Draft	3/8/2004
Vulvovaginal Candidiasis—Developing Antimicrobial Drugs for Treatment (PDF - 42 KB)	Draft	7/22/1998
Clinical / Medical		
Acceptance of Foreign Clinical Studies (PDF - 12 KB)	Final	3/12/2001
Acne Vulgaris: Developing Drugs for Treatment (PDF - 284 KB)	Draft	9/16/2005
Adaptive Design Clinical Trials for Drugs and Biologics (PDF - 424 KB)	Draft	2/25/2010
Allergic Rhinitis: Clinical Development Programs for Drug Products (PDF - 68 KB)	Draft	6/2000
Antianxiety Drugs—Clinical Evaluation (PDF - 2 MB)	Final	9/1977
Antidepressant Drugs—Clinical Evaluation (PDF - 2 MB)	Final	9/1977
Assessment of Abuse Potential of Drugs (PDF - 138 KB)	Draft	1/26/2010
Available Therapy (PDF - 176 KB)	Final	7/22/2004
Calcium DTPA and Zinc DTPA Drug Products - Submitting a New Drug Application (PDF - 157 KB)	Final	8/13/2004
Cancer Drug and Biological Products - Clinical Data in Marketing Applications (PDF - 39 KB)	Final	10/11/2001
Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment(PDF - 205 KB)	Final	6/1/2006
Chronic Obstructive Pulmonary Disease: Developing Drugs for Treatment (PDF - 153 KB)	Draft	11/8/2007
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (PDF - 40 KB)	Draft	7/07/1999
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA) (PDF - 369 KB)	Final	1/1999
Clinical Evaluation of Analgesic Drugs (Withdrawn per August 5, 2003, Federal Register Notice)	Final	Withdrawn 8/5/2003
Clinical Evaluation of Antacid Drugs (Withdrawn per July 20, 2004, Federal Register notice.)	Final	Withdrawn 7/20/2004
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)	Final	Withdrawn 5/29/2008
Clinical Evaluation of Antidiarrheal Drugs (Withdrawn per July 20, 2004, Federal Register notice.)	Final Withdrawn	Withdrawn 7/20/2004
Clinical Evaluation of Antiepileptic Drugs (adults and children) (PDF - 1,007 KB)	Final	1/1981
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs (Withdrawn per July 20, 2004, Federal Register notice.)	Final Withdrawn	Withdrawn 7/20/2004
Clinical Evaluation of General Anesthetics (PDF - 890 KB)	Final	5/1982
Clinical Evaluation of Laxative Drugs (Withdrawn per July 20, 2004, Federal Register notice.)	Final Withdrawn	Withdrawn 7/20/2004
Clinical Evaluation of Lipid-Altering Agents (PDF - 36 KB)	Draft	Withdrawn 4/19/2010
Clinical Evaluation of Radiopharmaceutical Drugs (Withdrawn per July 20, 2004, Federal Register notice.)	Final Withdrawn	Withdrawn 7/20/2004
Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics (PDF - 145 KB)	Final	5/15/2007
Collection of Race and Ethnicity Data in Clinical Trials (PDF - 70 KB)	Final	9/16/2005
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products (PDF - 42 KB) ○ Questions and Answers: Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products (PDF - 14 KB) (10/2000)	Final	11/1995
Developing Medical Imaging Drug and Biological Products • Part 1: Conducting Safety Assessments (PDF - 271 KB) • Part 2: Clinical Indications (PDF - 231 KB) • Part 3: Design, Analysis, and Interpretation of Clinical Studies(PDF - 307 KB)	Final	6/17/2004
Developing Products for Weight Management Revision 1 (PDF - 150 KB)	Draft	2/14/2007
Development and Use of Risk Minimization Action Plans (PDF - 225 KB)	Final	3/24/2005
Development of Parathyroid Hormone for the Prevention and Treatment of Osteoporosis (PDF - 20 KB)	Draft	5/2000
Diabetes Mellitus: Developing Drugs and Therapeutic Biologics for Treatment and Prevention (PDF - 265 KB)	Draft	2/29/2008
Diabetes Mellitus—Evaluating Cardiovascular Risk in New Antidiabetic Therapies to Treat Type 2 Diabetes (PDF - 51 KB)	Final	12/17/2008
Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals (PDF - 88 KB)	Draft	9/6/2002
Establishing Pregnancy Exposure Registries (PDF - 268 KB)	Final	8/2002
Establishment and Operation of Clinical Trial Data Monitoring Committees (PDF - 333 KB)	Final	3/27/2006

Title and Format	Type	Issue Date
Estrogen and Estrogen/Progestin Drug Products to Treat Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommendations for Clinical Evaluation (PDF - 198 KB)	Draft	1/2003
Evaluating the Risks of Drug Exposure in Human Pregnancies (PDF - 3 MB)	Final	4/27/2005
Exercise-Induced Bronchospasm (EIB)—Development of Drugs to Prevent EIB (PDF - 27 KB)	Draft	2/2002
Exocrine Pancreatic Insufficiency Drug Products—Submitting New Drug Applications(PDF - 149 KB)	Final	4/13/2006
Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment (PDF - 23 KB)	Draft	5/2000
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products (PDF - 58 KB)	Final	12/1998
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer (PDF - 2 MB)	Final	Posted 3/2/1998
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer (Withdrawn per July 20, 2004, Federal Register notice.)	Final Withdrawn	Withdrawn 7/20/2004
Format and Content of the Clinical and Statistical Sections of an Application (PDF - 1 MB)	Final	7/1988
Formatting, Assembling and Submitting New Drug and Antibiotic Applications* (PDF - 2 MB)	Final	2/1987
General Considerations for the Clinical Evaluation of Drugs (PDF - 1 MB)	Final	
General Considerations for the Clinical Evaluation of Drugs in Infants and Children (PDF 2 MB)	Final	9/77
Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention (PDF -91KB)	Draft	6/24/ 2005
Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment (PDF - 220 KB)	Final	3/24/2005
Guidance for Clinical Trial Sponsors On the Establishment and Operation of Clinical Trial Data Monitoring Committees (PDF - 333KB)	Final	3/27/2006
Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research (PDF - 2 MB)	Draft	8/29/2006
Guidance for the Development of Vaginal Contraceptive Drugs (NDA)(PDF - 465 KB)	Final	3/2/1998
Hypnotic Drugs—Clinical Evaluation (PDF - 2MB)	Final	9/77
IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer (PDF - 188 KB)	Final	Revised 1/15/2004
Inhalation Drug Products Packaged in Semipermeable Container Closure Systems (PDF - 27 KB)	Draft	7/2002
Integration of Dose-Counting Mechanisms into MDI Drug Products (PDF - 126 KB)	Final	3/2003
Internal Radioactive Contamination—Development of Decorporation Agents (PDF - 177 KB)	Final	3/1/2006
Irritable Bowel Syndrome—Clinical Evaluation of Products for Treatment (PDF 221 KB)	Draft	3/22/2010
Levothyroxine Sodium Tablets - In Vivo Pharmacokinetic and Bioavailability Studies and In Vitro Dissolution Testing (PDF - 27 KB)	Final	2/2001
Local Anesthetics—Clinical Evaluation (PDF - 1 MB	Final	3/2/1998
Malaria: Developing Drug and Nonvaccine Biological Products for Treatment and Prophylaxis (PDF - 344 KB)	Draft	6/6/2007
MDI and DPI Drug Products—Clinical Development Programs for (PDF - 699 KB)	Final	9/19/1994
Non-Inferiority Clinical Trials (PDF - 565 KB)	Draft	2/26/2010
Pediatric Use Supplements—Content and Format (PDF - 24 KB)	Final	5/1996
Oncologic Drugs Advisory Committee Discussion on FDA Requirements or Approval of New Drugs for Treatment of Colon and Rectal Cancer (PDF - 2 MB)	Final	Posted 3/2/1998
Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children (PDF - 247 KB)	Final	3/5/2007
OTC Treatment of Herpes Labialis with Antiviral Agents (PDF - 15 KB)	Draft	Withdrawn 3/18/2010
Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims (PDF -295 KB)	Final	12/8/2009
Pediatric Oncology Studies In Response to a Written Request (PDF - 30 KB)	Draft	6/2000
Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report (PDF - 95 KB)	Final	8/27/1997
Postmarketing Reporting of Adverse Drug Experiences (PDF - 7 MB)	Final	3/1992
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis (PDF - 50 KB) Withdrawn	Draft Withdrawn	Withdrawn 12/2009
Premarketing Risk Assessment(PDF - 88 KB)	Final	3/24/2005
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products (PDF - 129 KB)	Final	5/14/1998
Prussian Blue Drug Products—Submitting a New Drug Application (PDF - 178 KB)	Final	1/2003
Psychoactive Drugs in Infants and Children—Clinical Evaluation (PDF - 18 MB)	Final	3/2/1998
The Radioactive Drug Research Committee: Human Research Without An Investigational New Drug Application (PDF - 421 KB)	Draft	6/2/2009
Recommendations for Complying with the Pediatric Rule (21 CFR 314.55(a) and 601.27(a)) (PDF - 56 KB)	Draft	Posted 12/1/2000
Sinusitis: Designing Clinical Development Programs of Nonantimicrobial Drugs for Treatment (PDF - 113 KB)	Draft	Posted 11/21/2006
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs (PDF - 2 MB)	Final	7/22/1993
Study of Drugs Likely to be used in the Elderly (PDF - 1MB)	Final	11/1989
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications (PDF - 43 KB)	Final	8/1999
Summary for New Drug and Antibiotic Applications—Format and Content of the Summary for New Drug and Antibiotic Applications (PDF - 1 MB)	Final	2/1987
Systemic Lupus Erythematosus—Developing Drugs for Treatment (PDF - 403 KB)	Draft	3/28/2005
The Use of Clinical Holds Following Clinical Investigator Misconduct (PDF - 33 KB)	Final	9/2004
Waiver of IRB Requirements for Drug and Biological Product Studies (PDF - 33 KB)	Final	1/2006
Clinical Pharmacology		
Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling (PDF - 363 KB)	Draft	Issued 2/7/05
Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling (PDF - 253 KB)	Draft	Issued 9/11/2006

Title and Format	Type	Issue Date
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro (PDF - 109 KB)	Final	4/1997
Exposure-Response Relationships—Study Design, Data Analysis, and Regulatory Applications (PDF - 221 KB)	Final	5/5/2003
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application (PDF - 519 KB)	Final	2/1987
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products (PDF - 37 KB)	Draft	11/1998
In Vivo Drug Metabolism/Drug Interaction Studies - Study Design, Data Analysis, and Recommendations for Dosing and Labeling (PDF - 44 KB)	Final	11/24/1999
Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling (PDF - 151 KB)	Draft	3/17/2010
Pharmacokinetics in Patients with Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling (PDF - 222 KB)	Final	Posted 5/30/2003
Pharmacokinetics in Patients with Impaired Renal Function (PDF - 128 KB)	Final	5/14/1998
Pharmacokinetics in Pregnancy—Study Design, Data Analysis, and Impact on Dosing and Labeling (PDF - 324 KB)	Draft	10/29/2004
Population Pharmacokinetics (PDF - 135 KB)	Final	2/1999
Combination Products		
Coronary Drug-Eluting Stents-Nonclinical and Clinical Studies (PDF - 120 KB) • Coronary Drug-Eluting Stents—Nonclinical and Clinical Studies -Companion Document (PDF - 295 KB)		
Current Good Manufacturing Practices (CGMPs)/Compliance		
Bar Code Label Requirements—Questions and Answers (PDF - 101 KB)	Final	10/5/2006
Comparability Protocols - Protein Drug Products and Biological Products - Chemistry, Manufacturing, and Controls Information (PDF - 82 KB)	Draft	9/3/2003
Compressed Medical Gases	Final	2/1989
Computerized Systems Used in Clinical Investigations (PDF - 53 KB)	Final	5/10/2007
Current Good Manufacturing Practice for Combination Products (PDF - 350 KB)	Draft	9/29/2004
Current Good Manufacturing Practice for Medical Gases (PDF - 437 KB)	Draft	5/6/2003
Current Good Manufacturing Practice for Phase 1 Investigational Drugs (PDF - 132 KB)	Final	7/14/2008
Dosage Delivery Devices for OTC Liquid Drug Products (PDF -93 KB)	Draft	11/04/2009
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron (PDF - 88 KB)	Final	6/27/1997
Expiration Dating of Unit-Dose Repackaged Drugs: Compliance Policy Guide (PDF - 19 KB)	Draft	5/27/2005
Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP (PDF - 110 KB)	Final	1/11/2006
General Principles of Process Validation	Final	5/1987
Good Laboratory Practice Regulations Questions and Answers (PDF - 2 MB)	Final	3/2/1998
Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities - FDA Public Health Advisory (PDF - 19 KB)	Final	4/5/2001
Guidance for IRBs, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research (21 CFR 50.24) (PDF - 3 MB) Draft released for comment	Draft	8/29/2006
Guideline for Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices (PDF - 4 MB)	Final	Posted 3/2/1998
Investigating Out-of-Specification Test Results for Pharmaceutical Production (PDF - 98 KB)	Final	10/11/2006
Manufacturing, Processing, or Holding Active Pharmaceutical Ingredients (PDF - 150 KB)	Draft	4/17/1998
Marketed Unapproved Drugs—Compliance Policy Guide (PDF - 66 KB)	Final	6/8/2006
Monitoring of Clinical Investigations (PDF - 433 KB)	Final	Posted 3/2/1998
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment (PDF - 3 MB)	Final	Posted 3/2/1998
Part 11, Electronic Records; Electronic Signatures—Scope and Application (PDF - 215 KB)	Final	9/3/2003
PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance (PDF - 315 KB)	Final	9/29/2004
PET Drug Products - Current Good Manufacturing Practice (CGMP) (PDF - 399 KB)	Final	9/15/2005
Pharmaceutical Components at Risk for Melamine Contamination (PDF - 137 KB)	Final	8/6/2009
Pharmacy Compounding—Compliance Policy Guide (PDF - 793 KB)	Final	5/2002
Possible Dioxin/PCB Contamination of Drug and Biological Products (PDF - 8 KB)	Final	8/23/1999
Powder Blends and Finished Dosage Units—Stratified In-Process Dosage Unit Sampling and Assessment (PDF - 297 KB) • Revised Attachments (PDF - 159 KB)	Draft	11/2003
Preparation of Investigational New Drug Products (Human and Animal)(PDF - 795 KB)	Final	11/1992
Prescription Drug Marketing Act—Donation of Prescription Drug Samples to Free Clinics (PDF - 38 KB) • Prescription Drug Marketing Act (PDMA) Requirements- Questions and Answers (PDF - 112 KB) (Issued and Posted 11/13/2006)	Final	3/2006
Process Validation: General Principles and Practices (PDF - 194 KB)	Draft	11/17/2008
Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations (PDF - 443 KB)	Final	9/27/2006
Questions and Answers on Current Good Manufacturing Practices (cGMP) for Drugs(updated 6/29/2009	Final	8/4/2004
Review of FDA's Implementation of the Drug Export Amendments of 1986 (PDF - 2 MB)	Final	11/1989
Sterile Drug Products Produced by Aseptic Processing—Current Good Manufacturing Practice (PDF - 734 KB)	Final	9/29/2004
Street Drug Alternatives (PDF - 11 KB)	Final	3/2000
Testing of Glycerin for Diethylene Glycol (PDF - 36 KB)	Final	5/1/2007

Title and Format	Type	Issue Date
The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2—Current Good Manufacturing Practice (CGMP)(PDF - 38 KB)	Final	1/26/2010
Drug Safety		
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (PDF - 1516 KB)	Final	2/2005
Drug-Induced Liver Injury: Premarketing Clinical Evaluation (PDF - 206 KB)	Final	7/29/2009
Drug Safety Information - FDA's Communication to the Public (PDF - 114 KB)	Final	3/2/2007
Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications (PDF - 316 KB)	Draft	9/30/2009
Postmarketing Studies and Clinical Trials—Implementation of Section 505(o) of the Federal Food, Drug, and Cosmetic Act (PDF - 173 KB)	Draft	7/15/2009
Electronic Submissions		
Indexing Structured Product Labeling (PDF - 59 KB)	Final	6/2/2008
Part 11, Electronic Records; Electronic Signatures—Scope and Application (PDF - 215 KB)	Final	9/3/2003
Providing Regulatory Submissions in Electronic Format—ANDAs	Final	6/2002
Withdrawn FR Notice 10/5/2006	Withdrawn FR Notice	
Providing Regulatory Submissions in Electronic Format -Annual Reports for NDAs and ANDAs	Draft	Posted
Withdrawn FR Notice 10/5/2006	Withdrawn FR Notice	8/27/2003
Providing Regulatory Submissions in Electronic Format—Content of Labeling (PDF - 28 KB)	Final	4/20/2005
Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing (PDF - 123 KB)	Final	5/28/2009
Providing Regulatory Submissions in Electronic Format -Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications(PDF - 133 KB) To ensure that you have the most recent versions of the specifications referenced in this document, check the appropriate center's Web page. CBER Topics page. CDER Topics page.	Final	Revised 06/11/2008
Providing Regulatory Submissions in Electronic Format -General Considerations (PDF - 288 KB) (Issued, Posted 10/22/2003)	Draft	10/2003
Providing Regulatory Submissions in Electronic Format-Postmarketing Individual Case Safety Reports (PDF - 107 KB) To ensure that you have the most recent versions of the specifications referenced in this document, check the appropriate center's Web page. CBER Topics page. CDER Topics page.	Draft	6/11/2008
Providing Regulatory Submissions in Electronic Format - Prescription Drug Advertising and Promotional Labeling (PDF - 28 KB)	Draft	1/2001
Providing Regulatory Submissions in Electronic Format—Receipt Date (PDF - 59 KB)	Draft	6/4/2007
Regulatory Submissions in Electronic Format; General Considerations (PDF - 54 KB)	Final	1/1999
Regulatory Submissions in Electronic Format; New Drug Applications	Final	1/1999
Withdrawn FR Notice 10/5/2006	Withdrawn FR Notice	
SPL Standard for Content of Labeling Technical Qs & As (PDF - 58 KB)	Draft	10/2009
FDAAA (Food and Drug Administration Amendments Act)		
Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 4020) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007 (PDF - 314 KB)	Draft	4/2008
Generics		
180-Day Exclusivity When Multiple ANDAs Are Submitted on the Same Day (PDF - 162 KB)	Final	7/2003
Alternate Source of the Active Pharmaceutical Ingredient in Pending ANDAs (PDF - 14 KB)	Final	12/2000
ANDAs: Impurities in Drug Products (PDF - 104 KB)	Draft	8/26/2005
ANDAs: Impurities in Drug Substances (PDF - 136 KB)	Final	7/15/2009
ANDAs:Pharmaceutical Solid Polymorphism: Chemistry, Manufacturing, and Controls Information (PDF - 125 KB)	Final	7/6/2007
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (PDF - 25 KB)	Final	3/2000
Handling and Retention of Bioavailability and Bioequivalence Testing Samples (PDF - 166 KB)	Final	5/25/2004
Individual Product Bioequivalence Recommendations (PDF - 45 KB)	Draft	5/30/2007
List of Product Bioequivalence Recommendations		
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past. (PDF - 194 KB)	Final	8/1995
Letter describing efforts by the CDER and the ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new and abbreviated drug approval process in order to reduce duplication or redundancy in the process (PDF - 274 KB)	Final	10/1994
Letter on incomplete Abbreviated Applications, Convictions Under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy (PDF - 1915 KB)	Final	4/1994
Letter on the Provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters (PDF - 254 KB)	Final	7/1992
Letter on the provision of new procedures and policies affecting the generic drug review process (PDF - 608 KB)	Final	3/1989
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions (PDF - 917 KB)	Final	11/1990
Letter on the response to 12/20/1984 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act(PDF - 392 KB)	Final	3/1985

Title and Format	Type	Issue Date
Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse-to-file incomplete submissions as required by the new law (PDF - 233 KB)	Final	1/1993
Letter to regulated industry notifying interested parties about important detailed information regarding labeling, scale-up, packaging, minor/major amendment criteria and bioequivalence requirements (PDF - 908 KB)	Final	8/1993
Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers (PDF - 57 KB)	Draft	10/2004
Major, Minor, and Telephone Amendments to Abbreviated New Drug Applications (PDF - 24 KB)	Final	12/2001
Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing (PDF - 48 KB)	Final	10/25/2005
Revising ANDA Labeling Following Revision of the RLD Labeling (PDF - 19 KB)	Final	4/26/2000
Submission of Summary Bioequivalence Data for Abbreviated New Drug Applications (PDF - 183 KB)	Draft	4/16/2009
Variations in Drug Products that May Be Included in a Single ANDA (PDF - 107 KB)	Final	12/1998
Good Review Practices		
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (PDF - 1516 KB)	Final	2/2005
Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff : Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007	Final	1/21/2009
Pharmacology/Toxicology Review Format (PDF - 55 KB)	Final	5/2001
International Conference on Harmonisation - Efficacy		
E1A The Extent of Population Exposure to Assess Clinical Safety: For Drugs Intended for Long-term Treatment of Non-Life-Threatening Conditions (PDF - 17 KB)	Final	3/1995
E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting (PDF - 49 KB)	Final	3/1995
E2B International Conference on Harmonisation; Guidance on Data Elements for Transmission of Individual Case Safety Reports (PDF - 69 KB)	Final	1/15/1998
• E2BM Data Elements for Transmission Of Individual Case Safety Reports (PDF - 74 KB) (Issued 4/2002, Posted 4/4/2002)		
○ E2B(M) Questions and Answers (PDF - 55 KB) (Revised 3/09/2005, Posted, 3/16/2005)		
E2B(R) Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports (PDF - 269 KB) (Issued , Posted 9/30/2005)	Draft	9/30/2005
E2C(R1) Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs Note: In November 2005, the ICH incorporated the E2C addendum with the E2C parent guidance and retitled the combined document E2C(R1). The contents of the two guidances were not revised.		
• E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs (PDF - 169 KB)	Final	5/19/1997
• E2C Addendum to ICH E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs (PDF - 35 KB)	Final	2/5/2004
E2D Postapproval Safety Data Management: Definitions and Standards for Expedited Reporting (PDF - 184 KB)	Draft	9/12/2003
E2E Pharmacovigilance Planning (PDF - 73 KB)	Final	3/31/05
E2F Development Safety Update Report (PDF - 118 KB)	Draft	8/4/2008
E3 Structure and Content of Clinical Study Reports (PDF - 240 KB)	Final	7/1996
E4 Dose-Response Information to Support Drug Registration (PDF - 49 KB)	Final	7/1996
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data		
• E5 Questions and Answers (PDF - 48 KB) [Issued 9/27/2006; Posted 9/28/2006]	Final	6/2004
E6 Good Clinical Practice: Consolidated Guideline (PDF - 262 KB)	Final	5/9/1997
Spanish Version (PDF - 151 kb)		
E7 Studies in Support of Special Populations: Geriatrics (PDF - 25 KB)	Final	8/1994
E7 Studies in Support of Special Populations; Geriatrics; Questions and Answers (PDF - 125 KB)	Draft	11/9/2009
E8 General Considerations for Clinical Trials (PDF - 67 KB)	Final	12/1997
E9 Statistical Principles for Clinical Trials (PDF - 110 KB)	Final	9/1/1998
E10 Choice of Control Group and Related Issues in Clinical Trials (PDF - 93 KB)	Final	5/2001
E11 Clinical Investigation of Medicinal Products in the Pediatric Population (PDF - 60 KB)	Final	12/2000
E12A Principles for Clinical Evaluation of New Antihypertensive Drugs. (PDF - 27 KB)	Draft	8/2000
E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs (PDF - 67 KB)	Final	10/19/2005
Questions and Answers (PDF - 108 KB)		11/18/2008
E15 Pharmacogenomics Definitions and Sample Coding (PDF - 90 KB)	Final	4/7/2008
E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions (PDF - 135 KB)	Draft	7/30/2009
International Conference on Harmonisation - Joint Safety/Efficacy (Multidisciplinary)		
M2 eCTD: Electronic Common Technical Document Specification (PDF - 1,020 KB)	Final	4/1/2003
• M2: eCTD Specification Questions and Answers and Change Requests (PDF 17 KB)		3/14/05
• Companion Document: Current Q & As and Change Requests		7/10/2008
M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals (PDF - 295 KB)	Final	1/20/2010
M4: Common Technical Document for the Registration of Pharmaceuticals for Human Use	Final	Originally Issued 10/15/2001
• M4: Organization of the CTD (PDF - 31 KB)		

Title and Format	Type	Issue Date
• M4 Granularity Annex (PDF - 124 KB) (Issued 10/18/2005, Posted 10/18/2005) • M4: The CTD—General Questions and Answers (PDF - 29 KB) (Issued 12/04, Posted 12/22/2004) • M4: The CTD—Quality (PDF - 79 KB) • M4: The CTD—Quality Questions and Answers /Location Issues (PDF - 49 KB) (Issued 6/2004, Posted 6/8/2004) • M4: The CTD—Efficacy (PDF - 156 KB) • M4: The CTD—Efficacy Questions and Answers (PDF - 34 KB) (Issued 12/2004, Posted 12/22/2004) Clarification for Q&A 10 on submitting integrated summaries of safety and effectiveness (ISS/ISE) in the eCTD format [esrs/eCTD page]. • M4: The CTD—Safety (PDF - 60 KB) • M4: The CTD—Safety Appendices (PDF - 178 KB) ○ M4: The CTD—Safety Questions and Answers (PDF - 16 KB) (Issued 2/2003, Posted 2/4/2003)		
M5 International Conference on Harmonisation; Draft Guidance on M5 Data Elements and Standards for Drug Dictionaries (PDF - 288 KB)	Draft	9/2005
Submitting Marketing Applications According to the ICH/CTD Format: General Considerations (PDF - 50 KB)	Draft	9/2001
International Conference on Harmonisation - Quality		
Q1A(R2) Stability Testing of New Drug Substances and Products (PDF - 58 KB)	Final	11/2003
Q1B Photostability Testing of New Drug Substances and Products (PDF - 339 KB)	Final	11/1996
Q1C Stability Testing for New Dosage Forms (PDF - 101 KB)	Final	5/9/1997
Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products (PDF - 31 KB)	Final	1/2003
Q1E Evaluation of Stability Data (PDF - 221 KB)	Final	6/2004
Q1F Stability Data Package for Registration Applications in Climatic Zones III and IV, revision 1	Final	Withdrawn 7/6/2006
Q2(R1) Validation of Analytical Procedures: Text and Methodology Note: In November 2005, the ICH incorporated Q2B on methodology with the parent guidance Q2A and retitled the combined Q2 document. The contents of the two guidances were not revised.		
• Q2A Text on Validation of Analytical Procedures (PDF - 25 KB)	Final	3/1995
• Q2B Validation of Analytical Procedures: Methodology (PDF - 132 KB)	Final	5/19/1997
Q3A(R) Impurities in New Drug Substances (PDF - 55 KB)	Final	6/6/2008
Q3B(R) Impurities in New Drug Products (Revision 2)(PDF - 171 KB)	Final	8/4/2006
Q3C Impurities: Residual Solvents (PDF - 41 KB)	Final	12/24/1997
Q3C Tables and List (PDF - 33 KB)	Final	11/12/2003
• Appendix 4 (PDF - 120 KB); Appendix 5 (PDF - 216 KB); Appendix 6 (PDF - 128 KB) (Appendices were issued with the Q3C draft guidance documents) Maintenance Procedures for Updating	Final	2/11/2002
Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions (PDF - 55 KB)	Final	2/20/2007
• Annex I: Residue on Ignition/Sulphated Ash General Chapter (PDF - 36 KB)	Final	2/20/2007
• Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter (PDF - 79 KB)	Final	1/8/2009
• Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter (PDF - 1208 KB)	Final	1/8/2009
• Annex 4A: Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter (PDF - 81 KB)	Final	4/7/2009
• Annex 4B: Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter (PDF - 82 KB)		
• Annex 4C: Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter (PDF - 75 KB)		
• Annex 5: Disintegration Test General Chapter (PDF - 32 KB)	Final	12/22/2009
• Annex 6:Uniformity of Dosage Units General Chapter (PDF - 87 KB)	Final	4/2/2010
• Annex 7:Dissolution Test General Chapter (PDF - 93 KB)		
• Annex 8: Sterility Test General Chapter (PDF - 32 KB)	Final	12/22/2009
• Annex 9: Tablet Friability General Chapter (PDF - 84 KB)	Final	4/2/2010
• Annex 10: Polyacrylamide Gel Electrophoresis General Chapter (PDF - 84 KB)	Final	4/9/2010
• Annex 11: Capillary Electrophoresis General Chapter (PDF - 90 KB)		
• Annex 12: Analytical Sieving General Chapter (PDF - 313 KB)	Draft	12/16/2009
Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin (PDF - 71 KB)	Final	Posted 9/1998
Q5B Quality of Biotechnological Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products (PDF - 109 KB)	Final	2/1996
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products (PDF - 70 KB)	Final	7/1996
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products; Availability (PDF - 52 KB)34 (Issued , Posted 9/21/1998)	Final	9/21/1998
Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process (PDF - 58 KB)	Final	6/2005
Q6A International Conference on Harmonisation; Guidance on Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances.	Final	12/29/2000
Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products (PDF - 64 KB)	Final	8/1999
Q7A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients (PDF - 175 KB) Note: In November 2005, the ICH redesignated this guidance. Q7 The guidance was not revised.	Final	8/2001
Q8(R2) Pharmaceutical Development (PDF - 402 KB)	Final	11/20/2009

Title and Format	Type	Issue Date
Q9 Quality Risk Management (PDF - 113 KB)	Final	6/1/2006
Q10 Pharmaceutical Quality System (PDF - 274 KB)	Final	4/7/2009
International Conference on Harmonisation - Safety		
S1A The Need for Long-term Rodent Carcinogenicity Studies of Pharmaceuticals (PDF - 100 KB)	Final	3/1996
S1B Testing for Carcinogenicity of Pharmaceuticals (PDF - 145 KB)	Final	2/28/1998
S1C(R2) Dose Selection for Carcinogenicity Studies of Pharmaceuticals (PDF - 185 KB)	Final	9/17/2008
S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals (PDF - 123 KB)	Final	4/1996
S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals (PDF - 131 KB)	Final	11/21/1997
S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use(PDF - 242 KB)	Draft	3/24/2008
S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies (PDF - 46 KB)	Final	3/1995
S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies (PDF - 14 KB)	Final	3/1995
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)(PDF - 21 KB)	Final	Posted 6/25/99
S5(R2) Detection of Toxicity to Reproduction for Medicinal Products Toxicity to Male Fertility Note: In November 2005, the ICH incorporated the S5B addendum with S5A and retitled the combined S5 document. The contents of the two guidances were not revised.		
• S5A Detection of Toxicity to Reproduction for Medicinal Products (PDF - 87 KB)	Final	9/1994
• S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility (PDF - 98 KB)	Final	4/1996
S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals (PDF - 137 KB)	Final	11/1997
• Addendum to ICH S6:(PDF - 160 KB) Preclinical Safety Evaluation of Biotechnology -Derived Pharmaceuticals S6(R1)	Draft	12/16/2009
S7A Safety Pharmacology Studies for Human Pharmaceuticals (PDF - 44 KB)	Final	7/2001
S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals (PDF - 52 KB)	Final	10/19/2005
S8 Immunotoxicity Studies for Human Pharmaceuticals (PDF - 72 KB)	Final	4/12/2006
S9 Nonclinical Evaluation for Anticancer Pharmaceuticals (PDF - 170 KB)	Final	3/5/2010
Investigational New Drug Applications		
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products (PDF - 42 KB)	Final	11/1995
• Questions and Answers: Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products (PDF - 14 KB) (10/2000)		
Exploratory IND Studies (PDF - 220 KB)	Final	1/12/2006
Labeling		
Adverse Reactions Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 52 KB)	Final	1/18/2006
Clinical Pharmacology Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 144 KB)	Draft	3/3/2009
Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format(PDF - 127 KB)	Final	1/18/2006
Content and Format for Geriatric Labeling (PDF - 38 KB)	Final	10/2001
Contents of a Complete Submission for the Evaluation of Proprietary Names (PDF - 306 KB)	Final	2/5/2010
Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products - Content and Format (PDF - 143 KB)	Final	3/22/2010
Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims (PDF - 53 KB)	Draft	3/12/2008
Labeling for Combined Oral Contraceptives (PDF - 92 KB)	Draft	3/2/2004
Labeling for Human Prescription Drugs—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information (PDF - 66 KB)	Final	10/16/2009
Labeling for Human Prescription Drug and Biological Products—Implementing the New Content and Format Requirements (PDF - 213 KB)	Draft	1/18/2006
Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis) (PDF - 71 KB)	Draft	6/1998
Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommended Prescribing Informtion for Health Care Providers and Patient Labeling (PDF - 458 KB)	Draft	11/15/2005
Public Availability of Labeling Changes in "Changes Being Effected" Supplements (PDF - 26 KB)	Draft	9/19/2006
Referencing Discontinued Labeling for Listed Drugs in Abbreviated New Drug Applications (PDF - 32 KB)	Draft	10/26/2000
Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices (PDF - 188 KB)	Final	6/26/2009
Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format (PDF - 58 KB)	Draft	1/18/2006
Microbiology		
Format and Content of the Microbiology Section of an Application* (PDF - 546 KB)	Final	1990
Modernization Act		
Changes to an Approved NDA or ANDA (PDF - 108 KB)	Final	4/2004
Classifying Resubmissions in Response to Action Letters (PDF - 76 KB)	Final	5/14/1998
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	Final	Withdrawn 9/2008
Fast Track Drug Development Programs - Designation, Development, and Application Review (PDF - 311 KB) (Posted 7/22/2004) Appendix 2 [(PDF - 3930 KB)] [Appendices are scanned copies, which will be replaced by final versions]	Final	11/17/1998
Formal Dispute Resolution: Appeals Above the Division Level(PDF - 30 KB)	Final	2/2000
Formal Meetings With Sponsors and Applicants for PDUFA Products (PDF - 89 KB)	Final	5/19/2009

Title and Format	Type	Issue Date
Implementation of Section 120 of the Food and Drug Administration Modernization Act of 1997–Advisory Committees (PDF - 62 KB)	Final	10/1998
Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997 - Elimination of Certain Labeling Requirements (PDF - 979 KB)	Final	7/1998
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions(PDF - 34 KB)	Final	3/2002
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (PDF - 40 KB)	Draft	1/2004
National Uniformity for Nonpresciption Drugs - Ingredient Listing for OTC Drugs (PDF - 74 KB)	Final	4/1998
PET Drug Applications - Content and Format for NDAs and ANDAs (PDF - 153 KB)	Draft	3/7/2000
• Sample formats for chemistry, manufacturing, and controls sections (PDF - 125 KB)		
• Sample formats for labeling (PDF - 94 KB)		
• Sample formats for Form FDA 356h (PDF - 51 KB)		
• Sample formats for user fee Form FDA 3397(PDF - 42 KB)		
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products (PDF - 129 KB)	Final	5/14/1998
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act (PDF - 57 KB)	Final	9/1999
• Frequently Asked Questions on Pediatric Exclusivity (505A), The Pediatric "Rule," and Their Interaction		Posted 7/27/1999
Repeal of Section 507 of the Federal Food, Drug and Cosmetic Act (PDF - 85 KB)	Final	Revised 5/1998
Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997 (PDF - 456 KB)	Final	2/15/2006
Standards for Prompt Review of Efficacy Supplements (PDF - 76 KB)	Final	5/15/1998
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications (PDF - 43 KB)	Final	8/1998
Submitting and Reviewing Complete Responses to Clinical Holds (Revised) (PDF - 26 KB)	Final	10/2000
Over-the-Counter		
Enforcement Policy on Marketing OTC Combination Products (CPG 7132b.16)(PDF - 294 KB)	Final	5/1984
General Guidelines for OTC Combination Products (PDF - 270 KB)	Final	11/1978
Label Comprehension Studies for Nonprescription Drug Products (PDF - 204 KB)	Draft	4/30/2009
Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvo-vaginal Candidiasis) (PDF - 71 KB)	Draft	6/1998
Labeling OTC Human Drug Products—Questions and Answers (PDF - 599 KB)	Final	1/2/2009
Labeling OTC Human Drug Products -Submitting Requests for Exemptions and Deferrals (PDF - 34 KB)	Draft	12/2000
Labeling OTC Human Drug Products; Small Entity Compliance Guide (PDF - 270 KB)	Final	5/12/2009
Labeling OTC Human Drug Products Updating Labeling in ANDAs (PDF - 32 KB)	Draft	2/21/2001
• Additional examples 1 (PDF - 32 KB) (3/19/2001)		
• Additional examples 2 (PDF - 15 KB) (3/26/2001)		
• Additional examples 3 (PDF - 17 KB) (3/26/2001)		
Labeling OTC Human Drug Products Updating Labeling in RLDs and ANDAs (PDF - 30 KB)	Final	10/2002
Example Drug Facts Labels		
• Acetaminophen 120 mg in a Suppository Dosage Form (PDF - 13 KB)		
• Acetaminophen 325 mg in a Suppository Dosage Form (PDF - 14 KB)		
• Acetaminophen 650 mg in a Suppository Dosage Form (PDF - 14 KB)		
• Cimetidine 200 mg in a Tablet Dosage Form (PDF - 13 KB)		
• Clemastine Fumerate 1.34 mg in a Tablet Dosage Form(PDF - 14 KB)		
• Doxylamine Succinate 25 mg Tablet Dosage Form (PDF - 12 KB)		
• Ibuprofen 200 mg in a Tablet/Capsule Dosage Form (PDF - 14 KB)		
• Loperamide HCl in a Liquid Dosage Form (PDF - 15 KB)		
• Loperamide HCl in a Tablet/Caplet Dosage Form (PDF - 15 KB)		
• Miconazole Nitrate Vaginal Products (PDF - 16 KB)		
• Minoxidil Topical Solution 2% for Men and Women (PDF - 14 KB)		
• Minoxidil Topical Solution 5% for Men (PDF - 17 KB)		
• Naproxen Sodium 220 mg in a Tablet/Caplet/Gelcap Dosage Form (PDF - 14 KB)		
• Pseudoephedrine HCl Extended-Release Tablets 120 mg (PDF - 15 KB)		
Labeling OTC Human Drug Products Using a Column Format (PDF - 57 KB)	Final	12/2000
Labeling OTC Skin Protectant Drug Products (PDF - 274 KB)	Draft	Removed 3/18/2010
Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application (PDF - 298 KB)	Final	7/13/2009
Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers (PDF - 83 KB)	Final	8/31/2009
Time and Extent Applications (PDF - 46 KB)	Draft	2/2004
Upgrading Category III Antiperspirants to Category I (43 FR 46728-46731) (PDF - 583 KB)	Final	10/1978
Pharmacology/Toxicology		
Animal Models—Essential Elements to Address Efficacy Under the Animal Rule (PDF - 135 KB)	Draft	1/16/2009
Carcinogenicity Study Protocol Submissions (PDF - 29 KB)	Final	5/22/2002
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products (PDF - 42 KB)	Final	11/1995
• Questions and Answers: Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products (PDF - 14 KB) (10/2000)		
Developing Medical Imaging Drug and Biological Products	Final	6/17/2004
• Part 1: Conducting Safety Assessments (PDF - 271 KB)		

Title and Format	Type	Issue Date
Estimating the Maximum Safe Starting Dose in Initial Clinical Trials for Therapeutics in Adult Healthy Volunteers (PDF - 702 KB)	Final	7/21/2005
Exploratory IND Studies (PDF - 220 KB)	Final	1/12/2006
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application* (PDF -1300 KB)	Final	2/1987
Genotoxic and Carcinogenic Impurities in Drug Substances and Products: Recommended Approaches (PDF - 169 KB)	Draft	12/15/2008
Immunotoxicology Evaluation of Investigational New Drugs (PDF - 100 KB)	Final	10/2002
Integration of Study Results to Assess Concerns about Human Reproductive and Developmental Toxicities (PDF - 142 KB) (Issued , Posted 11/9/2001)	Draft	11/2001
Nonclinical Evaluation of Late Radiation Toxicity of Therapeutic Radiopharmaceuticals (PDF - 233 KB)	Draft	6/17/2005
Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives	Final	10/96 Updated 7/2005
Nonclinical Safety Evaluation of Drug or Biologic Combinations (PDF - 100 KB)	Final	3/14/2006
Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route (PDF - 76 KB)	Draft	3/7/2008
Nonclinical Safety Evaluation of Pediatric Drug Products (PDF - 479 KB)	Final	2/14/2006
Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients(PDF - 230 KB)	Final	05/18/2005
Photosafety Testing (PDF - 179 KB)	Final	5/7/2003
Recommended Approaches to Integration of Genetic Toxicology Study Results (PDF - 190 KB)	Final	1/3/2006
Reference Guide for the Nonclinical Toxicity Studies of Antivial Drugs Indicated for the Treatment of N/A Non-Life Threatening Disease Evaluation of Drug Toxicity Prior to Phase I Clinical Studies (PDF - 837 KB)	Final	3/2/1998
Safety Testing of Drug Metabolites (PDF - 86 KB)	Final	2/14/2008
Single Dose Acute Toxicity Testing for Pharmaceuticals (PDF - 63 KB)	Final	8/1996
Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals (PDF - 135 KB)	Draft	5/2001
Procedural		
180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (PDF - 77 KB)	Final	6/1998
Applications Covered by Section 505(b)(2)(PDF - 41 KB)	Draft	10/1999
Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act (PDF - 164 KB)	Draft	1/16/2009
Complementary and Alternative Medicine Products and Their Regulation by the Food and Drug Administation	Draft	12/2006
Container and Closure System Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products (PDF - 64 KB)	Final	2/22/2008
Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA (PDF - 195 KB)	Final	Withdrawn 4/9/2010
Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA (PDF - 168 KB) • Paperwork Reduction Act Burden Statement (PDF - 72 KB) (Posted 7/27/2004)	Final	Withdrawn 4/9/2010
Cooperative Manufacturing Arrangements for Licensed Biologics	Final	12/3/2008
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (PDF - 25 KB)	Final	Posted 3/27/2000
Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000 (PDF - 30 KB)	Draft	12/1999
Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees	Draft	2/14/2002
Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000 (PDF - 10 KB)	Final	11/1999
Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy (PDF - 159 KB)	Final	6/3/2003
Emergency Use Authorization of Medical Products; Availability (PDF - 4070 KB)	Draft	7/5/2005
End-of-Phase 2A Meetings (PDF - 163 KB)	Final	9/18/2009
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	Withdrawn	9/2008
Fast Track Drug Development Programs - Designation, Development, and Application Review (PDF - 83 KB) Appendix 2 (PDF - 3930 KB)15 [Appendices are scanned copies, which will be replaced by final versions] (Issued 11/17/1998, Posted 11/17/1998)	Final	1/12/2006
FDA Export Certificates	Final	7/2004
Financial Disclosure by Clinical Investigators	Final	3/27/2001
Fixed Dose Combinations, Co-Packaged Drug Products, and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV (PDF - 343 KB)	Final	10/17/2006
Formal Dispute Resolution: Appeals Above the Division Level (PDF - 30 KB)	Final	2/2000
Formal Meetings Between the FDA and Sponsors or Applicants (PDF - 89 KB)	Final	5/19/2009
Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (PDF - 32 KB)	Draft	5/14/2001
Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices U.S.	Final	1/14/2009
Good Review Management Principles and Practices for PDUFA Products (PDF - 683 KB)	Final	3/2005

Title and Format	Type	Issue Date
Guidance for FDA Staff: The Leveraging Handbook; An Agency Resource for Effective Collaborations (PDF - 143 KB)	Final	Revised 6/2003
Guidance for Clinical Investigators, Sponsors, and IRBs Adverse Event Reporting to IRBs—Improving Human Subject Protection (PDF - 61 KB)	Final	1/14/2009
Guidance to Pharmacies: Compounding Tamiflu Oral Suspension in Advance to Provide for Multiple Prescriptions (PDF - 114KB)	Draft	1/11/2010
Guidance for Sponsors, Clinical Investigators, and IRBs; Data Retention When Subjects Withdraw From FDA-Regulated Clinical Trials (PDF - 399 KB)	Draft	12/2/2008
How to Comply with the Pediatric Research Equity Act (PDF - 116 KB)	Draft	9/7/2005
Implementation of Section 120 of the Food and Drug Administration Modernization Act of 1997–Advisory Committees (PDF - 62 KB)	Final	10/1998
Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997 - Elimination of Certain Labeling Requirements (PDF - 979 KB)	Final	7/1998
Independent Consultants for Biotechnology Clinical Trial Protocols	Final	8/18/2004
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (PDF - 40 KB) [Revision 1]	Draft	1/2004
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (PDF - 34 KB)	Final	3/2002
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act (PDF - 27 KB)	Final	11/2001
Information Sheet Guidance for Sponsors, Clinical Investigators, and IRBs Frequently Asked Questions - Statement of Investigator (Form FDA 1572) (PDF - 672 KB)	Draft	7/29/2008
Integrated Summaries of Effectiveness and Safety: Location Within the Common Technical Document (PDF - 98 KB)	Final	4/20/2009
Integrated Summary of Effectiveness (PDF - 95 KB)	Draft	7/26/2008
Investigator Responsibilities—Protecting the Rights, Safety, and Welfare of Study Subjects (PDF - 163 KB)	Final	10/23/2009
Levothyroxine Sodium Products Enforcement of August 14, 2001 Compliance Date and Submission of New Applications (PDF - 24 KB)	Final	7/2001
Medication Guides—Adding a Toll-Free Number for Reporting Adverse Events (PDF - 67 KB)	Final	6/8/2009
National Uniformity for Nonpresciption Drugs - Ingredient Listing for OTC Drugs (PDF - 74 KB)	Final	4/1998
PET Drug Applications - Content and Format for NDAs and ANDAs (PDF - 153 KB) [(Issued , Posted 3/7/2000) • Sample formats for chemistry, manufacturing, and controls sections (PDF - 125 KB) • Sample formats for labeling (PDF - 94 KB) • Sample formats for Form FDA 356h (PDF - 51 KB) • Sample formats for user fee Form FDA 3397 (PDF - 41 KB)	Draft	3/7/2000
Pharmacogenomic Data Submissions (PDF - 96 KB) • Examples of Voluntary Submissions or Submissions Required Under 21 CFR 312, 314, or 601 (PDF - 63 KB)	Final	3/2005
Pharmacogenomic Data Submissions—Companion Guidance (PDF - 211 KB)	Draft	8/28/2007
Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products (PDF - 47KB)	Draft	1/7/2010
Postmarketing Adverse Even Reporting for Medical products and Dietary Supplements During an Influenza Pandemic (PDF - 246 KB)	Draft	12/15/2008
Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines (PDF - 375 KB)	Draft	3/9/2001
Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies (PDF - 40 KB) • KI in Radiation Emergencies-Questions and Answers (PDF - 161 KB)	Final	12/10/2001 12/23/2002
Potassium Iodide Tablets - Shelf Life Extension (PDF - 156 KB)	Final	3/8/2004
Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees (PDF - 68 KB)	Draft	3/21/2007
Process for Handling Referrals to FDA Under 21 CFR 50.54 Additional Safeguards for Children in Clinical Investigations (PDF - 116 KB) [PDF]	Final	12/22/2006
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act (PDF - 57 KB)	Final	9/1999
Refusal to File (PDF - 304KB)	Final	7/12/1993
Repeal of Section 507 of the Federal Food, Drug and Cosmetic Act (PDF - 85 KB)	Final	Revised 5/1998
Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997 (PDF - 456 KB)	Final	2/15/2006
Special Protocol Assessment (PDF - 36 KB)	Final	5/2002
Standards for Prompt Review of Efficacy Supplements (PDF - 76 KB)	Final	5/15/1998
Standards for Securing the Drug Supply Chain - Standardized Numerical Identification for Prescription Drug Packages	Final	3/26/2010
Submission of Patent Information for Certain Old Antibiotics (PDF - 42 KB)	Draft	11/28/2008
Submitting and Reviewing Complete Responses to Clinical Holds (Revised)(PDF - 26 KB)	Final	10/2000
Submitting Debarment Certification Statements (PDF - 144 KB)	Draft	10/2/98
Submitting Marketing Applications According to the ICH/CTD Format: General Considerations (PDF - 50 KB)	Draft	9/5/2001
Target Product Profile—A Strategic Development Process Tool (PDF - 454 KB)	Draft	3/29/2007
Technical Considerations for Pen, Jet, and Related Injectors Intended for Use With Drugs and Biological Products (PDF - 112 KB)	Draft	6/2/2009
The Use of Clinical Holds Following Clinical Investigator Misconduct (PDF - 33 KB)	Draft	4/2002
Tropical Disease Priority Review Vouchers (PDF - 112 KB)	Draft	10/21/2008

Title and Format	Type	Issue Date
Useful Written Consumer Medication Information (CMI)(PDF - 73 KB)	Final	7/17/2006
Using a Centralized IRB Review Process in Multicenter Clinical Trials (PDF - 87 KB)	Final	3/15/2006
Waiver of IRB Requirements for Drug and Biological Product Studies (PDF - 35 KB)	Final	1/2006
Women and Minorities Guidance Requirements (PDF - 30 KB)	Final	7/20/1998
Small Entity Compliance Guides		
Sterility Requirement for Aqueous-Based Drug Products for Oral Inhalation—Small Entity Compliance Guide (PDF - 18 KB)	Final	11/7/2001
Labeling OTC Human Drug Products (Small Entity Compliance Guide)(PDF - 481 KB)	Draft	12/2004
User Fees		
Attachment G—Draft Interim Guidance Document for Waivers of and Reductions in User Fees (PDF - 897 KB)	Draft	7/16/1993
Classifying Resubmissions in Response to Action Letters (PDF - 76 KB)	Final	5/14/1998
Fees-Exceed-the-Costs Waivers Under the Prescription Drug User Fee Act (PDF - 48 KB)	Final	6/1999
Guidance for Industry and FDA Staff: Application User Fees for Combination Products (PDF - 83 KB)	Final	4/2005
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act (PDF - 27 KB)	Final	11/2001
Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees (PDF - 211 KB)	Final	12/30/2004
User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR (PDF - 46 KB) (Issued , Posted 2/7/2007)	Final	2/7/2007

IV. Center for Devices and Radiological Health (CDRH)

For information a specific guidance document or to obtain a paper copy, contact:

Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993, 1–800–638–2041, FAX: 301–847–2149, e-mail: *dsmica@fda.hhs.gov, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/Default.htm.*

CDRH has no withdrawn guidance documents at this time.

The following list of current CDRH guidance documents was obtained from FDA's Web site on April 22, 2010:

Title	Organization	Doc #	Date
Cross-Center Guidance Document List			
Guidance for Industry and FDA Staff - User Fees and Refunds for Premarket Notification Submissions (510(k)s)	CBER CDRH	1511	08/27/09
Guidance for Industry, FDA Staff, and Third Parties - Inspection by Accredited Persons Under The Medical Device User Fee and Modernization Act of 2002 and the FDA Amendments Act of 2007; Accreditation Criteria	CBER CDRH	1200	08/06/09
Presenting Risk Information in Prescription Drug and Medical Device Promotion			
User Fees and Refunds for Premarket Approval Applications	CBER CDRH	1681	03/13/09
Guidance for Industry, FDA Staff, and FDA-Accredited Third Parties - Manufacturer's Notification of the Intent to Use an Accredited Person under the Accredited Persons Inspection Program Authorized by Section 228 of the Food and Drug Administration Amendments Act of 2007 (FDAAA)	CBER CDRH	1532	03/02/09
Assay Migration Studies for In Vitro Diagnostic Devices	CBER CDRH/ OIVD	1660	01/05/09
Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile	CBER CDRH/ ODE	1615	12/12/08
Modifications to Devices Subject to Premarket Approval (PMA) - The PMA Supplement Decision	CBER CDRH	1584	12/11/08
Draft Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and FDA Staff - Humanitarian Device Exemption (HDE) Regulation: Questions and Answers	CBER CDRH	1668	08/05/08
FY 2009 Medical Device User Fee Small Business Qualification and Certification (PDF only)	CBER CDRH		08/01/08
FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Goals	CBER CDRH	1218	06/30/08
Guidance for Industry and FDA Staff: Expedited Review of Premarket Submissions for Devices	CBER CDRH	108	02/29/08
Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements	CBER CDRH	1655	02/28/08
Guidance for Industry and FDA Staff: Bundling Multiple Devices or Multiple Indications in a Single Submission	CBER CDRH	1215	06/22/07
Guidance on Pharmacogenetic Tests and Genetic Tests for Heritable Markers	CBER CDER CDRH	1549	02/09/06
Annual Reports for Approved Premarket Approval Applications (PMA)	CBER CDRH	1585	10/26/06
Real-Time Premarket Approval Application (PMA) Supplements	CBER CDRH	673	04/28/06
Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable	CBER CDRH	1588	04/25/06
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices	CBER CDRH/ ODE CDRH/ OIVD	337	05/11/05
Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use	CBER CDRH	4444	11/30/04
Resolution of Disputes Concerning Payment or Refund of Medical Device User Fees Under MDUFMA	CBER CDRH	1303	11/17/04

Title	Organization	Doc #	Date
Guidance for Industry and FDA Staff - User Fees and Refunds for Premarket Notification Submissions (510(k)s)	CBER CDRH	1511	08/27/09
FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment	CBER CDRH	1219	05/21/04
Premarket Assessment of Pediatric Medical Devices	CBER CDRH	1220	05/14/04
Guidance for Industry and FDA: User Fees and Refunds for Premarket Approval Applications	CBER CDRH	1224	11/24/03
Premarket Approval Application Modular Review	CBER CDRH/ ODE	835	11/03/03
Premarket Approval Application Filing Review	CBER CDRH/ ODE CDRH/ OIVD	297	05/01/03
Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products	CBER CDRH	1201	02/25/03
The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles; Final Guidance for FDA and Industry	CBER CDRH/ ODE	1332	10/04/02
General Principles of Software Validation; Final Guidance for Industry and FDA Staff	CBER CDRH/ OC	938	01/11/02
OC Guidance Documents			
Guidance for Industry and FDA Staff - Implementation of Medical Device Establishment Registration and Device Listing Requirements Established by the Food and Drug Administration Amendments Act of 2007	OC/DRMO/ RPSB	1657	10/08/09
Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300	OC/DE2/ OBGUB	1688	12/23/08
Medical Device Tracking; Guidance for Industry and FDA Staff	OC	169	01/25/10
Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves	OC/DE2	1141	07/11/08
Surveillance and Detention Without Physical Examination of Condoms	OC/DE2	1139	07/11/08
The Review and Inspection of Premarket Approval Application Manufacturing Information and Operations	OIVD OC	1566	01/08/08
The Review and Inspection of Premarket Approval Applications under the Bioresearch Monitoring Program	OC/DBM	1602	01/08/08
Class II Special Controls Guidance Document: Oxygen Pressure Regulators and Oxygen Conserving Devices	OC	1227	02/27/07
Decorative, Non-corrective Contact Lenses	OC/DE1	1613	11/24/06
Inspection of Medical Device Manufacturers	OC/DPO/FPB		06/15/06
Compliance with Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended - Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices	OC	1217	05/01/06
Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex	OC/DE2/ OBGUB	1548	11/14/05
Draft Guidance for Industry and FDA Staff - Functional Indications for Implantable Cardioverter Defibrillators	ODE OC	1304	10/06/05
Guidance for Industry - Cybersecurity for Networked Medical Devices Containing Off-the-Shelf (OTS) Software	ODE OC	1553	01/14/05
Consumer-Directed Broadcast Advertising of Restricted Devices	OC	1513	02/10/04
User Labeling for Devices that Contain Natural Rubber (21 CFR 801.437); Small Entity Compliance Guide	OC	1212	04/01/03
Quality System Information for Certain Premarket Application Reviews; Guidance for Industry and FDA Staff	OC/DE3	1140	02/03/03
General Principles of Software Validation; Final Guidance for Industry and FDA Staff	CBER CDRH/ OC	938	01/11/02
Sterilized Convenience Kits for Clinical and Surgical Use	OC	1390	01/07/02
Labeling Recommendations for Single-Use Devices Reprocessed by Third Parties and Hospitals; Final Guidance for Industry and FDA	OC/DE3	1392	07/30/01
Implementation of the Biomaterials Access Assurance Act of 1998	OC	1324	04/02/01
Labeling for Electronic Anti-Theft Systems	OC/DE3	1170	08/15/00
Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals	OC/DE3	1168	08/14/00
Alternative to Certain Prescription Device Labeling Requirements	OC	1150	01/21/00
Regulating In Vitro Diagnostic Device (IVD) Studies	OC/DBM	1132	12/17/99
Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables (PDF version)	OC/DE1	1129	11/15/99
Guidance for FDA Staff: Civil Money Penalty Policy	OC	1124	06/08/99
Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects	OC/DBM	2229	03/19/99
Performance Standard for Electrode Lead Wires and Patient Cables	OC	1197	03/16/98
Information about Lasers: An Important Letter to Ophthalmologists About Lasers for Refractive Surgery	OC/DE2	8323	06/27/97
Design Control Guidance For Medical Device Manufacturers	OC/DE3	994	03/11/97
Prospective Manufacturers of Barrier Devices Used During Oral Sex for STD Protection	OC/DE2	1394	10/31/96
Electromagnetic Compatibility - A Letter to Industry	OC/DE3	1087	09/18/96
Shielded Trocars and Needles used for Abdominal Access during Laparoscopy (PDF Version)	OC/DE2	1122	08/23/96
Letter to Manufacturers and Initial Distributors of Hemodialyzers (PDF only)	OC/DE2	2507	05/23/96
Reuse of Medical Disposable Devices Policy	OC/DE3	961	12/27/95
Letter to Medical Device Manufacturer on Pentium processors (PDF only)	OC	456	02/14/95

Title	Organization	Doc #	Date
Medical Devices and EMI: The FDA Perspective	OC/DE3	1082	01/01/95
Pesticide Regulation Notice 94-4 Interim Measures for the Registration of Antimicrobial Products/ Liquid Chemical Germicides with Medical Device Use Claims (PDF only)	OC/DE2	851	06/30/94
All Device Manufacturers/Repackers Using Cotton (PDF Version)	OC/DE2	101	04/22/94
Letter - Condom Manufacturers and Distributors (PDF only)	OC/DE2	56	04/05/94
Letter - Manufacturers, Distributors and Importers of Condom Products (included in Condom Packet 398) (PDF only)	OC/DE2	52	02/23/94
Manufacturers And Initial Distributors Of Sharps Containers And Destroyers Used By Health Care Professionals (PDF Version)	OC/DE2	933	02/03/94
Endoscopy and Laparoscopy Accessories (PDF only)	OC/DE1	545	05/17/93
Letter to Industry, Powered Wheelchair Manufacturers from RMJohnson (PDF Only)	OC/DE2	869	05/10/93
Latex Labeling Letter (Johnson) (PDF only)	OC/DE2	831	03/18/98
Dental Handpiece Sterilization (Dear Doctor Letter) (PDF only)	OC/DE2	589	09/28/92
Computerized Devices/Processes Guidance (PDF Version)	OC/DE3	247	05/01/92
Commercial Distribution/Exhibit Letter (PDF only)	OC	246	04/10/92
Quality Assurance Guidelines for Hemodialysis Devices	OC/DE3	507	02/01/91
Letter - Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt) (PDF only)	OC/DE2	53	02/13/89
Color Additive Status List (PDF Only)	OC	268	02/01/89
Color Additive Petitions (PDF Only)	OC	296	06/01/87
Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on 4/8/87) (PDF only)	OC/DE2	293	04/08/87
All U.S. Condom Manufacturers, Importers and Repackagers (PDF only)	OC/DE2	2510	04/07/87
Standard Specification for Rubber Contraceptives (Condoms) (PDF Only)	OC/DE2	628	10/28/83
Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure (PDF only)	OC/DE2	1019	06/23/78
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations (PDF Version)	OC/DE3	1086	
Office of the Center Director Guidance Documents			
Resolving Scientific Disputes Concerning The Regulation Of Medical Devices, A Guide To Use Of The Medical Devices Dispute Resolution Panel; Final Guidance for Industry and FDA	OCD	1121	07/02/01
OCER Guidance Documents			
Guidance for Industry and FDA Staff: Acceptable Media for Electronic Product User Manuals	OCER/DMQRP/ EPB		03/18/10
Draft Guidance for Industry, MQSA Inspectors and FDA Staff - The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13	OCER/DMQRP	1695	10/09/09
Radiation Safety Considerations for X-Ray Equipment Designed for Hand-Held Use	OCER/DMQRP	1680	12/24/08
Inspection of Domestic and Foreign Manufacturers of Diagnostic X Ray Equipment	OCER/DMQRP/ RPB		05/15/08
Medical Glove Guidance Manual	OCER/DSMICA	1661	01/22/08
Inspection and Field Testing of Radiation-Emitting Electronic Products	OCER/DMQRP		10/31/07
Impact-Resistant Lenses: Questions and Answers	OCER/DSMICA	23	10/26/07
Procedures for Renewal and Amendment of Certain Laser Light Show Variances (Laser Notice 55)	OCER/DMQRP	1639	09/25/07
Compliance Guide for Cabinet X-Ray Systems	OCER/DMQRP	1634	09/19/07
Writing Dear Doctor Letters for Recalls of Implantable Cardioverter Defibrillators (ICDs)	OCER/DHC	1645	07/19/07
Laser Products - Conformance with IEC 60825-1 and IEC 60601-2-22; (Laser Notice No. 50)	OCER/DMQRP	1346	06/24/07
Performance Standard for Diagnostic X-Ray Systems and Their Major Components (21CFR 1020.30, 1020.31, 1020.32, 1020.33); Small Entity Compliance Guide	OCER/DMQRP	1640	06/07/07
Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device			05/01/07
Approval of Alternate Means of Labeling for Laser Products (Laser Notice 53)	OCER/DMQRP	1633	03/23/07
The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #12	OCER/DMQRP	1623	02/02/07
Exemption from Certain Reporting and Recordkeeping Requirements for Television Receivers and Computer Monitors with Cathode Ray Tubes	OCER/DMQRP	1612	10/20/06
Exemption from Certain Reporting and Recordkeeping Requirements for Microwave Ovens	OCER/DMQRP	1611	10/20/06
Provision for Alternate Measure of the Computed Tomography Dose Index (CTDI) to Assure Compliance with the Dose Information Requirements of the Federal Performance Standard for Computed Tomography	OCER/DMQRP	1609	10/20/06
Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment	OSB/DPS OCER/DHC	1537	03/10/06
Compliance Program Guidance Manual CP 7386.003 Field Compliance Testing of Diagnostic (Medical) X-ray Equipment - Guidance for FDA Staff	OCER/DMQRP	1600	02/08/06
Exemption from Reporting and Recordkeeping Requirements for Low Power Laser Products (Laser Notice 54)	OCER/DMQRP OCER/ DMQRP/ EPDB	1592	01/06/06
Applicability of the Performance Standard for High-Intensity Mercury Vapor Discharge Lamps (21 CFR 1040.30)	OCER/DMQRP/ EPDB	1565	11/06/05
Mammography Facility Surveys, Mammography Equipment Evaluations, and Medical Physicist Qualification Requirements under MQSA	OCER/DMQRP/ ICB	6409	09/13/05
Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems	OCER/DMQRP/ DDB	2619	09/05/03

Title	Organization	Doc #	Date
Frequently-Asked-Questions about the Reprocessing and Reuse of Single-Use Devices by Third-Party and Hospital Reprocessors; Three Additional Questions	OCER/DHC	1427	07/16/03
Guidance on the Department of Defense Exemption from the FDA Performance Standard for Laser Products (Laser Notice No. 52)	OCER/DMQRP	1412	07/12/02
Frequently-Asked-Questions about the Reprocessing and Reuse of Single-Use Devices by Third-Party and Hospital Reprocessors: Three Additional Questions; Final Guidance for Industry and FDA Staff	OCER/DHC	1408	07/09/02
Compliance Guidance: The Mammography Quality Standards Act Final Regulations: Preparing For MQSA Inspections; Final	OCER/DMQRP/ ICB	6400	11/05/01
Frequently-Asked-Questions about the Reprocessing and Reuse of Single-Use Devices by Third-Party and Hospital Reprocessors; Final Guidance for Industry and FDA Staff	OCER/DHC	1333	07/06/01
Responsibilities of Laser Light Show Projector Manufacturers, Dealers, and Distributors; (Laser Notice 51)	OCER/DMQRP/ EPDB	1349	05/27/01
Guidance on Medical Device Patient Labeling	OCER/DHC	1128	04/19/01
CDRH Manual for the Good Guidance Practices (GGP) Regulations; Final Guidance for FDA Staff	OCER/DHC	1323	02/09/01
Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Final Guidance for Staff, Industry and Third Parties	OCER/DSMICA	1160	02/02/01
Guidance for Industry - Wireless Medical Telemetry Risks and Recommendations		1173	09/27/00
Medical Device Use-Safety: Incorporating Human Factors Engineering into Risk Management	OCER/DHC	1497	07/18/00
Regulation of Medical Devices: Background Information for International Officials	OCER/DSMICA	610	04/14/99
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies (PDF Only)	OCER/DMQRP	1071	08/13/98
Overview of FDA Modernization Act of 1997, Medical Device Provisions	OCER/DSMICA	1174	02/19/98
Medical Device Appeals and Complaints: A Guidance on Dispute Resolution (PDF Only)	OCER/DSMICA	396	02/19/98
FDA Modernization Act of 1997 - Guidance for the Device Industry on Implementation of Highest Priority Provisions	OCER	434	02/06/98
Medical Device Reporting for Manufacturers	OCER/DSMICA	987	03/01/97
Human Factors Points to Consider for IDE Devices	OCER/DHC	839	01/17/97
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions	OCER/DSMICA	471	01/01/97
Do It By Design - An Introduction to Human Factors in Medical Devices	OCER/DHC	995	12/01/96
Medical Device Quality Systems Manual	OCER/DSMICA	6303	12/01/96
Emitted Laser Beam as Emission Indicator for Class II and Class IIIa Laser Products (Laser Notice 49) (PDF only)	OCER/DMQRP		09/05/96
Identification Labels for Certain Class I Laser Products (Laser Notice 48) (PDF Only)	OCER/DMQRP		09/05/96
Effective Visual Control of Laser Projections (Laser Notice 47) (PDF Only)	OCER/DMQRP		06/06/96
Medical Device Reporting for User Facilities (PDF Only)	OCER/DHC		04/01/96
A Guide for the Submission of An Abbreviated Radiation Safety Reports on Cephalometric Devices Intended for Diagnostic Use	OCER/DMQRP/ DDB	977	03/01/96
A Guide For The Submission Of An Abbreviated Initial Report On X-Ray Tables, Cradles, Film Changers Or Cassette Holders Intended For Diagnostic Use (PDF Only)	OCER/DMQRP/ DDB	978	
All Holders of Approved Variances For Laser Light Shows and Displays (Laser Notice 46) (PDF Only)	OCER/DMQRP		12/11/95
Guide for Preparing Product Reports for Lasers and Products Containing Lasers (PDF Only)	OCER/DMQRP/ EPDB	277	09/01/95
Labeling of Laser Products (Laser Notice 45) (PDF Only)	OCER/DMQRP		08/15/95
User Instruction for Medical Products (Laser Notice 44) (PDF Only)	OCER/DMQRP		08/11/95
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)- E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems (PDF Only)	OCER/DMQRP/ EPDB	236	08/01/95
Certification Statement for the Impact Resistance Test (PDF Only)	OCER/DSMICA	1460	10/25/93
Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g) (PDF Only)	OCER/DMQRP/ DDB	116	10/13/93
Human Factors Principles for Medical Device Labeling (PDF Only)	OCER/DHC	227	09/01/93
Beam Attenuators and Emission Indicators for Class II and IIIa Laser Systems (Laser Notice 43) (PDF Only)	OCER/DMQRP		06/07/93
Compliance Guide for Laser Products (FDA 86-8260) (PDF Only)	OCER/DMQRP/ EPDB	278	06/01/92
Clarification of Compliance Requirements for Certain Manufacturers Who Incorporate Certified Class I Laser Products into Their Products (Laser Notice 42) (PDF Only)	OCER/DMQRP		12/18/89
Labeling - Regulatory Requirements for Medical Devices (FDA 89-4203) (PDF Only)	OCER/DSMICA	470	09/01/89
Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment (FDA 89-8221)	OCER/DMQRP	758	03/01/89
Imports Radiation-Producing Electronic Products (FDA 89-8008) (PDF Only)	OCER/DMQRP/ EPDB	756	11/01/88
Low Power Laser Reporting Exemption (Laser Notice 40) (PDF Only)	OCER/DMQRP		08/09/88
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88-8264)] (PDF Only)	OCER/DMQRP/ EPDB	286	03/01/88
Impact Resistant Lenses: Questions and Answers (FDA 87-4002) (PDF Only)	OCER/DSMICA	23	09/01/87
User Instructions - Multi Axis Workstations (Laser Notice 39) (PDF Only)	OCER/DMQRP		06/24/87
Importation for Investigation And Evaluation (Laser Notice 38) (PDF Only)	OCER/DMQRP		05/22/87
Policy on Lamp Compatibility (sunlamps) (PDF Only)	OCER/DMQRP/ EPDB	2343	09/02/86
Procedures for Laboratory Compliance Testing of Television Receivers (PDF Only)	OCER/DMQRP/ EPDB	945	05/01/86

Title	Organization	Doc #	Date
Guide for the Submission of Initial Reports on Computed Tomography X-Ray Systems	OCER/DMQRP/DDB	271	12/01/85
Walk-In Workstations (Laser Notice 37) (PDF Only)	OCER/DMQRP		10/21/85
Low Power Laser Exemption (Laser Notice 36) (PDF Only)	OCER/DMQRP		08/23/85
Policy on Warning Label Required on Sunlamp Products (PDF Only)	OCER/DMQRP/EPDB	1343	06/25/85
User Instruction Hazard Warnings (Laser Notice 35) (PDF Only)	OCER/DMQRP		02/05/85
Medical Laser Delivery System Interlocks (Laser Notice 34) (PDF Only)	OCER/DMQRP		01/20/85
A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and their Major Components	OCER/DMQRP/DDB	257	01/01/82
Exemption from Reporting and Record keeping Requirements for Certain Sunlamp Product Manufacturers (PDF Only)	OCER/DMQRP/EPDB	343	09/16/81
Letter to All Manufacturers and Importers of Microwave Ovens: Retention of Records Required by 21 CFR 1002 (PDF Only)	OCER/DMQRP/EPDB	880	08/24/81
Investigational Medical Laser Significant Risk Device (Laser Notice 31) (PDF Only)	OCER/DMQRP		05/18/81
Laser Diodes Used in Fiber Optics Communication Systems (Laser Notice 27) (PDF Only)	OCER/DMQRP		10/16/80
Alternate Wording For Caution Statement (Laser Notice 30) (PDF Only)	OCER/DMQRP		08/25/80
Guide for the filing of Annual Reports for X-Ray Components and Systems (PDF Only)	OCER/DMQRP/EPDB	253	07/01/80
Open Door Operation of Microwave Ovens as a Result of Oven Miswiring (PDF Only)	OCER/DMQRP/EPDB	646	03/28/80
Exemption of Certain Lasers Used By DOE, NOAA and U.S. Dept. of Commerce (Laser Notice 25) (PDF Only)	OCER/DMQRP		09/14/79
Laser Light Shows Subject to Laser Product Performance Standard (Laser Notice 22) (PDF Only)	OCER/DMQRP		11/23/77
Emission Delay - Remote Interlock Connector (Laser Notice 21) (PDF Only)	OCER/DMQRP		11/11/77
Optional Interlocks - Labeling (Laser Notice 17) (PDF Only)	OCER/DMQRP		03/02/77
Warning Labels For Dye And Multiple Wavelength Lasers (Laser Notice 16) (PDF Only)	OCER/DMQRP		03/02/77
Certain Military Lasers Exempt From 21 CFR 1040.10 & .11 (Laser Notice 15) (PDF Only)	OCER/DMQRP		12/08/76
Lasers Manufactured and Used In-House (Laser Notice 14) (PDF Only)	OCER/DMQRP		11/23/76
Manufacture and Certification of Laser Kits (Laser Notice 13) (PDF Only)	OCER/DMQRP		10/14/76
Remote Interlock Connectors (Laser Notice 11) (PDF Only)	OCER/DMQRP		10/07/76
Interlock Design (Laser Notice 12) (PDF Only)	OCER/DMQRP		09/09/76
Emission Indicator - Visibility (Laser Notice 10) (PDF Only)	OCER/DMQRP		08/31/76
Certain Military Lasers Exempt From 21 CFR 1040.10 & .11 (Laser Notice 9) (PDF Only)	OCER/DMQRP		08/23/76
Viewing Optics - Sighting Telescope (Laser Notice 8) (PDF Only)	OCER/DMQRP		08/05/76
Components and Repair (Laser Notice 7) (PDF Only)	OCER/DMQRP		06/23/76
Emission Indicators - Brightness (Laser Notice 6) (PDF Only)	OCER/DMQRP		06/22/76
Protective Eyewear - Visibility of Emission Indicator (Laser Notice 4) (PDF Only)	OCER/DMQRP		11/21/75
Emission Indicators on Energy Source (Laser Notice 3) (PDF Only)	OCER/DMQRP		11/21/75
Laser Energy Source (Laser Notice 2) (PDF Only)	OCER/DMQRP		11/21/75
COMPARISON CHART: 1996 QUALITY System Regulation Versus 1978 GOOD Manufacturing Practices Regulation Versus ANSIIISOIASQC Q9001-1994 AND ISO/DIS 13485:1996 (PDF Version)	OCER/DSMICA		
ODE Guidance Documents 2010			
Draft Guidance for Industry and FDA Staff: Heart Valves - Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications	ODE/DCD/CSPDB	1607	01/20/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator with Limited Output for Pain Relief	ODE/DRARD/ULDB	1574	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief Intended	ODE/DRARD/ULDB	1670	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Muscle Conditioning	ODE/DRARD/ULDB	1580	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation	ODE/DRARD/ULDB	1577	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Rehabilitation	ODE/DRARD/ULDB	1578	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Aesthetic Purposes	ODE/DRARD/ULDB	1575	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator with Limited Output for Aesthetic Purposes	ODE/DRARD/ULDB	1576	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning	ODE/DRARD/ULDB	1579	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Cutaneous Electrode	ODE/DRARD/ULDB	1572	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Electroconductive Media	ODE/DRARD/ULDB	1571	04/05/10
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief	ODE/DRARD/ULDB	1573	04/05/10
Guidance for Industry and FDA Staff - Total Product Life Cycle: Infusion Pump - Premarket Notification [510(k)] Submissions	ODE/DAGID/GHDB	1694	
ODE Guidance Documents 2008 - 2009			
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Wound Dressing with Poly(diallyl dimethyl ammonium chloride) (pDADMAC) Additive	ODE/DGRND/PRSDB	1684	10/16/09

Title	Organization	Doc #	Date
Draft Guidance for Industry and FDA Staff - Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation	ODE/DCD/ CEMB	1708	09/14/09
Class II Special Controls Guidance Document: Dental Amalgam, Mercury, and Amalgam Alloy - Guidance for Industry and FDA Staff	ODE/DAGID/ DEDB	1192	07/28/09
Draft Guidance for Industry and FDA Staff: Investigational Device Exemption (IDE) Guidance for Retinal Prostheses	ODE/DOED/ VEDB	1651	04/17/09
Guidance for Industry and FDA Staff: Regulatory Requirements for Hearing Aid Devices and Personal Sound Amplification Products	ODE/DOED/ ENTB	1696	02/25/09
Guidance for Industry: Designation of Special Controls for Male Condoms Made of Natural Rubber Latex (21 CFR 884.5300); Small Entity Compliance Guide	ODE/DRARD/ OGDB	1693	01/05/09
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Tissue Expander	ODE/DGRND/ PRSB	1628	12/22/08
Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile	CBER CDRH/ ODE	1615	12/12/08
Draft Guidance for Industry and FDA Staff - Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence	ODE/DRARD/ ULDB	1636	09/19/08
Guidance for Industry and FDA Staff - Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	OSEL ODE/ DRARD	560	09/09/08
Guidance for Industry and FDA Staff: Clinical Study Designs for Catheter Ablation Devices for Treatment of Atrial Flutter	ODE/DCD/ CEMB	1678	08/05/08
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Bone Sonometers	OSEL ODE/ DRARD	1547	07/17/08
Guidance for Industry and FDA Staff - Intravascular Administration Sets Premarket Notification Submissions [510(k)]	ODE/DAGID/ GHDB	1189	07/11/08
Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin	ODE/DGRND/ PRSB	1630	05/30/08
Draft Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters	ODE/DCD/ICDB	1608	05/30/08
Guidance for Industry and FDA Staff: Display Accessories for Full-Field Digital Mammography Systems-Premarket Notification (510(k)) Submissions	OSEL ODE/ DRARD	1617	05/30/08
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Full Field Digital Mammography System	OSEL ODE/ DRARD	1616	05/30/08
Guidance for Industry and FDA Staff: Hemodialysis Blood Tubing Sets - Premarket Notification [510(k)] Submissions	ODE/DRARD/ GRDB	1649	04/23/08
Guidance for Industry and FDA Staff: Investigational Device Exemptions (IDEs) for Devices Indicated for Nocturnal Home Hemodialysis	ODE/DRARD/ GRDB	1650	04/15/08
Guidance for Industry and FDA Staff: Preparation and Review of Investigational Device Exemption Applications (IDEs) for Total Artificial Discs	ODE/DGRND/ ORDB	1637	04/11/08
Coronary Drug-Eluting Stents-Nonclinical and Clinical Studies			
Coronary Drug-Eluting Stents—Nonclinical and Clinical Studies -Companion Document			
Guidance for Industry and FDA Staff: Coronary and Carotid Embolic Protection Devices - Premarket Notification [510(k)] Submissions	ODE/DCD/ PVDB ODE/ DCD/ICDB	1658	02/15/08
ODE Guidance Documents 2006 - 2007			
Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Remote Medication Management System	ODE/DAGID/ GHDB	1621	10/19/07
Guidance for Industry and FDA Staff - Biological Indicator (BI) Premarket Notification [510(k)] Submissions	ODE/DGRND/ INCB	1320	10/04/07
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Electrocardiograph Electrodes	ODE/DCD/ CEMB	1597	10/04/07
Guidance for Industry and FDA Staff - Non-clinical Information for Femoral Stem Prostheses	ODE/DGRND/ ORDB	1647	09/17/07
Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology	ODE/DGRND/ PRSB	1629	08/03/07
Draft Guidance for Industry and FDA Staff - Premarket Notification [510(k)] Submissions for Medical Devices that Include Antimicrobial Agents	ODE	1557	07/19/07
Draft Guidance for Industry and FDA Staff - Pulse Oximeters - Premarket Notification Submissions [510(k)s]	ODE/DAGID/ ARDB	1605	07/19/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies	ODE/DAGID/ INCB	1626	07/03/07
Guidance for Industry and FDA Staff - Pre-Clinical and Clinical Studies for Neurothrombectomy Devices	ODE/DGRND/ GSDB	1586	06/18/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Intervertebral Body Fusion Device	ODE/DGRND/ ORDB	1540	06/12/07
Guidance for Industry and FDA Staff: Dental Handpieces - Premarket Notification [510(k)] Submissions	ODE/DAGID/ DEDB	556	05/02/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Computerized Labor Monitoring Systems	ODE/DRARD/ OGDB	1625	04/24/07
Guidance for Industry and FDA Staff - Saline, Silicone Gel, and Alternative Breast Implants	ODE/DGRND/ PRSB	1239	11/17/06
Draft Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Absorbable Hemostatic Device	ODE/DGRND	1558	10/31/06

Title	Organization	Doc #	Date
Guidance for Industry and FDA Staff - Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions (510(k)s) for Reprocessed Single-Use Medical Devices	ODE	1216	09/25/06
Guidance for Industry and FDA Staff - Keratome and Replacement Keratome Blades Premarket Notification [510(k)] Submissions	ODE/DOED/ DSDB	1604	09/18/06
Guidance for Industry and FDA Staff - Humanitarian Device Exemption (HDE) Regulation: Questions and Answers	ODE/ODEOD/ POS	1381	07/18/06
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Olfactory Test Device	ODE/DOED/ ENTB	1595	06/07/06
Topical Oxygen Chamber for Extremities - Class II Special Controls Guidance Document - Draft Guidance for Industry and FDA Staff	ODE/DGRND/ PRSB	1582	04/06/06
Guidance for Industry and FDA Staff: Tonometers - Premarket Notification [510(k)] Submissions	ODE/DOED/ DSDB	1593	03/27/06
Dental Curing Lights - Premarket Notification [510(k)]	OSEL/DPS ODE/DAGID/ DEDB	1591	03/27/06
Class II Special Controls Guidance Document: Implantable Intra-Aneurysm Pressure Measurement System - Guidance for Industry and FDA Staff	ODE/DCD/ PVDB	1589	02/15/06
ODE Guidance Documents 2004 - 2005			
Guidance for Industry and FDA Staff: A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures	ODE	1347	11/10/05
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Tinnitus Masker Devices	ODE/DOED/ ENTB	1555	11/08/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner	ODE/DGRND/ PRSB	1302	11/07/05
Guidance for Industry and FDA Staff: Dental Composite Resin Devices - Premarket Notification [510(k)] Submissions	ODE/DAGID/ DEDB	642	10/26/05
Draft Guidance for Industry and FDA Staff - Functional Indications for Implantable Cardioverter Defibrillators	ODE OC	1304	10/06/05
Guidance for Industry and FDA Staff - Class II Special Controls Document: Oral Rinse to Reduce the Adhesion of Dental Plaque	ODE/DAGID/ DEDB	1559	09/20/05
Guidance for Industry and FDA Staff: Format for Traditional and Abbreviated 510(k)s	OIVD ODE	1567	08/12/05
Guidance for Industry and FDA Staff: Medical Devices with Sharps Injury Prevention Features	ODE/DAGID/ GHDB	934	08/09/05
Guidance for Industry and FDA Staff - Menstrual Tampons and Pads: Information for Premarket Notification Submissions (510(k)s)	ODE/DRARD/ OGDB	166	07/27/05
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices	CBER CDRH/ ODE CDRH/ OIVD	337	05/11/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Dental Bone Grafting Material Devices	ODE/DAGID/ DEDB	1512	04/28/05
Guidance for Industry - Cybersecurity for Networked Medical Devices Containing Off-the-Shelf (OTS) Software	ODE OC	1553	01/14/05
Guidance for Industry and FDA Staff: Non-Clinical Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems	ODE/DCD/ PVDB ODE/ DCD/ICDB	1545	01/13/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices	ODE/DRARD/ OGDB ODE/ DGRND/ PRSB ODE/ DCD/PVDB	1234	12/29/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems	ODE/DRARD/ OGDB	1539	12/28/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: External Penile Rigidity Devices	ODE/DRARD/ ULDB	1231	12/28/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Implantable Radiofrequency Transponder System for Patient Identification and Health Information	ODE/DAGID/ GHDB	1541	12/10/04
Guidance for Industry and FDA Staff: Clinical Data Presentations for Orthopedic Device Applications	ODE/DGRND/ ORDB	1542	12/02/04
Guidance for Industry and FDA Staff - Frequently Asked Questions (FAQs) on the Status of Reprocessed Single Use Devices (SUDs) that receive a Not Substantially Equivalent (NSE) Letter	ODE	1544	11/08/04
Guidance for Industry and FDA Staff - Clinical Trial Considerations: Vertebral Augmentation Devices to Treat Spinal Insufficiency Fractures	ODE/DGRND/ REDB ODE/ DGRND/ ORDB	1543	10/24/04
Guidance for Third Parties and FDA Staff; Third Party Review of Premarket Notifications	OIVD ODE	2237	09/28/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Dental Noble Metal Alloys	ODE/DAGID/ DEDB	1415	08/23/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Dental Base Metal Alloys	ODE/DAGID/ DEDB	1416	08/23/04
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Endosseous Dental Abutments	ODE/DAGID/ DEDB	1389	05/12/04

Title	Organization	Doc #	Date
Guidance for Industry and FDA Staff: Spinal System 510(k)s	ODE/DGRND/ ORDB	636	05/03/04
Guidance for Industry and FDA Staff: Premarket Approval Applications (PMA) for Absorbable Powder for Lubricating a Surgeon's Glove	ODE/DAGID/ INCB	1230	04/13/04
Guidance for Industry and FDA Staff: Surgical Masks - Premarket Notification [510(k)] Submissions; Guidance for Industry and FDA	ODE/DAGID/ INCB	94	03/05/04
Guidance for Industry and FDA Staff: Vocal Fold Medialization Devices - Premarket Notification [510(k)] Submissions	ODE/DOED/ ENTB	1535	02/13/04
Guidance for Industry and FDA Staff: Clinical Study Designs for Percutaneous Catheter Ablation for Treatment of Atrial Fibrillation	ODE/DCD/ CEMB	1229	01/09/04
ODE Guidance Documents 2002 - 2003			
Premarket Notification [510(k)] Submissions for Chemical Indicators: Guidance for Industry and FDA Staff	ODE/DAGID/ INCB	1420	12/19/03
Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA	ODE/DGRND/ PRSB	54	12/18/03
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices	ODE/DAGID/ DEDB	1393	12/02/03
Premarket Approval Application Modular Review	CBER CDRH/ ODE	835	11/03/03
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm	ODE/DCD/ CEMB	1363	10/28/03
Guidance for Industry and FDA Staff: Implantable Middle Ear Hearing Device	ODE/DOED/ ENTB	1406	08/01/03
Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Breast Lesion Documentation System	ODE/DRARD/ OGDB	1202	07/28/03
Guidance for Industry and FDA Staff: Coronary and Peripheral Arterial Diagnostic Catheters	ODE/DCD/ CEMB	1228	07/15/03
Guidance for Industry and FDA Staff: Criteria for Significant Risk Investigations of Magnetic Resonance Diagnostic Devices	ODE/DRARD	793	07/14/03
Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA Staff	ODE	1208	06/03/03
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Surgical Sutures	ODE/DGRND/ PRSB	1387	06/03/03
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device	ODE/DGRND/ REDB	855	06/02/03
Premarket Approval Application Filing Review	CBER CDRH/ ODE CDRH/ OIVD	297	05/01/03
Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA	ODE/DAGID	1203	04/22/03
Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses; Guidance for Industry and FDA	ODE/DGRND/ ORDB	1418	01/16/03
Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide (PcCO2) and Oxygen (PcO2) Monitors; Guidance for Industry and FDA	ODE/DAGID/ ARDB	1335	12/13/02
Determination of Intended Use for 510(k) Devices; Guidance for CDRH Staff (Update to K98-1)	OIVD ODE	857	12/03/02
Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA	ODE/DAGID/ DEDB	1378	11/12/02
Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System (TACHAS); Guidance for Industry and FDA	ODE/DOED/ ENTB	1414	11/07/02
The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles; Final Guidance for FDA and Industry	CBER CDRH/ ODE	1332	10/04/02
Updated 510(k) Sterility Review Guidance K90-1; Final Guidance for Industry and FDA	ODE	361	08/30/02
Regulatory Status of Disinfectants Used to Process Dialysate Delivery Systems and Water Purification Systems for Hemodialysis; Guidance for Industry and FDA	ODE/DAGID/ INCB	1419	08/30/02
Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement; Guidance for Industry and FDA	ODE/DGRND/ ORDB	668	07/17/02
Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA	ODE/DAGID	1178	07/17/02
Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry	ODE/DCD/ CEMB	1382	07/01/02
Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery; Guidance for Industry	ODE/DGRND/ PRSB ODE/ DRARD/ OGDB	1356	06/18/02
Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis; Guidance for Industry and FDA	ODE/DGRND/ ORDB	1328	04/30/02
Class II Special Controls Guidance Document: Endolymphatic Shunt Tube with Valve; Guidance for Industry and FDA	ODE/DOED/ ENTB	791	04/29/02
Premarket Notification [510(k)] Submissions for Medical Sterilization Packaging Systems in Health Care Facilities; Draft Guidance for Industry and FDA	ODE/DAGID/ INCB	1388	03/07/02
Class II Special Controls Guidance Document: Medical Washers and Medical Washer-Disinfectors; Guidance for the Medical Device Industry and FDA Review Staff	ODE/DAGID/ INCB	1252	02/07/02
ODE Guidance Documents 2000 - 2001			
Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA	ODE/DRARD/ GRDB	1385	11/28/01

Title	Organization	Doc #	Date
Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA	ODE/DAGID/ ARDB	1126	10/05/01
Availability of Information Given to Advisory Committee Members in Connection with CDRH Open Public Panel Meetings; Draft Guidance for Industry and FDA Staff	ODE	1341	07/18/01
Information for Keratome Manufacturers Regarding LASIK; Final Guidance for Industry	ODE/DOED/ DSDB	1376	06/21/01
Changes or Modifications During the Conduct of a Clinical Investigation; Final Guidance for Industry and CDRH Staff	ODE	1337	05/29/01
Class II Special Controls Guidance Document: Tissue Culture Media for Human ex vivo Tissue and Cell Culture Processing Applications; Final Guidance for Industry and FDA Reviewers	ODE/DRARD/ GRDB	1325	05/16/01
Class II Special Controls Guidance Document: Pharmacy Compounding Systems; Final Guidance for Industry and FDA	ODE/DAGID/ GHDB	1326	03/12/01
Class II Special Controls Guidance for Home Uterine Activity Monitors; Final Guidance for Industry and FDA Reviewers (PDF Version Only)	ODE/DRARD/ OGDB	820	03/09/01
Premarket Approval Applications (PMA) for Sharps Needle Destruction Devices; Final Guidance for Industry and FDA	ODE/DAGID/ INCB	891	03/02/01
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA); Final Guidance for Industry and for CDRH Staff	ODE	310	02/28/01
Premarket Applications for Digital Mammography Systems; Final Guidance for Industry and FDA	ODE/DRARD	983	02/16/01
Guidance for Annuloplasty Rings 510(k) Submissions; Final Guidance for Industry and FDA Staff	ODE/DCD/ CSPB	1358	01/31/01
Guidance for Industry and FDA Reviewers: Content of Investigational Device Exemptions for Solutions for Hypothermic Flushing, Transport and Storage of Organs for Transplantation	ODE/DRARD/ GRDB	1164	01/16/01
Deciding When To Submit A 510(k) For A Change To An Existing Wireless Telemetry Medical Device: Final Guidance for FDA Reviewers and Industry	ODE	1073	11/30/00
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions; Final Guidance for Industry and FDA	ODE/DCD/ CSPB	1622	11/29/00
Final Guidance for Industry and FDA: Guidance for Extracorporeal Blood Circuit Defoamer - 510(k) Submissions	ODE/DCD/ CSPB	1632	11/29/00
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions; Final Guidance for Industry and FDA Staff	ODE/DCD/ CSPB	1361	11/13/00
Guidance Document for Dura Substitute Devices; Guidance for Industry	ODE/DGRND/ PRSB	1152	11/09/00
Investigational Device Exemption (IDE) Study Enrollment for Cardiac Ablation of Typical Atrial Flutter; Final Guidance for Industry and FDA Reviewers	ODE/DCD/ CEMB	1199	11/08/00
Suggested Format for Developing and Responding to Deficiencies in Accordance with the Least Burdensome Provisions of FDAMA; Final Guidance for Industry and FDA Staff	ODE	1195	11/02/00
Guidance for Industry and FDA Staff: Guidance Document for Vascular Prostheses 510(k) Submissions	ODE/DCD/ PVDB	1357	11/01/00
Guidance for Industry: Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions	ODE/DCD/ PDLB	372	11/01/00
Guidance for Industry and FDA Staff - Class II Special Controls Guidance: Shoulder Joint Metal/ Polymer/Metal Nonconstrained or Semi-Constrained Porous-Coated Uncemented Prosthesis	ODE/DGRND/ ORDB	1193	10/31/00
Guidance for Industry: A Suggested Approach to Resolving Least Burdensome	ODE	1188	09/11/00
Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997	ODE	1135	08/09/00
Guidance for Industry and for FDA Reviewers: Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi	ODE/DRARD/ ULDB	1226	08/09/00
Guidance for Industry: Guidance for the Submission of Premarket Notifications for Photon-Emitting Brachytherapy Sources	ODE/DRARD	1177	08/02/00
Guidance for Industry: Guidance for the Submission Of Premarket Notifications for Medical Image Management Devices	ODE/DRARD	416	07/27/00
Guidance for Industry and FDA Staff: Guidance on Amended Procedures for Advisory Panel Meetings	ODE	413	07/22/00
Guidance for Industry and CDRH Reviewers: 1-Consolidated Annual Report for a Device product line (1-CARD)	ODE/DCD/ PDLB	1167	07/06/00
Guidance for Industry and FDA Reviewers - Class II Special Controls Guidance Document for Clitoral Engorgement Devices	ODE/DRARD/ OGDB	1144	07/03/00
Guidance for Industry and FDA Reviewers: Class II Special Control Guidance Document for Acute Upper Airway Obstruction Devices	ODE/DAGID/ ARDB	1138	07/03/00
Guidance for Industry: Guidance for Premarket Submissions of Orthokeratology Rigid Gas Permeable Contact Lenses	ODE/DOED/ VEDB	1134	04/10/00
Guidance for Manufacturers Seeking Marketing Clearance of Ear, Nose, and Throat Endoscope Sheaths Used as Protective Barriers: Guidance for Industry	ODE/DOED/ ENTB	954	03/12/00
Guidance for Industry and for FDA Staff: Use of Standards in Substantial Equivalence Determinations	ODE	1131	03/12/00
Guidance for Industry and FDA Reviewers - Reprocessing and Reuse of Single-Use Devices	ODE/DAGID	1156	02/08/00
Guidance for Industry and for FDA Reviewers - Guidance Document for Premarket Notification Submissions for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer and Nitrogen Dioxide Analyzer	ODE/DAGID/ ARDB	1157	01/24/00
Guidance for Industry and for FDA Staff: Guidance for the Content of Premarket Notifications for Penile Rigidity Implants	ODE/DRARD/ ULDB	177	01/16/00

Title	Organization	Doc #	Date
Guidance for Industry and/or FDA Staff: Guidance Document for the Preparation of IDEs for Spinal Systems	ODE/DGRND/ORDB	2250	01/13/00
Guidance for Industry and FDA Reviewers: Content and Format of Premarket Notification [510(k)] Submissions for Liquid Chemical Sterilants/High Level Disinfectants	ODE/DAGID/INCB	397	01/03/00
ODE Guidance Documents 1998 - 1999			
Guidance for Industry and FDA Staff: Guidance for Cardiovascular Intravascular Filter 510(k) Submissions	ODE/DCD/PVDB	24	11/26/99
Guidance for Industry, FDA Reviewers and Compliance on Off-The-Shelf Software Use in Medical Devices	ODE	585	09/09/99
Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance: Guidance for the Submission of 510(k)'s for Solid State X-ray Imaging Devices	ODE/DRARD	644	08/06/99
Guidance for Industry, FDA Reviewers/Staff and Compliance - Guidance Document for Powered Muscle Stimulator 510(k)s	ODE/DGRND/REDB	2246	06/09/99
Recommended Clinical Study Design for Ventricular Tachycardia Ablation (PDF Version)	ODE/DCD/CEMB	2244	05/07/99
Guidance for Industry and for FDA Reviewers/Staff - Guidance on 510(k) Submissions for Keratoprostheses	ODE/DOED/ICIB	1351	03/03/99
Guidance for Industry - Guidance for Dermabrasion Devices	ODE/DGRND/PRSB	2248	03/02/99
Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance - Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh	ODE/DGRND/PRSB	2247	03/02/99
Guidance for Industry and FDA Reviewers/Staff: Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization To Chemicals In Natural Rubber Products	ODE/DAGID/INCB	944	01/13/99
Guidance for Industry - Guidance for the Submission of Premarket Notifications for Emission Computed Tomography Devices and Accessories (SPECT and PET) and Nuclear Tomography Systems	ODE/DRARD	2240	12/03/98
Guidance for Industry: Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters	ODE/DRARD/ULDB	2235	11/30/98
Guidance for Industry - Guidance for the Submission of Premarket Notifications For Radionuclide Dose Calibrators	ODE/DRARD	2238	11/20/98
Guidance for Industry: Non-Automated Sphygmomanometer (Blood Pressure Cuff) Guidance - Version 1	ODE/DCD/CEMB	2239	11/19/98
Guidance for Industry and for FDA Reviewers/Staff: Aqueous Shunts - 510(k) Submissions	ODE/DOED/ICIB	2236	11/16/98
Guidance for Industry - Harmonic Imaging with/without Contrast - Premarket Notification Requirements	ODE/DRARD	2234	11/16/98
Guidance for FDA Reviewers and Industry Medical Devices Containing Materials Derived from Animal Sources (Except for In Vitro Diagnostic Devices)	ODE	2206	11/06/98
Guidance for Industry: Guidance for the Submission Of Premarket Notifications for Magnetic Resonance Diagnostic Devices	ODE/DRARD	340	11/14/98
Guidance for Industry: Cardiac Monitor Guidance (including Cardiotachometer and Rate Alarm)	ODE/DCD/PDLB	2233	11/05/98
Guidance for Industry: Diagnostic ECG Guidance (Including Non-Alarming ST Segment Measurement)	ODE/DCD/PDLB	2232	11/05/98
Guidance for Industry: General/Specific Intended Use	ODE	499	11/04/98
Guidance for Industry: Frequently Asked Questions on the New 510(K) Paradigm	ODE	2230	10/22/98
Guidance for Industry - Noise Claims in Hearing Aid Labeling	ODE/DOED	2210	10/21/98
Guidance for Industry: Guidance Document For Nonprescription Sunglasses	ODE/DOED/DSDB	2208	10/09/98
Guidance for Industry and FDA Reviewers/Staff: Guidance Document for Powered Suction Pump 510(k)s	ODE/DGRND/GSDB	2207	09/30/98
Guidance for Industry and FDA Reviewers/Staff - Neonatal and Neonatal Transport Incubators - Premarket Notifications	ODE/DAGID/GHDB	2201	09/18/98
Guidance for Industry and FDA Staff: Dental Cements - Premarket Notification	ODE/DAGID	2204	08/18/98
Guidance for Industry and FDA Staff - OTC Denture Cushions, Pads, Reliners, Repair Kits, and Partially Fabricated Denture Kits	ODE/DAGID	2205	08/18/98
Guidance for Industry and FDA Staff - Dental Impression Materials Premarket Notification	ODE/DAGID	2203	08/17/98
Guidance for Industry and FDA Staff: Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval Applications for Class III Rigid Gas Permeable Contact Lenses for Extended Wear	ODE/DOED/VEDB	1249	08/11/98
Guidance for Industry and CDRH Reviewers: Guidance for the Content of Premarket Notifications for Hemodialysis Delivery Systems	ODE/DRARD/GRDB	2202	08/07/98
Guidance for Industry and CDRH Reviewers: Guidance for the Content of Premarket Notifications for Conventional and High Permeability Hemodialyzers	ODE/DRARD/GRDB	421	08/07/98
Guidance for Industry: Latex Condoms for Men - Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions	ODE/DRARD/OGDB	1250	07/23/98
Guidance for Industry - Uniform Contraceptive Labeling	ODE/DRARD/OGDB	1251	07/23/98
Guidance for Industry, FDA Reviewers/Staff and Compliance: Guidance Document for Surgical Lamp 510(k)s	ODE/DGRND/GSDB	1244	07/13/98
Guidance for Industry: Ophthalmoscope Guidance - (Direct and Indirect)	ODE/DOED/DSDB	1241	07/08/98
Guidance for Industry: Slit Lamp Guidance	ODE/DOED/DSDB	1242	07/08/98

Title	Organization	Doc #	Date
Guidance for Industry: Retinoscope Guidance	ODE/DOED/ DSDB	1240	07/08/98
Guidance Document For Washers And Washer-Disinfectors Intended For Processing Reusable Medical Devices (Text Only)	ODE/DAGID/ INCB	4	06/02/98
Guidance for Industry - Supplements to Approved Applications for Class III Medical Devices: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review (Text Only)	ODE	380	05/20/98
Guidance For Industry - Guidance For The Content Of Premarket Notifications For Esophageal And Tracheal Prostheses	ODE/DGRND/ PRSB	6	04/28/98
The New 510(k) Paradigm - Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications - Final Guidance	ODE	905	03/20/98
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies - for Use by CDRH and Industry	ODE	322	02/19/98
30-Day Notices and 135-Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH	ODE	795	02/19/98
New Section 513(f)(2) - Evaluation of Automatic Class III Designation, Guidance for Industry and CDRH Staff	ODE	199	02/19/98
Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff	ODE	159	02/19/98
Guidance For The Content Of Premarket Notifications For Metal Expandable Biliary Stents	ODE/DRARD/ GRDB	2243	02/05/98
Guidance on IDE Policies and Procedures	ODE	882	01/20/98
Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification; Final (PDF only)	ODE/DOED/ ENTB	930	01/14/98
ODE Guidance Documents 1996 - 1997			
Distribution and Public Availability of Premarket Approval Application Summary of Safety and Effectiveness Data Packages - October 10, 1997 (P97-1) (Text Only)	ODE	563	10/10/97
Notice to Manufacturers of Bone Mineral Densitometers	ODE/DRARD	552	09/25/97
Discussion Points for Expansion of the "Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers" Draft Document	ODE/DOED/ DSDB	7093	09/05/97
Testing for Sensitizing Chemicals in Natural Rubber Latex Medical Devices (Addendum to 944) (PDF Only)	ODE/DAGID/ INCB	1944	07/28/97
ORDB 510(K) Sterility Review Guidance	ODE/DGRND/ ORDB	659	07/03/97
Kit Certification for 510(k)s (Text Only)	ODE	562	07/01/97
Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis	ODE/DRARD/ GRDB	842	05/30/97
Convenience Kits Interim Regulatory Guidance	ODE	562	05/20/97
Premarket Notification 510(k) Guidance for Contact Lens Care Products (PDF Only)	ODE/DOED/ VEDB	674	05/01/97
Non-Invasive Blood Pressure (NIBP) Monitor Guidance (Text Only)	ODE/DCD/ CEMB	123	03/10/97
Reviewers Guidance Checklist For Intramedullary Rods	ODE/DGRND/ ORDB	956	02/21/97
Reviewers Guidance Checklist For Orthopedic External Fixation Devices Version #5	ODE/DGRND/ ORDB	829	02/21/97
510(K) Information Needed for Hydroxyapatite Coated Orthopedic Implants	ODE/DGRND/ ORDB	47	02/20/97
Electrocardiograph (ECG) Electrode (PDF Only)	ODE/DCD/ CEMB	25	02/11/97
Electrocardiograph (ECG) Lead Switching Adapter (PDF Only)	ODE/DCD/ CEMB	26	02/11/97
Electrocardiograph (ECG) Surface Electrode Tester (PDF Only)	ODE/DCD/ CEMB	27	02/11/97
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	ODE/DGRND/ GSDB	593	02/01/97
Third Party Review Guidance For Vitreous Aspiration & Cutting Device Premarket Notification (510(k))	ODE/DOED/ DSDB	2196	01/31/97
Third Party Review Guidance for Phacofragmentation System Device Premarket Notification (510(k)) (PDF Only)	ODE/DOED/ DSDB	2197	01/31/97
Deciding When to Submit a 510(k) for a Change to an Existing Device (K97-1)	ODE	935	01/10/97
Guidance for Submitting Reclassification Petition (PDF Only)	ODE	609	01/01/97
Carotid Stent - Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications (PDF Only)	ODE/DCD/ PVDB	974	10/26/96
Checklist of Information Usually Submitted in an Investigational Device Exemptions (IDE) Application for Refractive Surgery Lasers [excimer]	ODE/DOED/ DSDB	2093	10/10/96
Letter to Manufacturers of Prescription Home Monitors for Non-Stress Tests	ODE/DRARD/ OGDB	1342	09/06/96
Letter to Manufacturers of Falloposcopes	ODE/DRARD/ OGDB	1344	09/05/96
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities (PDF Only)	ODE	1198	09/03/96
Memorandum of Understanding Regarding Patient Labeling Review (Blue Book Memo #G96-3) (Text Only)	ODE	806	08/09/96

Title	Organization	Doc #	Date
Continued Access to Investigational Devices During PMA Preparation and Review July 15, 1996 (Blue Book Memo) (D96-1) (Text Only)	ODE	872	07/15/96
Suggested Format For IDE Progress Report (Text Only)	ODE	311	06/01/96
Guidance for Testing MR Interaction with Aneurysm Clips, Draft Document	ODE/DGRND/PRSB	958	05/22/96
Guidance Document For Testing Bone Anchor Devices	ODE/DGRND/ORDB	915	04/20/96
Guidance Document for Testing Biodegradable Polymer Implant Devices (Text Only)	ODE/DGRND/ORDB	914	04/20/96
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance (PDF Only)	ODE	198	04/01/96
510(k) Quality Review Program (Blue Book Memo I96-1) (Text Only)	ODE	344	03/29/96
Thermal Endometrial Ablation Devices (Submission Guidance for an IDE)	ODE/DRARD/OGDB	547	03/14/96
Hysteroscopes and Gynecologic Laparoscopes - Submission Guidance for a 510(k)	ODE/DRARD/OGDB	907	03/07/96
Suggested Content for Original IDE Application Cover Letter (Text Only)	ODE	797	02/27/96
Indications for Use Statement	ODE	879	02/06/96
ODE Guidance Documents 1994 - 1995			
Guidance On The Content Of Premarket Notification [510(K)] Submissions For Protective Restraints (Text Only)	ODE/DAGID	993	12/01/95
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Devices (blue book memo #K95-1) (Text Only)	ODE	406	11/21/95
Addendum to: Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities (Text Only)	ODE/DAGID	1833	09/19/95
Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement, Att. B Criteria for Catergorization of Investigational Devices, & Att. C -List #D95-2 (blue book memo) (Text Only)	ODE	106	09/15/95
HCFA Reimbursement Categorization Determinations for FDA-approved IDEs (PDF Only)	ODE	4106	09/15/95
#D95-2, Attachment A (Interagency Agreement between FDA & HCFA) (PDF Only)	ODE	2106	09/15/95
#D95-2, Attachment B (Criteria for Categorization of Investigational Devices (HCFA) (PDF Only)	ODE	3106	09/15/95
Hysteroscopic And Laparoscopic Insufflators: Submission Guidance For A 510(K) (Text Only)	ODE/DRARD/OGDB	1907	08/01/95
Guidance Document for the Preparation of Notification (510(k)) Applications for Therapeutic Massagers and Vibrators	ODE/DGRND/REDB	818	07/26/95
Guidance Document For the Preparation of Premarket Notification [510(K)] Applications For Communications Systems (Powered and Non-Powered) and Powered Environmental Control Systems	ODE/DGRND/REDB	762	07/26/95
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Electromyograph Needle Electrodes	ODE/DGRND/GSDB	325	07/26/95
Guidance Document for the Preparation of Premarket Notification [510(K)] Applications for Exercise Equipment	ODE/DGRND/REDB	326	07/26/95
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Heating and Cooling Devices	ODE/DGRND/REDB	828	07/26/95
Guidance Document For the Preparation of Premarket Notification [510(K)] Applications For Immersion Hydrobaths	ODE/DGRND/REDB	729	07/26/95
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Tables and Multifunctional Physical Therapy Tables	ODE/DGRND/REDB	735	07/26/95
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Submerged (Underwater) Exercise Equipment	ODE/DGRND/REDB	307	07/26/95
Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	ODE/DGRND/REDB	346	07/26/95
Goals and Initiatives for the IDE Program #D95-1 (blue book memo) (Text Only)	ODE	405	07/12/95
Draft Reviewer Guidance for Ventilators (PDF Only)	ODE/DAGID/ARDB	500	07/01/95
Testing guidance for Male Condoms Made from New Material (Non-Latex) (Text Only)	ODE/DRARD/OGDB	455	06/29/95
Memorandum: Electromagnetic Compatibility for Medical Devices: Issues and Solutions (PDF Only)	ODE	639	06/13/95
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	ODE/DGRND/GSDB	386	06/01/95
Guidance Document for Testing Non-Articulating, 'Mechanically Locked', Modular Implant Components	ODE/DGRND/ORDB	916	05/01/95
Use of International Standard ISO-10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing' (Replaces #G87-1 #8294) (blue book memo) (Text Only)	ODE	164	05/01/95
Guidance on Premarket Notification [510(K)] Submissions for Short-Term and Long-Term Intravascular Catheters (PDF Only)	ODE/DAGID/GHDB	824	03/15/95
Guidance Document For The Preparation of Premarket Notification For Ceramic Ball Hip Systems	ODE/DGRND/ORDB	355	01/10/95
Coronary and Cerebrovascular Guidewire Guidance (PDF Only)	ODE/DCD/ICDB	964	01/01/95
Checklist for Mechanical Lithotripters and Stone Dislodgers used in Gastroenterology and Urology (PDF Only)	ODE/DRARD/ULDB	98	11/01/94

Title	Organization	Doc #	Date
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments (Text Only)	ODE/DRARD/ ULDB	892	09/19/94
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters (Text Only)	ODE/DRARD/ ULDB	97	09/12/94
Guidance for the Preparation of a Premarket Notification for Extended Laparoscopy Devices (ELD)	ODE/DGRND/ GSDB	667	08/30/94
Guidance For The Content Of Premarket Notifications For Urodynamic/Uroflowmetry Systems (Text Only)	ODE/DRARD/ ULDB	490	07/29/94
Premarket Approval Application (PMA) Closure #P94-2 (blue book memo) (Text Only)	ODE	403	07/08/94
Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	ODE/DOED/ VEDB	896	06/28/94
Guidance for the Content of Premarket Notifications for Urine Drainage Bags (PDF Only)	ODE/DRARD/ ULDB	96	06/07/94
510(k) Sign-Off Procedures #K94-2 (blue book memo) (Text Only)	ODE	308	06/01/94
Letter to Industry, Powered Wheelchair/Scooter or Accessory/Component Manufacturer from Susan Alpert, Ph.D.,M.D. (PDF Only)	ODE	883	05/26/94
510(k) Refuse to Accept Procedures #K94-1 (blue book memo) (Text Only)	ODE	401	05/20/94
IDE Refuse to Accept Procedures #D94-1 (blue book memo) (Text Only)	ODE	410	05/20/94
Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone Or Bone Cement	ODE/DGRND/ ORDB	827	04/28/94
Preamendments Class III Strategy (Text Only)	ODE	611	04/19/94
Draft Reviewer Guidance on Face Masks and Shield for CPR (PDF Only)	ODE/DAGID/ ARDB	996	03/16/94
Premarket Notification [510(k)] Status Request Form	ODE	858	03/07/94
Draft 510(K) Submission Requirements for Peak Flow Meters (PDF Only)	ODE/DAGID/ ARDB	999	01/13/94
Battery Guidance (PDF Only)	ODE/DCD	873	01/01/94
ODE Guidance Documents 1992 - 1993			
Documentation and Resolution of Differences of Opinion on Product Evaluations #G93-1 (blue book memo) (Text Only)	ODE	920	12/23/93
Excerpts Related to EMI from November 1993 Anesthesiology and Respiratory Devices Branch (includes EMI standard) (PDF Only)	ODE/DAGID/ ARDB	638	11/01/93
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	ODE/DAGID/ ARDB	784	10/01/93
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers (PDF Only)	ODE/DAGID/ INCB	895	10/01/93
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities (PDF Only)	ODE/DAGID/ INCB	881	08/01/93
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes (PDF Only)	ODE/DAGID/ INCB	888	08/01/93
510(k) Additional Information Procedures #K93-1 (blue book memo) (Text Only)	ODE	886	07/23/93
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy (PDF Only)	ODE	4859	06/30/93
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy - (updated Checklist 3/14/1995) (PDF Only)	ODE	3859	06/30/93
Classified Convenience Kits (PDF Only)	ODE	789	04/30/93
Draft Emergency Resuscitator Guidance (PDF Only)	ODE/DAGID/ ARDB	985	04/14/93
Guidance on the Content of Premarket Notification [510(K)] Submissions for Hypodermic Single Lumen Needles (Text Only)	ODE/DAGID/ GHDB	450	04/01/93
Guidance on the Content of Premarket Notification [510(K)] Submissions for Piston Syringes (Text Only)	ODE/DAGID/ GHDB	821	04/01/93
Draft Guidance for Preparation of PMA Applications for Testicular Prostheses (Text Only)	ODE/DRARD/ ULDB	809	03/16/93
Guidance on Premarket Notification 510(k) for Sterilizers Intended for Use in Health Care Facilities (PDF Only)	ODE/DAGID	833	03/01/93
Guidance on the Content of Premarket Notification [510(K)] Submissions for Clinical Electronic Thermometers (Text Only)	ODE/DAGID/ GHDB	822	03/01/93
Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	ODE/DGRND/ ORDB	233	02/18/93
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology (Text Only)	ODE/DRARD/ ULDB	482	02/10/93
Guidance for the Content of Premarket Notifications for Ureteral Stents (Text Only)	ODE/DRARD/ ULDB	431	02/10/93
Telephone Communications Between ODE Staff and Manufacturers #I93-1 (blue book memo) (Text Only)	ODE	360	01/29/93
Policy for Expiration Dating (DCRND RB92-G) (PDF Only)	ODE/DCD	137	10/30/92
General Guidance Document: Non-Invasive Pulse Oximeter (PDF Only)	ODE/DAGID/ ARDB	997	09/07/92
Important Information About Rophae Intraocular Lenses (PDF Only)	ODE/DOED/ ICIB	811	08/20/92
Guidance for Peak Flow Meters for Over-the-Counter Sale (PDF Only)	ODE/DAGID/ ARDB	998	06/23/92

Title	Organization	Doc #	Date
SMDA Changes - Premarket Notification; Regulatory Requirements for Medical Devices (510k) Manual Insert (PDF Only)	ODE	655	04/17/92
Preamendment Class III Devices (PDF Only)	ODE	584	03/11/92
Nondisclosure of Financially Sensitive Information #I92-1 (blue book memo) (Text Only)	ODE	587	03/05/92
Document Review Processing #I91-1 (blue book memo) (Text Only)	ODE	446	02/12/92
ODE Guidance Documents 1990 - 1991			
Heated Humidifier Review Guidance (PDF Only)	ODE/DAGID/ ARDB	780	08/30/91
Integrity of Data and Information Submitted to ODE #I91-2 (blue book memo) (Text Only)	ODE	447	05/29/91
Panel Review of Premarket Approval Applications #P91-2 (blue book memo) (Text Only)	ODE	444	05/03/91
PMA Compliance Program #P91-3 (blue book memo) (Text Only)	ODE	445	05/03/91
Shelf Life of Medical Devices (PDF Only)	ODE	415	04/01/91
Device Labeling Guidance #G91-1 (blue book memo) (Text Only)	ODE	414	03/08/91
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices #G90-2 (blue book memo) (Text Only)	ODE	30	10/19/90
Consolidated Review of Submissions for Lasers and Accessories #G90-1 (blue book memo) (Text Only)	ODE	31	10/19/90
Guidance on 510(k) Submissions for Implanted Infusion Ports (PDF Only)	ODE/DAGID/ GHDB	392	10/01/90
Assignment of Review Documents #I90-2 (blue book memo) (Text Only)	ODE	366	08/24/90
Premarket Testing Guidelines for Female Barrier Contraceptive Devices also intended to prevent sexually transmitted diseases (PDF Only)	ODE/DRARD/ OGDB	384	04/04/90
Policy Development and Review Procedures #I90-1 (blue book memo) (Text Only)	ODE	368	02/15/90
Reviewer Guidance for Automatic X-Ray Film Processor 510(k) (PDF Only)	ODE/DRARD	788	02/01/90
Implantable Pacemaker Testing Guidance (PDF Only)	ODE/DCD/ PDLB	383	01/12/90
Guidance on the CDRH Premarket Notification Review Program 6/30/86 (K86-3)	ODE	390	01/01/90
Threshold Assessment of the Impact of Requirements for Submission of PMAs for 31 Medical Devices Marketed Prior to May 28, 1976 (PDF Only)	ODE	352	01/01/90
ODE Guidance Documents 1976 - 1989			
Meetings with the Regulated Industry #I89-3 (blue book Memo)	ODE	367	11/20/89
Toxicology Risk Assessment Committee #G89-1 (blue book memo) (Text Only)	ODE	363	08/09/89
New FDA Recommendations & Results of Contact Lens Study (7 day letter) (PDF Only)	ODE/DOED/ VEDB	265	05/30/89
Review of IDEs for Feasibility Studies #D89-1 (blue book memo) (Text Only)	ODE	362	05/17/89
Premarket Notification - Consistency of Reviews #K89-1 (blue Book memo) (Text Only)	ODE	339	02/28/89
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Non-continuous Ventilator Class II (PDF Only)	ODE/DAGID/ ARDB	583	02/01/89
Balloon Valvuloplasty Guidance For The Submission Of an IDE Application and a PMA Application (Text Only)	ODE/DCD	370	01/01/89
Guidance for Studies for Pain Therapy Devices - General Consideration in the Design of Clinical Studies for Pain-Alleviating Devices	ODE/DGRND/ REDB	640	05/12/88
Review of Laser Submissions #G88-1 (blue book memo) (Text Only)	ODE	330	04/22/88
Limulus Amebocute Lysate; Reduction of Samples for Testing (PDF Only)	ODE	178	10/23/87
ODE Executive Secretary Guidance Manual G87-3	ODE	1338	08/07/87
Master Files Part III; Guidance on Scientific and Technical Information (PDF Only)	ODE	338	06/01/87
Industry Representatives on Scientific Panel (PDF Only)	ODE	329	03/23/87
Panel Report and Recommendations on PMA Approvals #P86-5 (blue book memo) (Text Only)	ODE	306	04/18/86
Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products	ODE	269	06/01/84
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices (PDF Only)	ODE	267	12/01/83
Guidance ('Guidelines') for Evaluation of Hysteroscopic Sterilization Devices	ODE/DRARD/ OGDB	248	05/10/78
Guidance ('Guidelines') for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories) (PDF Only)	ODE/DRARD/ OGDB	232	05/01/78
Guidance ('Guidelines') for Evaluation of Tubal Occlusion Devices (PDF Only)	ODE/DRARD/ OGDB	245	11/22/77
Guidance ('Guidelines') for Evaluation of Fetal Clip Electrode (PDF Only)	ODE/DRARD/ OGDB	244	03/08/77
Guidelines for Evaluation of Non-Drug IUDs	ODE/DRARD/ OGDB	641	09/26/76
Review Guidance for Oxygen Generators and Oxygen Equipment (PDF Only)	ODE/DAGID/ ARDB	986	
OIVD Guidance Documents			
Guidance for Industry and FDA Staff - In Vitro Diagnostic 2009 H1N1 Tests for Use in the 2009 H1N1 Emergency	OIVD	1706	11/06/09
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Cardiac Allograft Gene Expression Profiling Test Systems	OIVD/DCTD	1686	10/21/09
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Assays	OIVD/DMD	1672	10/09/09
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays	OIVD/DMD	1673	10/09/09
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay	OIVD/DMD	1669	10/09/09

Title	Organization	Doc #	Date
Draft Guidance for Industry and FDA Staff - Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Human Papillomaviruses	OIVD/DMD	1699	09/09/09
Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems	OIVD/DMD	631	08/28/09
Recommendations for Anti-Nuclear Antibody (ANA) Test System Premarket (510(k)) Submissions	OIVD/DIHD	848	01/22/09
Assay Migration Studies for In Vitro Diagnostic Devices	CBER CDRH/ OIVD	1660	01/05/09
Class II Special Controls Guidance Document: Nucleic Acid Amplification Assay for the Detection of Enterovirus RNA	OIVD/DMD	1665	01/02/09
Class II Special Controls Guidance Document: Plasmodium Species Antigen Detection Assays	OIVD/DMD	1646	05/20/08
Guidance for Industry and FDA Staff: Administrative Procedures for CLIA Categorization	OIVD	1143	05/07/08
Establishing Performance Characteristics of In Vitro Diagnostic Devices for Detection or Detection and Differentiation of Influenza Viruses	OIVD/DMD	1638	02/12/08
Recommendations: Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices	OIVD	1171	01/30/08
The Review and Inspection of Premarket Approval Application Manufacturing Information and Operations	OIVD OC	1566	01/08/08
Draft Guidance for Industry and FDA Staff - In Vitro Diagnostic (IVD) Device Studies—Frequently Asked Questions	CBER CDRH/ OIVD	1587	10/25/07
Guidance for Industry and FDA Staff - Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions	CBER CDRH/ OIVD	1590	09/14/07
Guidance for Industry and FDA Staff - Review Criteria for Assessment of Qualitative Fecal Occult Blood In Vitro Diagnostic Devices	OIVD/DIHD	772	08/08/07
Draft Guidance for Industry, Clinical Laboratories, and FDA Staff - In Vitro Diagnostic Multivariate Index Assays	CBER CDRH/ OIVD	1610	07/26/07
Guidance on Pharmacogenetic Tests and Genetic Tests for Heritable Markers	CBER CDER CDRH	1549	02/09/06
Guidance for Industry and FDA Staff - Assayed and Unassayed Quality Control Material	OIVD	2231	06/07/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Gene Expression Profiling Test System for Breast Cancer Prognosis	OIVD/DIHD	1627	05/09/07
In Vitro Diagnostic Devices to Detect Influenza A Viruses: Labeling and Regulatory Path - Guidance for Industry and FDA Staff	OIVD/DMD	1594	05/01/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Herpes Simplex Virus Types 1 and 2 Serological Assays	OIVD/DMD	1305	04/03/07
Statistical Guidance on Reporting Results from Studies Evaluating Diagnostic Tests	OSB/DB	1620	03/13/07
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Quality Control Material for Cystic Fibrosis Nucleic Acid Assays	OIVD/DIHD	1614	01/10/07
Draft Guidance for Industry and FDA Staff - Total Product Life Cycle for Portable Invasive Blood Glucose Monitoring Systems	OIVD/DCTD	1603	10/24/06
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems	OIVD/DIHD	1599	07/27/06
Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable	CBER CDRH	1588	04/25/06
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses	OIVD/DMD	1596	03/22/06
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Hepatitis A Virus Serological Assays	OIVD/DMD	1536	02/09/06
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: CFTR Gene Mutation Detection Systems	OIVD/DIHD	1564	10/26/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: AFP-L3 Immunological Test Systems	OIVD/DIHD	1570	10/04/05
Guidance for Industry - Review Criteria for Assessment of C Reactive Protein (CRP), High Sensitivity C-Reactive Protein (hsCRP) and Cardiac C-Reactive Protein (cCRP) Assays	OIVD/DCTD	1246	09/22/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: RNA Preanalytical Systems (RNA Collection, Stabilization and Purification Systems for RT-PCR used in Molecular Diagnostic Testing)	OIVD/DIHD	1563	08/25/05
Guidance for Industry and FDA Staff: Format for Traditional and Abbreviated 510(k)s	OIVD ODE	1567	08/12/05
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices	CBER CDRH/ ODE CDRH/ OIVD	337	05/11/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Automated Fluorescence in situ Hybridization (FISH) Enumeration Systems	OIVD/DIHD	1550	03/23/05
Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems - Guidance for Industry and FDA Staff	OIVD/DCTD	1546	03/10/05
Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System - Guidance for Industry and FDA Staff	OIVD/DCTD	1551	03/10/05
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Newborn Screening Test Systems for Amino Acids, Free Carnitine, and Acylcarnitines Using Tandem Mass Spectrometry	OIVD/DCTD	1301	11/24/04
Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Sirolimus Test Systems	OIVD/DCTD	1300	09/30/04
Guidance for Third Parties and FDA Staff; Third Party Review of Premarket Notifications	OIVD ODE	2237	09/28/04

Title	Organization	Doc #	Date
Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan	OIVD/DMD	1825	09/23/04
Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System - Guidance for Industry and FDA Staff	OIVD/DIHD	1531	05/11/04
Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems - Guidance for Industry and FDA Staff	OIVD/DIHD	1236	03/16/04
Guidance for Industry and FDA Staff; Replacement Reagent and Instrument Family Policy	OIVD	950	12/11/03
Premarket Submissions and Labeling Recommendations for Drugs of Abuse Screening Tests - Draft Guidance for Industry and FDA Staff	OIVD/DCTD	152	12/02/03
Class II Special Controls Guidance Document: Endotoxin Assay - Guidance for Industry and FDA Staff	OIVD/DMD	1222	10/31/03
Class II Special Controls Guidance Document: Serological Reagents for the Laboratory Diagnosis of West Nile Virus - Guidance for Industry and FDA Staff	OIVD/DMD	1206	10/30/03
Class II Special Controls Guidance Document: Breath Nitric Oxide Test System - Guidance for Industry and FDA Staff	OIVD/DCTD	1211	07/07/03
510(k) Submissions for Coagulation Instruments - Guidance for Industry and FDA Staff	OIVD/DIHD	1223	06/19/03
Premarket Approval Application Filing Review	CBER CDRH/ ODE CDRH/ OIVD	297	05/01/03
Determination of Intended Use for 510(k) Devices; Guidance for CDRH Staff (Update to K98-1)	OIVD ODE	857	12/03/02
Class II Special Controls Guidance Document: Cyclosporine and Tacrolimus Assays; Guidance for Industry and FDA	OIVD/DCTD	1380	09/16/02
Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA	OIVD/DIHD	1184	12/04/01
Radioallergosorbent Test (RAST) Methods for Allergen-Specific Immunoglobulin E (IgE) 510(k)s; Final Guidance for Industry and FDA	OIVD/DIHD	800	08/22/01
Class II Special Control Guidance Document for B-Type Natriuretic Peptide Premarket Notifications; Final Guidance for Industry and FDA Reviewers; Final Guidance for Industry and FDA Reviewers; Final Guidance for Industry and FDA Reviewers	OIVD/DCTD	1072	11/30/00
Class II Special Control Guidance Document for Anti-Saccharomyces cerevisiae (S. cerevisiae) Antibody (ASCA) Premarket Notifications - Guidance for Industry and FDA Reviewers	OIVD/DIHD	1183	08/23/00
Guidance for Over-the-Counter (OTC) Human Chorionic Gonadotropin (hCG) 510(k)s - Guidance for Industry and FDA Reviewers/Staff	OIVD/DCTD	1172	07/22/00
Guidance for Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing (PDF Only)	OIVD/DCTD	1359	12/21/99
Guidance on Labeling for Laboratory Tests - Draft Guidance for Industry and for FDA Reviewers/ Staff	OIVD	1352	06/24/99
Document for Special Controls for Erythropoietin Assay Premarket Notifications [510(k)s]; Final Guidance for Industry	OIVD/DIHD	2241	04/28/99
In Vitro Diagnostic Fibrin Monomer Paracoagulation Test; Final Guidance for Industry and FDA Reviewers/Staff	OIVD/DIHD	2242	04/27/99
Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators; Final Guidance for Industry	OIVD	1247	02/22/99
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System; Final Guidance for Industry	OIVD/DCTD	1102	07/06/98
In Vitro Diagnostic Chloride Test System; Final Guidance for Industry	OIVD/DCTD	1103	07/06/98
In Vitro Diagnostic Potassium Test System; Final Guidance for Industry	OIVD/DCTD	1107	07/06/98
In Vitro Diagnostic Sodium Test System; Final Guidance for Industry	OIVD/DCTD	1109	07/06/98
In Vitro Diagnostic Urea Nitrogen Test System; Final Guidance for Industry	OIVD/DCTD	1110	07/06/98
In Vitro Diagnostic Glucose Test System; Final Guidance for Industry	OIVD/DCTD	1105	07/06/98
In Vitro Diagnostic Creatinine Test System; Final Guidance for Industry	OIVD/DCTD	1104	07/06/98
Guidance for Submission of Immunohistochemistry Applications to the FDA; Final Guidance for Industry	OIVD/DIHD	364	06/03/98
Review Criteria For Assessment Of Rheumatoid Factor (Rf) In Vitro Diagnostic Devices Using Enzyme-Linked Immunoassay (Eia), Enzyme Linked Immunosorbent Assay (Elisa), Particle Agglutination Tests, And Laser And Rate Nephelometry	OIVD/DIHD	165	02/21/97
Review Criteria for Assessment of Professional Use Human Chorionic Gonadotropin (hCG) In Vitro Diagnostic Devices (IVDs)	OIVD/DCTD	1345	11/06/96
Review Criteria for Assessment of Antimicrobial Susceptibility Test Discs (PDF Only)	OIVD/DMD	1631	10/30/96
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA	OIVD/DIHD	957	09/19/96
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery (PDF Only)	OIVD/DCTD	122	02/20/96
Review Criteria for In Vitro Diagnostic Devices that Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and Somatic)	OIVD/DIHD	980	02/15/96
Review Criteria Assessment of Portable Blood Glucose Monitoring In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase or Hexokinase Methodology	OIVD/DCTD	604	02/28/97
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter dated 3/14/1996 (PDF Only)	OIVD	553	03/14/96
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory and Home Use	OIVD/DCTD	605	07/13/95
Points to Consider for Collection of Data in Support of In-Vitro Device Submissions for 510(k) Clearance (PDF Only)	OIVD	95	09/26/94
Points to Consider for Cervical Cytology Devices (PDF Only)	OIVD/DIHD	968	07/25/94
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) in vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies (PDF Only)	OIVD/DIHD	459	07/15/94

Title	Organization	Doc #	Date
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies using Indirect Immunofluorescence Assay (IFA), Indirect Hemagglutination Assay (IHA), Radioimmunoasay (RIA), and Enzyme Linked Immunosorbent Assay (ELISA)	OIVD/DIHD	51	02/01/94
Guideline for the Manufacture of In Vitro Diagnostic Products (PDF only)	OIVD	918	01/10/94
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. [Tuberculosis (TB)] (PDF Only)	OIVD/DMD	862	07/06/93
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter pylori (PDF Only)	OIVD/DMD	588	09/17/92
Draft Guidance Document for 510(k) Submission of Immunoglobulins A,G,M,D and E Immunoglobulin System In Vitro Devices (PDF Only)	OIVD/DIHD	785	09/01/92
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents (PDF Only)	OIVD/DIHD	527	08/01/92
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19 (PDF Only)	OIVD/DMD	770	05/15/92
Review Criteria for Devices Intended for the Detection of Hepatitis B 'e' Antigen and Antibody to HBe (PDF Only)	OIVD/DMD	554	12/30/91
Review Criteria for Assessment of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin In Vitro Diagnostic Devices (Text Only)	OIVD/DIHD	658	09/30/91
Draft Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies (PDF Only)	OIVD/DIHD	475	09/26/91
Review Criteria for Blood Culture Systems (PDF Only)	OIVD/DIHD	82	08/12/91
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers (Text Only)	OIVD/DIHD	417	07/15/91
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases (PDF Only)	OIVD/DMD	629	05/31/90
Assessing the Safety and Effectiveness of Home-Use In Vitro Diagnostic Devices (IVDs): Draft Points to Consider Regarding Labeling and Premarket Submissions (Text Only)	OIVD	272	10/05/88
Office of Surveillance and Biometrics Guidance Documents			
Draft Guidance for Industry, User Facilities and FDA Staff: eMDR - Electronic Medical Device Reporting	OSB/DPS	1679	08/21/09
Procedures for Handling Post-Approval Studies Imposed by PMA Order	OSB/DPS	1561	06/16/09
Statistical Guidance on Reporting Results from Studies Evaluating Diagnostic Tests	OSB/DB	1620	03/13/07
Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials	OSB/DB	1601	02/05/10
Postmarket Surveillance Under Section 522 of the Federal Food, Drug and Cosmetic Act	OSB	316	04/26/06
Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment	OSB/DPS OCER/DHC	1537	03/10/06
Needlesticks - Medical Device Reporting Guidance for User Facilities, Manufacturers, and Importers	OSB/DSS/ RSMB	250	11/12/02
Medical Device Reporting - Remedial Action Exemption; Guidance for FDA and Industry	OSB/DSS/ RSMB	188	09/26/01
Hospital Reprocessors: Guidance on Adverse Event Reporting for Hospitals that Reprocess Devices Intended by the Original Equipment Manufacturer for Single Use	OSB/DSS/ RSMB	1334	04/24/01
MEDWATCH Medical Device Reporting Code Instructions	OSB/DSS	853	04/04/01
Medical Device Reporting - Alternative Summary Reporting (ASR) Program	OSB/DSS/ RSMB	315	10/19/00
Guidance for Industry and for FDA Reviewers/Staff - Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements	OSB/DPS	946	02/02/00
SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols	OSB/DPS	318	11/02/98
Instructions for Completing Form 3417 - Medical Device Reporting Baseline Report	OSB/DSS	1061	07/01/96
Variance from Manufacturer Report Number Format - No. 5	OSB/DSS		08/12/96
MDR Guidance Document No. 1 - IOL - E1996004	OSB/DSS	216	08/06/96
Variance from Manufacturer Report Number Format [MDR letter]	OSB/DSS	1059	07/16/96
Medical Device Reporting: An Overview	OSB/DSS	509	04/01/96
Statistical Guidance for Clinical Trials of Non Diagnostic Medical Devices	OSB	476	01/01/96
MedWatch: The FDA Safety Information and Adverse Event Reporting Program -			01/01/09
Common Problems: Baseline Reports and MedWatch Form 3500A (letter to manufacturers updated) (PDF version)	OSB/DSS	379	
Perspectives on Clinical Studies for Medical Device Submissions (PDF Only)	OSB	78	
PMA Review Statistical Checklist (PDF Only)	OSB	84	
Office of Science and Engineering Laboratories Guidance Documents			
Draft Guidance for Industry and FDA Staff: Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data - Premarket Approval (PMA) and Premarket Notification [510(k)] Submissions	OSEL/DIAM	1698	10/21/09
Draft Guidance for Industry and FDA Staff: Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data - Premarket Notification [510(k)] Submissions	OSEL/DRARD/ RDB	1697	10/21/09
Guidance for Industry and FDA Staff - Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	OSEL ODE/ DRARD	560	09/09/08
Establishing Safety and Compatibility of Passive Implants in the Magnetic Resonance (MR) Environment	OSEL	1685	08/21/08
Guidance for Industry and FDA Staff - Class II Special Controls Guidance Document: Bone Sonometers	OSEL ODE/ DRARD	1547	07/17/08

Title	Organization	Doc #	Date
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Full Field Digital Mammography System	OSEL ODE/ DRARD	1616	05/30/08
Guidance for Industry and FDA Staff: Display Accessories for Full-Field Digital Mammography Systems-Premarket Notification (510(k)) Submissions	OSEL ODE/ DRARD	1617	05/30/08
CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standards for Recognition	OSEL	616	09/17/07
Frequently Asked Questions on Recognition of Consensus Standards	OSEL	109	09/17/07
Guidance for Industry and FDA Staff - Recognition and Use of Consensus Standards	OSEL	321	09/17/07
Radio-Frequency Wireless Technology in Medical Devices	OSEL/DPS/ EPB	1618	01/03/07
Dental Curing Lights - Premarket Notification [510(k)]	OSEL/DPS ODE/DAGID/ DEDB	1591	03/27/06
Immunotoxicity Testing Guidance	OSEL	635	05/06/99
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem	OSEL/DECS	2000	05/15/98
A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems	OSEL	952	02/07/97

V. Center for Food Safety and Applied Nutrition (CFSAN)

For information on a specific guidance document or to obtain a paper copy, call the contact number located on the title page of the guidance. You may access electronic versions of CFSAN's guidance documents at *http://www.fda.gov/FoodGuidances*, *http://www.fda.gov/CosmeticGuidances*, and *http://www.fda.gov/ColorAdditiveGuidances*.

The following is a list of CFSAN guidance documents that have been withdrawn:

Title of Document	Date of Issuance	Date of Withdrawal
Release of Task Force Report; Guidance for Industry and FDA: Interim Evidence-Based Ranking System for Scientific Data; Withdrawal of Guidance	July 10, 2003	January 16, 2009
Guidance for Industry; Importer's Guide for Low-Acid Canned and Acidified Food	1985	May 29, 2009
Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements; Withdrawal of Guidance	December 22, 1999	January 16, 2009
Guidance for Industry on the Food and Drug Administration Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues; Withdrawal of Guidance	January 22, 2001	April 25, 2008

The following is a list of current CFSAN guidance documents as of May 13, 2010:

Biotechnology Safety Assessments

- Statement of Policy & Guidance to Industry: Foods Derived from New Plant Varieties (57 FR 22984, May 29, 1992)
- Consultation Procedures under FDA's 1992 Statement of Policy: Foods Derived from New Plant Varieties (October 1997)
- Draft Guidance: Use of Antibiotic Resistance Marker Genes in Transgenic Plants (September 1998)
- Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use (June 2006)

Chemical Contaminants and Pesticides

- Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed (2000)

Chemical Contaminants

- **Arsenic:** Bottled Water: Arsenic Small Entity Compliance Guide (April 2009)
- **Disinfectants:** Bottled Water: Residual Disinfectants and Disinfection Byproducts Small Entity Compliance Guide (May 2009)
- **Lead:** 1991 Letter to Bureau of Alcohol, Tobacco and Firearms Regarding Lead in Wine (March 2007)
- **Lead:** Lead in Candy Likely To Be Consumed Frequently by Small Children: Recommended Maximum Level and Enforcement Policy (November 2006)
- **Lead:** Letter to Manufacturers, Importers, and Distributors of Imported Candy and Candy Wrappers (June 13, 1995)
- **Uranium:** Bottled Water: Uranium Small Entity Compliance Guide (April 2009)

Pesticides

- **Pesticide Chemicals:** Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations (May 2005)
- **Methyl Parathion:** Channels of Trade Policy for Commodities with Methyl Parathion Residues (December 2000)
- **Vinclozolin:** Channels of Trade Policy for Commodities with Vinclozolin Residues (June 12, 2002)

Also see Natural Toxins

- Fumonisin Levels in Human Foods and Animal Feeds (November 9, 2001)

Dietary Supplements

- Liquid Dietary Supplements: Factors that Distinguish Liquid Dietary Supplements from Beverages, Considerations Regarding Novel Ingredients, and Labeling for Beverages and Other Conventional Foods (December 2009)

- Labeling: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (December 2007; Revised December 2008 and September 2009)
- A Dietary Supplement Labeling Guide (April 2005)
- Ephedrine Alkaloids: Final Rule Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk (July 17, 2008)
- Label Warning Statements: Iron-Containing Supplements and Drugs: Label Warning Statements: Small Entity Compliance Guide (October 17, 2003)
- Labeling: Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements Small Entity Compliance Guide (January 1999)
- Nutrient Content Claims: Food Labeling; Nutrient Content Claims; Definition for "High Potency" and Definition for "Antioxidant" for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods Small Entity Compliance Guide (July 2008)
- Structure/Function Claims: Small Entity Compliance Guide (January 9, 2002)
- Substantiation for Claims: Substantiation for Dietary Supplement Claims Made Under Section 403(r) (6) of the Federal Food, Drug, and Cosmetic Act (November 2004)

Health Claims

- Evidence-Based Review System for the Scientific Evaluation of Health Claims (January 2009)
- Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (June 1998)

Qualified Health Claims

- Interim Procedures for Qualified Health Claims in the Labeling of Conventional Human Food and Human Dietary Supplements (July 10, 2003)

Adverse Events Reporting

- Adverse Event Reporting and Recordkeeping: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (June 2009)

Food Defense and Emergency Response

Emergency Response

- Guidance for Industry: Use of Water by Food Manufacturers in Areas Subject to a Boil-Water Advisory (May 2010)

Prior Notice of Food Imports

- Compliance Policy Guide - Guidance for FDA and CBP Staff: Prior Notice of Imported Food (May 2009)
- Entry Types and Entry Identifiers - Prior Notice of Imported Food (April 7, 2005)
- Prior Notice of Imported Food Contingency Plan for System Outages (August 12, 2004)
- Prior Notice of Imported Food Questions and Answers (Edition 2) (May 3, 2004)
- What You Need to Know About Prior Notice of Imported Food Shipments (November 25, 2003; Revised April 2009)
- Prior Notice of Imported Food: Harmonized Tariff Schedule Codes Flagged with Prior Notice Indicators (August 26, 2004)

Registration of Food Facilities

- Questions and Answers Regarding Registration of Food Facilities (Edition 4) (August 6, 2004)
- Compliance Policy Guide - Guidance for FDA Staff: Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (December 2003; Revised November 2004 and August 2006)
- Necessity of the Use of Food Product Categories in Registration of Food Facilities (July 17, 2003)
- What You Need to Know About Registration of Food Facilities (November 25, 2003)

Establishment and Maintenance of Records

- Questions and Answers Regarding Establishment and Maintenance of Records (Edition 4) (September 21, 2006)
- Guidance for Records Access Authority Provided in Title III, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (November 2005)
- What You Need to Know About Establishment and Maintenance of Records (December 2004)

Administrative Detention

- What You Need to Know About Administrative Detention of Foods (November 2004)

Food and Cosmetic Security Preventive Measures Guidance

- Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance (October 2007)
- Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance (October 2007)
- Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations and Fluid Milk Processors Food Security Preventive Measures Guidance (October 2007)
- Importers and Filers: Food Security Preventive Measures Guidance (October 2007)
- Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance (October 2007)

ALERT

- Letter to Industry, State and Local Food Regulators and Inspectors Regarding Web-based ALERT Training (February 22, 2007)

Food Ingredients and Packaging

Petition Process for Food and Color Additives

- Electronic Submissions
  - Regulatory Submissions: Providing Regulatory Submissions in Electronic Format or Paper Format to the Office of Food Additive Safety (Draft Guidance, March 2010).
  - Providing Regulatory Submissions in Electronic Format—General Considerations (Agency) (Draft Guidance, October 2003)
  - Providing Food and Color Additive Petitions in Electronic Format (Draft, July 2001)
  - Submission Form - FDA Form 3503 (PDF - 256KB)
- Preparing Petitions
  - Pre-Petition Consultations for Food Additives and Color Additives for the Preparation of Petition Submissions (April 2005)
  - Questions And Answers About the Food Additive Petition Process (September 2003; Revised April 2006)
- Food Additives
  - Guidance for Food Additive Petition Expedited Review (January 1999)

Preparation of Notifications for Food Contact Substances (Food Contact Notifications (FCN))

- Preparation of Food Contact Notifications: Administrative (June 2000; Revised May 2002)
  - FDA Form 3480 - Notification for New Use of a Food Contact Substance (PDF - 1031KB)
  - FDA Form 3479 - Notifications for Food Contact Formulation (PDF-583KB)

Threshold of Regulation (TOR) Guidance

- Guidance for Submitting Requests under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Contact Articles (March 1996; Revised April 2005)

GRAS Notices

- Frequently Asked Questions about GRAS (December 2004)

Scientific Guidance Documents

Chemistry Guidance Documents

- Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations (April 2002; Revised December 2007)
- Use of Recycled Plastics in Food Packaging: Chemistry Considerations (August 2006)
- Recommendations for Submission of Chemical and Technological Data for Direct Food Additive Petitions (March 2006; Revised March 2009)
- Estimating Dietary Intake of Substances in Food (September 1995; Revised August 2006)
- Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions, January 1993.

Microbiology

- Guidance for Antimicrobial Food Additives (July 1999)
- Microbiological Considerations for Antimicrobial Food Additive Submissions (June 2008)

Toxicology Guidance Documents

- Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations (September 1999; April 2002)
- Summary Table of Recommended Toxicological Testing for Additives Used in Food (1983; Revised June 2006)
- Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food
  - Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I), U.S. Food and Drug Administration, Bureau of Foods (now CFSAN), 1982. May be purchased from: National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 605-6000, NTIS Order Number PB83-170696.
  - Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives: 1993 Draft Redbook II. Sections of Draft Redbook II not yet finalized in Redbook 2000 are available.
  - Toxicological Principles for the Safety Assessment of Food Ingredients: Redbook 2000 (July 7, 2000; Revised October 2001, November 2003, April 2004, February 2006, and July 2007)
    (Redbook 2000 chapters now substitute for or supplement guidance available in the 1982 Redbook I and in the 1993 Draft Redbook II, which can be obtained from the Office of Food Additive Safety. Additional chapters of Redbook 2000 will become available electronically upon their completion.)
- Templates for reporting toxicology data (March 2004; April 2005)

Environmental Guidance Documents

- Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition (May 2006)

When testing is necessary, consult the Environmental Assessment Technical Assistance Handbook for testing guidelines.

- Environmental Assessment Technical Assistance Handbook (September 2003; Revised May 2006)

Please contact the Environmental Review Group at *Premarkt@fda.hhs.gov* for assistance in preparing a claim of categorical exclusion or an EA and before doing environmental fate and effects testing.

Color Additives Guidance Documents

- Guidance for Industry: Color Additive Petitions - FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs, Cosmetics, or Medical Devices (January 1997; Revised July 2009)
- Guidance for Industry: Preparing a Color Additive Petition for Submission to the Center for Food Safety and Applied Nutrition for Color Additives Used in or on Contact Lenses (May 2006)

Food Labeling & Nutrition

General

- A Food Labeling Guide (April 2008)
- Retail Labeling: A Labeling Guide for Restaurants and Other Retail Establishments Selling Away-From-Home Foods (April 2008)
- Food Labeling: *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Small Entity Compliance Guide (August 20, 2003)
- Guidelines for Determining Metric Equivalents of Household Measures (October 1, 1993)
- Food Allergens: Questions and Answers Regarding Food Allergens, including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 4) (October 2006)
- Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers (June 10, 1996)
- Guidance for Industry: Ingredients Declared as Evaporated Cane Juice; Draft Guidance (October 2009)

Nutrition Labeling

- Small Business Nutrition Labeling Exemption (October 1, 2004; Updated May 7, 2007)
- FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases (March 1998)

Label Claims

- Letter Regarding Point of Purchase Food Labeling (October 2009)
- Dear Manufacturer Letter Regarding Front-of-Package Symbols (December 2008)
- Dear Manufacturer Letter Regarding Food Labeling (January 2007)
- Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (July 1998)
- Structure/Function Claims: Small Entity Compliance Guide (January 9, 2002)
- Nutrient Content Claims: Dear Manufacturer Letter Regarding Sugar Free Claims (September 2007)
- Nutrient Content Definitions: Food Labeling; Nutrient Content Claims; Definition for "High Potency" and Definition for "Antioxidant" for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods Small Entity Compliance Guide (July 2008)

Health Claims

- Interim Procedures for Qualified Health Claims in the Labeling of Conventional Human Food and Human Dietary Supplements (July 10, 2003)
- FDA's Implementation of "Qualified Health Claims": Questions and Answers (May 12, 2006)
- Evidence-Based Review System for the Scientific Evaluation of Health Claims (January 2009)
- Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements (December 1999)
- Food Labeling: Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis (May 2009)

Specific Products

- Beer: Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration; Draft Guidance (August 2009)
- Juice: Exemptions from the Warning Label Requirement for Juice - Recommendations for Effectively Achieving a 5-Log Pathogen Reduction (October 7, 2002)
- Milk: Interim Guidance on the Voluntary Labeling of Milk and Milk Products that have not been treated with Recombinant Bovine Somatropin (59 FR 6279, February 10, 1994)

- Shell Eggs: Food Labeling - Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution Small Entity Compliance Guide (July 2001)
- Soy Lecithin: Guidance on the Labeling of Certain Uses of Lecithin Derived from Soy Under Section 403(w) of the Federal Food, Drug, and Cosmetic Act (April 2006)
- White Chocolate: Standard of Identity for White Chocolate; Small Entity Compliance Guide (July 17, 2008)
- Whole Grain: Draft Guidance: Whole Grain Label Statements (February 2006)
- Biotechnology: Draft Guidance: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering (January 2001)
- Irradiation: Implementation of Section 10809 of the Farm Security and Investment Act of 2002, Pub. L. No. 107-171, § 10809 (2002) regarding the Petition Process to Request Approval of Labeling for Foods that Have Been Treated by Irradiation. (October 2002)
- Label Warning Statements: Iron-Containing Supplements and Drugs: Label Warning Statements: Small Entity Compliance Guide (October 17, 2003)
- Refrigeration: Guidance on Labeling of Foods that Need Refrigeration by Consumers (62 FR 8248, February 24, 1997)
- Serving Size: Food Labeling - Serving Sizes Reference Amount for Baking Powder, Baking Soda, Pectin; Small Entity Compliance Guide (July 2001)

Color Additive Guidance

- Guidance for Industry: Cochineal Extract and Carmine: Declaration by Name on the Label of All Foods and Cosmetic Products That Contain These Color Additives; Small Entity Compliance Guide (April 2009)

Food Processing & HACCP

- Food Processing: Control of *Listeria monocytogenes* in Refrigerated or Frozen Ready-To-Eat Foods (February 2008)
- Juice
  - Juice HACCP Hazards and Control Guidance - First Edition (March 3, 2004)
  - Juice HACCP Small Entity Compliance Guide (April 4, 2003)
  - Standardized Training Curriculum for Application of HACCP Principles to Juice Processing (June 2003)
- Seafood
  - Fish and Fisheries Products Hazards and Control Guide 3rd Edition (June 2001)
  - Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products (July 2001)
  - Seafood HACCP Transition Policy (December 1999)

Food Safety

- Guidance for Industry: Sanitary Transportation of Food (April 2010)
- Guidance for Industry: Submitting a Report for Multiple Facilities to the Reportable Food Electronic Portal as Established by the Food and Drug Administration Amendments Act of 2007 March 2010
- Guidance for Industry Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007 June 2009; Revised September 2009

Imports & Exports

- Establishing and Maintaining a List of U. S. Dairy Product Manufacturers/Processors with Interest in Exporting to Chile (June 22, 2005)
- Importers and Filers: Food Security Preventive Measures Guidance (October 2007)
- Draft Guidance: Regulatory Procedures Manual Chapter 9, Subchapter: Guidance Concerning Recommending Customs' Seizure and Destruction of Imported Human and Animal Food That Has Not Been Reconditioned (November 5, 2002)
- Letter to Manufacturers, Importers, and Distributors of Imported Candy and Candy Wrappers (June 13, 1995)

Prior Notice of Imported Foods

- Prior Notice of Imported Food Questions and Answers (Edition 2) (May 3, 2004)
- What You Need to Know About Prior Notice of Imported Food Shipments (November 25, 2003; Revised April 2009)

Infant Formula

Frequently Asked Questions about FDA's Regulation of Infant Formula (March 1, 2006)
Clinical Testing of Infant Formulas With Respect to Nutritional Suitability for Term Infants June 1988
Guidelines Concerning Notification and Testing of Infant Formulas 1985

Juice

- Refrigerated Carrot Juice and Other Refrigerated Low-Acid Juices (June 2007)
- Letter to State Regulatory Agencies and Firms That Produce Treated (but not Pasteurized) and Untreated Juice and Cider (September 22, 2005)
- Recommendations to Processors of Apple Juice or Cider on the Use of Ozone for Pathogen Reduction Purposes (November 2004)
- Juice HACCP Hazards and Control Guidance - First Edition (March 3, 2004)
- The Juice HACCP Regulation: Questions and Answers (September 4, 2003)
- Standardized Training Curriculum for Application of HACCP Principles to Juice Processing (June 2003)
- Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices (April 24, 2003)
- Juice HACCP Small Entity Compliance Guide (April 4, 2003)
- Exemptions from the Warning Label Requirement for Juice - Recommendations for Effectively Achieving a 5-Log Pathogen Reduction (October 7, 2002)
- The Juice HACCP Regulation: Questions & Answers (August 31, 2001)

Medical Foods

- Frequently Asked Questions About Medical Foods (May 1997; Revised May 2007)

Natural Toxins

- Letter to State Agricultural Directors, State Feed Control Officials, and Food, Feed, and Grain Trade Organizations (September 16, 1993)
- Fumonisin Levels in Human Foods and Animal Feeds (November 2001)

Related Guidance

- CPG Sec.510.150 Apple Juice, Apple Juice Concentrates, and Apple Juice Products - Adulteration with Patulin*http://edocket.access.gpo.gov/2010/pdf/2010-12638.pdf*
  October 2001; Updated November 2005

Produce and Plant Products Guidance for Industry

Produce

- Guide to Minimize Microbial Food Safety Hazards of Tomatoes (July 2009)
- Guide to Minimize Microbial Food Safety Hazards of Melons (July 2009)
- Guide to Minimize Microbial Food Safety Hazards of Leafy Greens (July 2009)
- Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables (October 26, 1998)
  (Also available in French, Spanish, Portuguese and Arabic*)

- Final Guidance: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables (February 2008)
- Reducing Microbial Food Safety Hazards For Sprouted Seeds (October 1999)
- Sampling And Microbial Testing Of Spent Irrigation Water During Sprout Production (October 1999)

Nuts

- Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Pistachio-Derived Product As An Ingredient (June 2009)
- Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Peanut-Derived Product as an Ingredient (March 2009)

Retail Food Protection

- Decontamination of Transport Vehicles: A Notice from the Food and Drug Administration to Growers, Food Manufacturers, Food Warehouse Managers, and Transporters of Food Products on Decontamination of Transport Vehicles (October 7, 2005; Revised August 2006)
- Food Defense: Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance (December 2003; Revised October 2007)
- Labeling of Shell Eggs: Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution, Small Entity Compliance Guide (July 2001)

Sanitation

- Defect Action Levels (DALS) (1995; Revised March 1997 and May 1998)

Booklet. This list is compiled from FDA's Compliance Policy Guides on established "current levels for natural or unavoidable defects in food for human use that present no health hazards."

- Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (2000)

Seafood

- 1991 Letter to Seafood Manufacturers Regarding the Fraudulent Practice of Including Glaze (ice) as Part of the Weight of Frozen Seafood (February 2009)
- Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association (January 2009; Revised February 2009)
- Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products (July 2001)
- Fish and Fisheries Products Hazards and Control Guide *3rd Edition* (June 2001)
  - Updated Information: Letter to Seafood Processors that Purchase Grouper, Amberjack, and Related Predatory Reef Species Captured in the Northern Gulf of Mexico (February 2008)
- HACCP Regulation for Fish and Fishery Products; Questions and Answers for Guidance to Facilitate the Implementation of a HACCP System in Seafood Processing (Issue Three, January 1999)
- Seafood HACCP Transition Policy (December 1999)
- Proposed Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Live and Perishable Fish and Fishery Products for Export to the European Union and the European Free Trade Association (November 2004)
- Implementation of Section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term "Catfish" (December 2002)
- Guidance and Protocol: Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association (January 2008)

Small Entity Compliance Guides

- Submission of Comments for CFSAN Rulemaking (October 2002)
- Booklets Available on Bioterrorism Act of 2002 Legislation
  - What You Need to Know About Registration of Food Facilities (November 2003)
  - What You Need to Know About Prior Notice of Imported Food Shipments (November 2003; Revised April 2009)
  - What You Need to Know About Establishment and Maintenance of Records (December 2004)
  - What You Need to Know About Administrative Detention of Foods (November 2004)
- Food Labeling
  - *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims (August 20, 2003)
  - Small Business Nutrition Labeling Exemption (October 2004; Revised May 2007)
  - Food Labeling - Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution (July 2001)
  - Food Labeling - Serving Sizes Reference Amount for Baking Powder, Baking Soda, Pectin (July 2001)
  - Food Labeling; Nutrient Content Claims; Definition for "High Potency" and Definition for "Antioxidant" for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods (July 2008)
  - Food Labeling: Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis (May 2009)
- Food Standards: Standard of Identity for White Chocolate (July 17, 2008)
- Dietary Supplements
  - Iron-Containing Supplements and Drugs: Label Warning Statements (October 17, 2003)
  - Final Rule Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk (July 17, 2008)
  - Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements (January 1999)
  - Structure/Function Claims (January 9, 2002)
- Shell Eggs: Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Transportation, and Storage (April 2010)
- Juice: Juice HACCP (April 4, 2003)
- Bottled Water
  - Bottled Water: Total Coliform and *E. coli* (March 2010)
  - Bottled Water: Residual Disinfectants and Disinfection Byproducts (May 2009)
  - Bottled Water: Arsenic (April 2009)
  - Bottled Water: Uranium (April 2009)

Color Additive Guidance

- Cochineal Extract and Carmine: Declaration by Name on the Label of All Foods and Cosmetic Products That Contain These Color Additives (April 2009)
- Petitions
  - Preparing a Color Additive Petition for Submission to the Center for Food Safety and Applied Nutrition for Color Additives Used in or on Contact Lenses (May 2006)

- Color Additive Petitions - FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs, Cosmetics, or Medical Devices (January 1997; Revised July 2009)

Cosmetic Guidance

- Guidance: Labeling for Cosmetics Containing Alpha Hydroxy Acids (January 10, 2005)
- Guidance for Industry: Cosmetics Processors and Transporters of Cosmetics Security Preventive Measures Guidance (November 2003; Revised October 2007)
- Cosmetic Labeling Manual (October 1991)

VI. Center for Tobacco Products (CTP)

For information on a specific guidance document or to obtain a paper copy contact:

Document Control Center, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, e-mail: *TobaccoIndustryQuestions@fda.hhs.gov*, *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

The following list of current CTP guidance documents was obtained from FDA's Web site on April 22, 2010:

- Final Guidance for Industry: Tobacco Health Document Submission
- Guidance for Industry: Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments
- Draft Guidance: The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act
- Final Guidance for Industry: Listing of Ingredients in Tobacco Products
- Draft Guidance for Industry: Preliminary Timetable for the Review of Applications for Modified Risk Tobacco Products under the Federal Food, Drug, and Cosmetic Act
- Guidance for Industry: Timeframe for Submission of Tobacco Health Documents
- Guidance to Industry and FDA Staff: General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2)

VII. Center for Veterinary Medicine (CVM)

For information on a specific guidance document or to obtain a paper copy, contact:

Communications Staff, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9300, e-mail: *AskCVM@fda.hhs.gov*, *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm*.

The following list of CVM guidance documents that have been withdrawn was obtained from FDA's Web site on April 22, 2010:

WITHDRAWN/REPLACED GUIDANCES

No.	Title	Date
1	Anticoccidial Guidelines	*Replaced by Guideline #40*
2	Anthelmintics	*Withdrawn 12/22/2004*
4	Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle	*Withdrawn 12/22/2004*
8	Guidelines for Toxicological Investigations	*Replaced by Guideline # 3*
9	Preclearance Guidelines for Production Drugs	*Withdrawn pending revisions*
14	Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in Food Producing Animals	*Withdrawn 12/22/2004*
15	Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in Non-Food Producing Animals (2277)	*Withdrawn 12/22/2*
17	Working Guidelines for Assigning Residue Tolerances	*Replaced by Guideline # 3*
18	Antibacterial Drugs in Animal Feeds: *Human* Health Safety Criteria	*Withdrawn 12/22/2004*
19	Antibacterial Drugs in Animal Feeds: *Animal* Health Safety Criteria	*Withdrawn 12/22/2004*
20	Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria	*Withdrawn 12/22/2004*
21	Nutritional Ingredients in Animal Drugs and Feeds	*Withdrawn 9/17/2009*
25	Guidelines for the Efficacy Evaluation of Equine Anthelmintics	*Replaced by Guidance 109*
26	Guidelines for the Preparation of Data to Satisfy the Requirements of Section 512 of the Act Regarding Animal Safety, Effectiveness, Human Food Safety and Environmental Considerations for Minor Use of New Animal Drugs	*(superceded by Guidance #61) 04/86;*
27	New Animal Drug Determinations	*Withdrawn 9/17/2009*

WITHDRAWN/REPLACED GUIDANCES—Continued

No.	Title	Date
28	Animal Drug Applications Expedited Review Guideline	*Withdrawn 10/14/2009*
29	Guidelines for the Effectiveness Evaluation of Swine Anthelmintics	*Replaced by Guidance 110*
30	Guidelines for Anti-infective Bovine Mastitis Product Development	*Replaced by guideline #49*
31	Guideline for the Evaluation of Bovine Anthelmintics	*Replaced by guideline #95*
32	Guideline for Threshold Assessment	*Replaced by Guideline # 3*
33	Target Animal Safety Guidelines for New Animal Drugs	*Withdrawn, superceded by #85 4/24/09*
34	Biomass Guideline - Guideline for New Animal Drugs and Food Additives Derived From a Fermentation; Human Food Safety Evaluation	*Replaced by Guideline # 3*
36	Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics	*Replaced by Guidance # 111*
39	Guideline on the Conduct of Clinical Investigations: Responsibilities of Clinical Investigators and Monitors for Investigational New Animal Drug Studies	*replaced by Guidance # 85*
41	Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications	*Withdrawn 3/2002*
43	Draft Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances	*Withdrawn 05/24/06*
51	Points to Consider Guideline - Development of a Pharmacokinetic Guideline Enabling Flexible Labeling of Therapeutic Antimicrobials	"*Please see Guidance 66 for updated information.*"
52	Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora, February 18, 2004	*Replaced by Guidance 159*
54	Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds	*06/94 See Final Guidance #80*
58	Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors	*Withdrawn 12/22/2004; superseded by guidance #85*
60	Guidance For Industry: Animal Proteins Prohibited From Animal Feed; Small Entity Compliance Guide	*Replaced by Guidance 67, 68, 69, and 70*
66	Withdrawal of Guidance Document on Professional Flexible Labeling of Antimicrobial Drugs	*Withdrawn 01/30/200*
77	Guidance for Industry: Interpretation of On-Farm Feed Manufacturing and Mixing Operations:	*Withdrawn 06/12/03*
78	Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	*Replaced by Guidance 152*
154	Draft Guidance for Industry: 21 CFR Part 11; Electronic Records; Electronic Signatures, Maintenance of Electronic Records	*Withdrawn 02/25/03*
155	Draft Guidance for Industry: 21 CFR Part 11: Electronic Records; Electronic Signatures; Electronic Copies of Electronic Records	*Withdrawn 02/04/03*
172	Guidance for Industry #172 - Use of unapproved hormone implants in veal calves, April 2, 2004	*Withdrawn 07/15/04*

The following list of current CVM guidance documents was obtained from FDA's Web site on April 22, 2010:

3	CVM GFI #3 General Principles for Evaluating the Safety of Compounds Used in Food Producing Animals	07/27/06
5	CVM GFI #5 Stability Guidelines	12/01/90
6	CVM GFI #6 Submitting NADA's for Generic Drugs Reviewed by NAS/NR	03/19/76
10	CVM GFI #10 Amendment of Section II(G)(1)(b)(4) of the Preclearance Guidelines	10/01/75
13	CVM GFI #13 Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds-Medicated Block	01/01/85
22	CVM GFI #22 Guideline Labeling of Arecoline Base Drugs Intended for Animal Use	
23	CVM GFI #23 Medicated Free Choice Feeds—Manufacturing Control	07/01/85
24	CVM GFI #24 Drug Combinations for Use in Animals	10/01/83
35	CVM GFI #35 Bioequivalence Guidance	11/08/06
37	CVM GFI #37 Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation	03/01/84

38	CVM GFI #38 Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs	03/01/84
40	CVM GFI #40 Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drug Combinations in Poultry	04/01/92
42	CVM GFI #42 Animal Drug Manufacturing Guidelines- Series of Four Guidelines	01/01/94
45	CVM GFI #45 Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle	08/01/93
48	CVM GFI #48 Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products	11/01/94
49	CVM GFI #49 Target Animal Safety And Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products (Lactating and Non-Lactating Cow Products)	04/01/96
50	CVM GFI #50 Target Animal and Human Food Safety,Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products	02/01/93
53	CVM GFI #53 Evaluation of the Utility of Food Additives in Diet Fed to Aquatic Animals	05/01/94
55	CVM GFI #55 Supportive Data for Cat Food Labels Bearing "Reduces Urinary pH Claims: Protocol Development	06/01/94
56	CVM GFI #56 Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials	07/10/01
57	CVM GFI #57 Preparation and Submission of Veterinary Master Files	01/01/95
59	CVM GFI #59 How to Submit a Notice of Claimed Investigational Exemption in Electronic Format to CVM	06/15/09
61	CVM GFI #61 FDA Approval of New Animal Drugs for MUMS	05/29/08
62	Consumer-Directed Broadcast Advertisements	
63	VICH GL1 - Validation of Analytical Procedures: Definition and Terminology	07/01/99
64	VICH GL2 - Validation of Analytical Procedures: Methodology: Final Guidance	07/01/99
	Industry-Supported Scientific and Educational Activites	
67	CVM GFI #67 Small Entities Compliance Guide for Renderers	02/01/98
68	CVM GFI #68 Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors	02/01/98
69	CVM GFI #69 Small Entities Compliance Guide for Feeders of Ruminant Animals with On-Farm Feed Mixing Operations	02/01/98
70	CVM GFI #70 Small Entities Compliance Guide for Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations	07/13/09
72	CVM GFI #72 GMP'S For Medicated Feed Manufacturers Not Required to Register and be Licensed with FDA	05/01/98
73	VICH GL3(R) - Stability Testing Of New Veterinary Drug Substances	11/21/07
74	VICH GL4 - Stability Testing of New Veterinary Dosage Forms	05/01/99
75	VICH GL5 -Stability Testing-Photostability Testing of New Veterinary Drug Substances and Medicinal Products	05/01/99
76	CVM GFI #76 Questions and Answers BSE Feed Regulations	01/01/98
79	CVM GFI #79 Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by CVM	07/01/05
80	CVM GFI #80 Evaluation the Utility of Anti-Salmonella Chemical Food Additives	11/21/02
82	CVM GFI #82 Development of Supplemental Applications for Approved New Animal Drugs	10/28/02
83	CVM GFI #83 Chemistry, Manufacturing and Controls Changes to Approved NADA/ANADA	05/30/07
84	GFI #84- Product Name Placement, Size, and Prominence in	
85	VICH GL9 - Good Clinical Practices	05/09/01
86	CVM GFI #86 How to Submit a Notice of Final Disposition of Investigational Animals Not Intended for Immediate Slaughter in Electronic Format to CVM	06/15/09
87	CVM GFI #87 How to Submit a Notice of Intent to Slaughter for Human Food Purpose in Electronic Format to CVM	06/15/09
88	CVM GFI #88 How to Submit a Request for a Meeting or Teleconference in Electronic Format to CVM	06/15/09
89	VICH GL6 - EIA's for Veterinary Medicinal Products - Phase I	03/07/01
90	VICH GL7 - Effectiveness of Anthelmintics: General Recommendations	10/11/01
91	VICH GL8 - Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products on Stability Testing for Medicated Premixes	03/01/00
92	VICH GL10(R) - Impurities In New Veterinary Drug Substances	11/21/07
93	VICH GL11(R) - Impurities in New Veterinary Medicinal Products	11/21/07
95	VICH GL12 - Efficacy of Anthelmintics: Specific Recommendations for Bovines	03/26/01
96	VICH GL13 - Efficacy of Anthelmintics: Specific Recommendations for Ovines	03/26/01
97	VICH GL14 - Efficacy of Anthelmintics: Specific Recommendations for Caprines	03/26/01
98	CVM GFI #98 Dioxin In Anti-Caking Agents In Animal Feed And Feed Ingredients	04/12/00
99	VICH GL17 - Testing of New Biotechnological/Biological Products	03/26/01
100	VICH GL18 Residual Solvents in New Veterinary Medicinal Products	05/15/01
102	CVM GFI #102 Manufacture and Distribution of Unapproved Piperazine Products	08/27/99
103	GFI #103 - Possible Dioxin/PCB Contamination of Drug and Biological Products	
104	CVM GFI #104 Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports For Submission	07/10/01
105	GFI #105 - Computerized Systems Used in Clinical Investigations	
106	CVM GFI #106 Published Literature in Support of New Animal Drug Approval	08/31/00
107	CVM GFI #107 How to Submit a Protocol without Data in Electronic Format to CVM	06/15/09
108	CVM GFI #108 Submit Information using the FDA Electronic Submission Gateway	06/15/09
109	VICH GL15 - Specific Recommendations for Equine	06/27/02
110	VICH GL16 - Specific Recommendations for Porcine	06/27/02
111	VICH GL19- Specific Recommendations for Canine	06/27/02
112	GFI #112 - Fumonisin Levels in Human Foods and Animal Feeds; Final Guidance	
113	VICH GL20 - Specific Recommendations for Feline	06/19/02
114	VICH GL21 - Specific Recommendations for Poultry-Gallus Gallus	06/19/02
115	VICH GL22 -Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Studies	07/27/06
116	VICH GL23 - Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing	07/27/06
117	VICH GL24 - Management of Adverse Event Reports (AER's)	05/01/06
118	CVM GFI #118 Mass Spectrometry for Confirmation of Identity of Animal Drug Resides	05/01/03
119	CVM GFI #119 How CVM Intends to Handle Deficient Submissions Filed During the Investigation of a New Animal Drug	08/29/02
120	CVM GFI #120 Veterinary Feed Directive Regulation	03/26/09
121	CVM GFI #121 Expedited Review for NADA for Human Pathogen Reduction Claims	03/06/01
122	CVM GFI #122 Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores	11/09/04
123	CVM GFI #123 Development of Data Supporting Approval of NSAIDS for Use in Animal	01/05/06

124	GFI #124 - Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering	
126	CVM GFI #126 BACPAC I-Intermediates in Drug Substance Synthesis Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation	06/01/06
132	CVM GFI #132 The Administrative New Animal Drug Application Process	11/06/02
135	CVM GFI #135 Validation of Analytical Procedures for Type C Medicated Feeds	11/07/05
136	CVM GFI #136 Method Transfer Studies for Type C Medicated Feed Assay Methods	04/26/07
137	CVM GFI #137 Analytical Methods Description for Type C Medicated Feeds	05/08/07
141	VICH GL28 - Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Carcinogenicity Testing,	07/27/06
142	VICH GL29 - Pharmacovigilance of Veterinary Medicinal Products: Management of Periodic Summary Update Reports (PSUs)	12/12/01
143	VICH GL30 - Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms	06/20/07
144	VICH GL27 - Pre-Approval for Registration of New VMPs for Food-Producing Animals to Antimicrobial Resistance	04/27/04
145	GFI #145 -Bioanalytical Method Validation	
147	VICH GL31 - Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food Repeat Dose (90 Day) Toxicity Testing	11/12/03
148	VICH GL32 - Developmental Toxicity Testing	07/27/06
149	VICH GL33 - Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing	03/17/09
150	CVM GFI #150 Concerns Related to the use of Clove Oil as an Anesthetic for Fish	04/24/07
151	GFI #151 - FDA Export Certificates	
152	CVM GFI #152 Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concern	10/23/03
153	CVM GFI #153 Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals	09/01/02
156	CVM GFI #156 Comparability Protocols-Chemistry, Manufacturing, and Controls Information	02/01/03
157	GFI #157 -Part 11, Electronic Records;Electronic Signatures-Scope and Application	
158	CVM GFI #158 Use of Material from Deer and Elk in Animal Feed	09/15/03
159	VICH GL36 - Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI	08/30/06
160	VICH GL37 - Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (Chronic) Toxicity Testing	07/27/06
162	GFI #162 - Comparability Protocols -Protein Drug Products and Biological Products CMC	
163	CVM GFI #163 Scientific and Technical Issues Related to Pharmaceutical CGMP	08/25/03
164	GFI #164 - PAT -Framework for Innovative Pharmaceutical Development, Manufacturing,and Quality Assurance	
165	CVM GFI #165 Providing Regulatory Submissions in Electronic Format	10/01/03
166	VICH GL38 - EIA's for Veterinary Medicinal Products, Phase II	01/09/06
167	GFI #167 - Prior Notice of Imported Food; Q&A's	
168	GFI #168 -Harmonized Tariff Schedule Codes Flagged with Prior Notice Indicators	
169	CVM GFI #169 Drug Substance: Chemistry, Manufacturing, and Controls Information	06/01/06
170	CVM GFI #170 Animal Drug User Fees and Fee Waivers and Reductions	10/01/08
171	CVM GFI #171 Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles	10/06/08
173	CVM GFI #173 Animal Drug Sponsor Fees Under the Animal Drug User Fee Act (ADUFA)	02/07/05
173	CVM GFI #173 Appendix for the Animal Drug Sponsor Fees Under the (ADUFA)	02/07/05
174	CVM GFI #174 Use of Material from BSE Positive Cattle in Animal Feed	09/30/04
176	VICH GL39 - Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances	06/14/06
177	VICH GL40 - Test Procedures/Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Product	06/14/06
178	CVM GFI #178 Design/Evaluation of Effectiveness Studies - Swine Respiratory Disease Claims	10/01/07
179	CVM GFI #179 Use of Animal Clones and Clone Progeny for Human Food/Animal Feed	01/15/08
181	CVM GFI #181 Blue Bird Medicated Feed Labels	04/10/08
182	VICH GL42 - Pharmacovigilance of Veterinary Medicinal Products: Data Elements for Submission of Adverse Event Reports	05/01/06
183	CVM GFI #183 ADUFA- Animal Drug User Fees: Fees Exceed Costs Waiver/Reduction	03/09/07
185	VICH GL43 - Target Animal Safety for Veterinary Pharmaceutical Products	04/24/09
187	CVM GFI #187 Regulation of Genetically Engineered Animals Containing Heritable Recombinant DNA Constructs	01/15/09
190	GFI #190 -Container and Closure System Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	
191	CVM GFI #191 New NADAs vs. Category II Supplemental NADAs	11/19/09
192	CVM GFI #192 Anesthetics for Companion Animals	03/25/10
193	GFI #193 -Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing	
194	GFI #194 -Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes	
196	CVM GFI #196 Process Validation: General Principles and Practices	11/08/08
195	CVM GFI #195 Small Entities Compliance Guide For Renderers—Substances Prohibited From Use In Animal Food Or Feed	05/06/09
197	CVM GFI #197 Documenting Statistical Analysis Programs and Data Files	04/30/09
198	VICH GL45 - Bracketing and Matrixing Designs For Stability Testing of New Veterinary Drug Substances and Medicinal Products	07/21/09
199	CVM GFI #199 - Animal Generic Drug User Fees and Fee Waivers and Reductions	05/13/09
205	VICH GL46 - Metabolism Study to Determine the Quantity and Identify the Nature of Residues	04/09/10
206	VICH GL47 - Comparative Metabolism Studies In Laboratory Animals	04/09/10
207	VICH GL48 - Marker Residue Depletion Studies to Establish Product Withdrawal Periods	04/09/10
208	VICH GL49 - Validation of Analytical Methods Used in Residue Depletion Studies	04/09/10

Sub Chapter 600 - Veterinary Drugs

- CPG Sec. 605.100 - Use of Statements Regarding NADA Approval by FDA in Labeling and Advertising of New Animal Drugs
- CPG Sec. 607.100 - Adequate Directions for Use (Species Designation) - Animal Drugs and Veterinary Devices

- CPG Sec. 608.100 Human-Labeled Drugs Distributed and Used in Animal Medicine (Withdrawn 7/7/2006)
- CPG Sec. 608.200 Over-The-Counter Sale of Injectable Animal Drugs
- CPG Sec. 608.300 Lay Use of *Animal Capture and Euthanasia* Drugs
- CPG Sec. 608.400 Compounding of Drugs for Use in Animals
- CPG Sec. 608.500 Illegal Sales of Veterinary Prescription Drugs Direct Reference Authority for *Warning* Letter Issuance
- CPG Sec. 615.100 Extra Label Use of New Animal Drugs in Food Producing Animals - Revoked on 09/24/1998 (63 FR 51074)
- CPG Sec 615.115 Extra-Label Use of Medicated Feeds for Minor Species
- CPG Sec. 615.200 Proper Drug Use and Residue Avoidance by Non-Veterinarians
- CPG Sec. 615.300 Responsibility for Illegal Drug Residues in Meat, Milk and Eggs
- CPG Sec. 616.100 Streptomycin Residues in Cattle Tissues (Withdrawn 7/7/2006)
- CPG Sec. 625.200 Availability of Bulk Chemicals for Animal Drug Use
- CPG Sec. 625.300 Unapproved New Animal Drugs - Follow-up Action to Approved Warning Letter - Direct Reference Seizure Authority
- CPG Sec.625.400 Reconditioning of New Animal Drugs Seized Under Section 501 (a)(5)
- CPG Sec. 625.500 Failure to Register *and/or Drug List*
- CPG Sec. 625.600 Orders for Post-Approval Record Reviews
- CPG Sec. 634.100 Drugs Packaged for Infusion or Injection of Food-Producing Animals
- CPG Sec. 635.100 Large Volume Parenterals (LVP's) for Animal Use
- CPG Sec. 637.100 Plastic Containers for Injectable Animal Drugs
- CPG Sec. 638.100 Process Validation Requirements for Drug Products Subject to Pre-Market Approval
- CPG Sec. 640.100 Anthelmintics
- CPG Sec. 641.100 *Products for Control of Fleas and Ticks* Containing a Pesticide
- CPG Sec. 642.100 *Drugs for Odor Control and Conception in Pet Animals*
- CPG Sec. 643.100 Oral Iron Products for Baby Pigs
- CPG Sec. 645.100 Biological Drugs for Animal Use
- CPG Sec. 650.100 Animal Drugs for Euthanasia
- CPG Sec. 651.100 Ethylenediamine Dihydroiodide (EDDI) (Revised 05/01/2000)
- CPG Sec. 653.100 Animal Grooming Aids
- CPG Sec. 654.100 Dimethyl Sulfoxide (DMSO) for Animal Use
- CPG Sec. 654.200 Teat Dips and Udder Washes for Dairy Cows and Goats
- CPG Sec. 654.300 Chloramphenicol as an Unapproved New Animal Drug - Direct Reference Seizure Authority
- CPG Sec. 655.100 Devices for Use in Animals
- CPG Sec. 655.200 Adequate Directions for Use - Animal Drugs & Veterinary Devices
- CPG Sec. 655.300 Barking Dog Collar
- CPG Sec. 655.400 The Status of Syringes and Needles for Animal Use

Sub Chapter 660 - Animal Feed

- CPG Sec. 660.100 Failure to Register
- CPG Sec. 665.100 Common or Usual Names for Animal Feed Ingredients
- CPG Sec. 665.200 Checklist Labeling for Custom Mixed Medicated Feeds
- CPG Sec. 665.300 Use of Type A Medicated Article Brand Names in Feed Labels
- CPG Sec. 666.100 Alternate Feeding of Different Medicated Feeds
- CPG Sec. 670.100 Refusals of Formula Information During Inspection of Feed Mills Manufacturing Feeds Requiring Approved Medicated Feed Applications
- CPG Sec. 670.200 Status of Vitamins and Minerals in Type B and C Medicated Feed and in Non-Medicated Feed
- CPG Sec. 670.500 Ammoniated Cottonseed Meal - Interpretation of 21 CFR
- CPG Sec. 675.100 Diversion of Contaminated Food for Animal Use
- CPG Sec. 675.200 Diversion of Adulterated Food to Acceptable Animal Feed Use
- CPG Sec. 675.300 Moisture Damaged Grain
- CPG Sec. 675.400 Rendered Animal Feed Ingredients
- CPG Sec. 680.100 Tracers in Animal Feed
- CPG Sec. 680.200 CGMP Regulations for Medicated Feeds - Daily Inventory Requirements
- CPG Sec. 680.400 Medicated Feeds—Combined Batches
- CPG Sec. 680.500 Unsafe Contamination of Animal Feed from Drug Carryover
- CPG Sec. 680.600 Sequencing as a Means to Prevent Unsafe Drug Contamination in the Production, Storage, and Distribution of Feeds
- CPG Sec. 681.100 Order for Post-Approval Record Reviews
- CPG Sec. 682.100 Use of Drug-Contaminated Products in Animal Feed
- CPG Sec. 682.200 The Use of Antibiotic Drug Residue By-Products in Animal Feed Feed
- CPG Sec. 683.100 Action Levels for Aflatoxins in Animal Feeds
- CPG Sec. 685.100 Recycled Animal Waste
- CPG Sec. 687.500 Silage Ingredients
- CPG Sec. 688.100 Unapproved Additives for Exported Grains
- CPG Sec. 689.100 Direct-Fed Microbial Products
- CPG Sec. 690.100 Nutritional Supplements for Companion Animals
- CPG Sec. 690.200 Pet Food Labeling
- CPG Sec. 690.300 Canned Pet Food
- CPG Sec. 690.400 Water and Gravy in Pet Food
- CPG Sec. 690.500 Uncooked Meat for Animal Food
- CPG Sec. 690.600 Rodent Contaminated Pet Foods - *Direct Reference Seizure Authority*
- CPG Sec. 690.700 Salmonella Contamination of Dry Dog Food

VII. Office of the Commissioner

For information on a specific guidance document or to obtain a paper copy, please go to FDA's Web site: *http://www.fda.gov/RegulatoryInformation/Guidances/Default.htm.*

The following list of current OC guidance documents was obtained from FDA's Web site on April 26, 2010:

FDA Guidance Documents: General and Cross-Cutting Topics

- 03/2001 Acceptance of Foreign Clinical Studies
- 01/2009 Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007
- 12/2006 Complementary and Alternative Medicine Products and their Regulation by the Food and Drug Administration
- 08/1999 Consumer-Directed Broadcast Advertisements
- 02/2008 Container and Closure System Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products
- 11/1997 Direct Final Rule Procedures
- 08/2003 Part 11, Electronic Records; Electronic Signatures—Scope and Application
- 11/2002 Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records (PDF - 143KB)
- 09/2001 (247) 21 CFR Part 11; Electronic Records; Electronic Signatures, Glossary of Terms; Draft Guidance for Industry (PDF - 117KB)
- 09/2001 (246) 21 CFR Part 11; Electronic Records; Electronic Signatures,Validation; Draft Guidance for Industry (PDF - 202KB)
- 07/2007 Emergency Use Authorization of Medical Products
- 03/2003 FDA Issues Food and Cosmetic Security Preventive Measures Guidance
- 05/2004 Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV
- 01/2009 Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices
- 11/1997 Industry Supported Scientific and Educational Activities (PDF - 428KB)
- 10/2003 Guidance for Industry - Providing Regulatory Submissions in Electronic Format—General Considerations
- 03/2010 Standards for Securing the Drug Supply Chain - Standardized Numerical Identification for Prescription Drug Packages
- 01/2009 Submission Of Laboratory Packages By Accredited Laboratories
- 09/1997 The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA-Regulated Products for Human Use
- 03/2006 Using Electronic Means to Distribute Certain Product Information
- 01/2009 Voluntary Third-Party Certification Programs for Foods and Feeds

Advisory Committee Guidance Documents

- 03/2010 Public Availability of Advisory Committee Members' Financial Interest Information and Waivers - Draft Guidance (PDF - 59KB)
- 08/2008 Preparation and Public Availability of Information Given to Advisory Committee Members - Final Guidance - August 1, 2008 (PDF - 169KB)
- 08/2008 Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees - Final Guidance - August 1, 2008 (PDF - 106KB)
- 08/2008 Public Availability of Advisory Committee Members' Financial Interest Information and Waivers - Final Guidance - August 1, 2008 (PDF - 55KB)
- 08/2008 Voting Procedures at Advisory Committee Meetings - Final Guidance - August 1, 2008 (PDF - 37KB)
- 08/2008 When FDA Convenes an Advisory Committee - Draft Guidance - August 1, 2008 (PDF - 40KB)
- 02/2005 The Open Public Hearing - FDA Advisory Committee Meetings - Draft Guidance

Clinical Trials Guidance Documents

- 01/2010 IRB Continuing Review After Clinical Investigation Approval - Draft Guidance (PDF - 125KB)
- 07/2009 Frequently Asked Questions - IRB Registration (PDF - 48KB)
- 09/2005 Collection of Race and Ethnicity Data in Clinical Trials
- 01/1988 Monitoring Clinical Investigations
- 04/1999 Computerized Systems Used in Clinical Trials
- 01/2006 Significant Risk and Nonsignificant Risk Medical Device Studies - Information Sheet (PDF - 121KB)
- 01/1998 Institutional Review Boards Frequently Asked Questions - Information Sheet
- 01/1998 Cooperative Research - Information Sheet
- 01/1998 Non-local IRB Review - Information Sheet
- 01/1998 Continuing Review After Study Approval - Information Sheet
- 01/1998 Sponsor - Investigator - IRB Interrelationship - Information Sheet
- 01/1998 Acceptance of Foreign Clinical Studies - Information Sheet
- 01/1998 Charging for Investigational Products - Information Sheet
- 01/1998 Recruiting Study Subjects - Information Sheet
- 01/1998 Payment to Research Subjects - Information Sheet
- 01/1998 Screening Tests Prior to Study Enrollment - Information Sheet
- 01/1998 A Guide to Informed Consent - Information Sheet
- 01/1998 Use of Investigational Products When Subjects Enter a Second Institution - Information Sheet
- 01/1998 Exception from Informed Consent for Studies Conducted in Emergency Settings: Regulatory Language and Excerpts from Preamble - Information Sheet
- 01/1998 "Off-Label" and Investigational Use Of Marketed Drugs, Biologics, and Medical Devices - Information Sheet
- 09/2008 Data Retention When Subjects Withdraw from FDA-Regulated Clinical Trials - Information Sheet (PDF - 71KB)
- 01/1998 Emergency Use of an Investigation Drug or Biologic - Information Sheet
- 01/1998 Treatment Use of Investigational Drugs - Information Sheet
- Waiver of IRB Requirements for Drug and Biological Product Studies - Information Sheet (PDF - 35KB)
- 01/1998 Drug Study Designs - Information Sheet
- 01/1998 Evaluation of Gender Differences in Clinical Investigations - Information Sheet
- 01/2006 FDA Inspections of Clinical Investigators - Information Sheet (PDF - 48KB)
- 01/2006 FDA Institutional Review Board Inspections - Information Sheet (PDF - 45KB)
- 01/2007 FDA/NCI MOU Regarding Common Standards-based Data Repository (PDF - 312KB)
- Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection
- 01/2009 Adverse Event Reporting to IRBs - Improving Human Subject Protection (PDF - 79KB)
- 12/2006 Process for Handling Referrals to FDA under 21 CFR 50.54 (PDF - 76KB)
- 03/2006 Establishment and Operation of Clinical Trial Data Monitoring Committees (PDF - 194KB)
- 07/2004 Available Therapy
- 03/2005 Development and Use of Risk Minimization Action Plans (PDF - 84KB)
- 03/2001 Financial Disclosure by Clinical Investigators
- 12/2002 Food-Effect Bioavailability and Fed Bioequivalence Studies (PDF - 166KB)

- 03/2005 Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment (PDF - 220KB)
- 07/1993 Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs (PDF - 1875KB)
- 05/2004 Handling and Retention of Bioavailability and Bioequivalence Testing Samples; Availability (PDF - 166KB)
- 01/2004 IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer (PDF - 188KB)
- 03/2002 Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (PDF - 34KB)
- 10/2003 IRB Review of Stand-Alone HIPAA Authorizations Under FDA Regulations (PDF - 614KB)
- 08/2003 Electronic Records; Electronic Signatures - Part 11, Scope and Application (PDF - 215KB)
- 01/2002 General Principles of Software Validation
- 03/2005 Pharmacogenomic Data Submissions (PDF - 96KB)
- 03/2005 Premarketing Risk Assessment (PDF - 91KB)
- 10/2005 Providing Regulatory Submissions in Electronic Format - Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications
- 09/2004 The Use of Clinical Holds Following Clinical Investigator Misconduct (PDF - 33KB)
- 03/2006 Using a Centralized IRB Review Process in Multicenter Clinical Trials
- 04/2006 Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable
- 01/2006 Frequently Asked Questions About Medical Devices - Information Sheet (PDF - 105KB)
- 03/2006 The Establishment and Operation of Clinical Trial Data Monitoring Committees for Clinical Trial Sponsors
- 08/2004 Independent Consultants for Biotechnology Clinical Trial Protocols
- 04/2007 Adverse Event Reporting - Improving Human Subject Protection
- 02/2005 Clinical Lactation Studies - Study Design, Data Analysis, and Recommendations for Labeling
- 01/2006 Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products - Content and Format
- 10/2000 Submitting and Reviewing Complete Responses to Clinical Holds
- 12/2006 Process for Handling Referrals to FDA Under 21 CFR 50.54 - Additional Safeguards for Children in Clinical Investigations
- 07/2006 Exception from Informed Consent Requirements for Emergency Research
- 10/2009 Investigator Responsibilities—Protecting the Rights, Safety and Welfare of Study Subjects,
- 05/2010 Information Sheet Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors—Clinical Investigator Administrative Actions—Disqualifications

Combination Products Guidance Documents

- 12/2009 Guidance for Industry - New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products (PDF - 159KB)
- 04/2009 Technical Considerations for Pen, Jet, and Related Injectors Intended for Use with Drugs and Biological Products (PDF - 112KB)
- 07/2007 Devices Used to Process Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
- 09/2006 Minimal Manipulation of Structural Tissue (Jurisdictional Update)
- 09/2006 Early Development Considerations for Innovative Combination Products
- 08/2005 How to Write a Request for Designation (RFD)
- 04/2005 Application User Fees for Combination Products
- 09/2004 Current Good Manufacturing Practice for Combination Products (Draft Guidance)
- 05/2004 Submission and Resolution of Formal Disputes Regarding the Timeliness of Premarket Review of a Combination Product

Import and Export Guidance Documents

- 07/12/2004 FDA Export Certificates
- 07/23/2007 Exports Under the FDA Export Reform and Enhancement Act of 1996
- 05/01/2001 E 10 Choice of Control Group and Related Issues in Clinical Trials
- 01/01/2009 Good Importer Practices (Draft Guidance)

IX. Office of Regulatory Affairs (ORA)

For information on a specific guidance document or to obtain a paper copy, please go to FDA's Web site: *http://www.fda.gov/RegulatoryInformation/Guidances/Default.htm.*

The following is a list of ORA guidance documents that have been withdrawn:

Title of document	Date of	
	Issuance	Withdrawal
Compliance Policy Guide Sec. 608.100 Human-Labeled Drugs Distributed and Used in Animal Medicine (CPG 7125.35)	March 19, 1991	July 7, 2006
Compliance Policy Guide Sec. 616.100 Streptomycin Residues in Cattle Tissues (CPG 7125.22)	October 1, 1980	July 7, 2006
Compliance Policy Guide Sec. 555.700 Revocation of Tolerances for Cancelled Pesticides (CPG 7120.29)	February 1, 1983	January 8, 2008
Compliance Policy Guide Sec. 560.700 Processing of Imported Frozen Products of Multiple Sizes (e.g., Shrimp, Prawns, Etc.) (CPG 7119.10)	October 1, 1980	June 6, 2008
Compliance Policy Guide Sec. 540.575 Fish—Fresh and Frozen—Adulteration Involving Decomposition (CPG 7108.05)	October 1, 1980	July 18, 2008
Compliance Policy Guide Sec. 540.375 Canned Salmon—Adulteration Involving Decomposition (CPG 7108.10)	October 1, 1980	March 22, 2010

The following is a list of current ORA guidance documents:

Title of Document	Date of Issuance
Compliance Policy Guides Manual	
Application Integrity Policy Procedures	March 5, 1998 (Edited for format March 4, 2004)
Points to Consider for Internal Reviews and Corrective Action Operating Plans	June 1991
Guidance for Industry and FDA Staff: Reduction of Civil Money Penalties for Small Entities	March 20, 2001 (Effective: April 19, 2001) (This document supersedes the Draft Civil Money Penalty Reduction Policy for Small Entities released on May 18, and June 15, 1999.)
Guidance for Industry: Good Laboratory Practice Regulations Management Briefings Post Conference Report	August 1979 (Minor editorial and formatting changes made November 1998)
Guidance for Industry: Good Laboratory Practices Questions and Answers	June 1981 (Minor editorial and formatting changes made December 1999, September 2000, & July 2007)
Guidance for Industry: Product Recalls, Including Removals and Corrections	November 3, 2003

Dated: July 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19342 Filed 8–6–10; 8:45 am]

BILLING CODE 4160–01–S

Federal Register

Monday,
August 9, 2010

Part IV

Federal Communications Commission

47 CFR Part 54
Rural Health Care Universal Service Support Mechanism; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 10–125]

Rural Health Care Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on a package of reforms that would expand the use of broadband to improve the quality and delivery of health care, and addresses each of the major recommendations in the National Broadband Plan regarding the Commission's rural health care program. The Commission proposes three major changes to the rural health care program. To create a health infrastructure program that would support up to 85 percent of the construction costs of new or upgraded regional or statewide dedicated broadband networks for health care purposes. To create a health broadband services program that would provide 50 percent of the monthly recurring costs for access to broadband services for eligible health care providers. To expand the definition of "eligible health care provider" to include administrative offices, data centers, skilled nursing facilities, and renal dialysis centers. The Commission also proposes to eliminate the offset contribution rule for the rural health care program, and seeks comment on prioritizing funding requests, and establishing performance measures.

DATES: Comments on the proposed rules are due on or before September 8, 2010, and reply comments are due on or before September 23, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 8, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed buy this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 02–60, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers. See* instructions in the Supplementary Information section of this document (under Comment Filing Procedures).
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.
- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ernesto Beckford (202) 418–1523, Wireline Competition Bureau, Telecommunications Access Policy Division or TTY: (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman, Office of Managing Director, via e-mail to *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 02–60, FCC 10–125, adopted July 15, 2010, and released July 15, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

○ In addition, one copy of each paper filing must be sent to each of the following: (i) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160; (ii) Ernesto Beckford, Telecommunications, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A312, Washington, DC 20554; e-mail: *Ernesto.Beckford@fcc.gov;* and (iii) Charles Tyler, Telecommunications, Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, e-mail: *Charles.Tyler@fcc.gov.*

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 8, 2010.

Comments on the proposed information and collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program.

Form No.: FCC Form 465, 466, 466–A, 467 (currently approved), newly proposed FCC Forms 464–A, 464–B, 464–Q, and 468.

Type of Review: Revision of currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit institutions; and State, local, or Tribal Government.

Number of Respondents and Responses: 11,000 and 46,721.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Annually, Quarterly and One-time only.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 58,360 hours.

Total Annual Costs: $3,118,069.06.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The information collected provides the Commission with the necessary information to administer the rural health care support mechanism, determine the amount of support entities seeking funding are eligible to receive, and inform the Commission about the feasibility of revising its rules.

Statutory Authority: Statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. The NPRM seeks comment on a package of potential reforms to the rural health care program that could be implemented in funding year 2011 (July 1, 2011–June 30, 2012).

2. The proposed reforms include: (1) Establishing a broadband infrastructure program (the "health infrastructure program") that would support up to 85 percent of the construction costs of new regional or statewide networks to serve public and non-profit health care providers in areas of the country where broadband is unavailable or insufficient; (2) establishing a broadband services access program (the "health broadband services program") that would subsidize 50 percent of the monthly recurring costs for access to broadband services for eligible public or non-profit rural health care providers, which should make broadband connectivity more affordable for providers operating in rural areas; (3) expanding the Commission's interpretation of "eligible health care provider" to include acute care facilities that provide services traditionally provided at hospitals, such as skilled nursing facilities and renal dialysis centers and facilities, and administrative offices and data centers that do not share the same building as the clinical offices of a health care provider but that perform support functions critical for the provision of health care; (4) clarifying the Commission's existing recordkeeping requirements to enhance its ability to protect against waste, fraud and abuse; and (5) eliminating the current rule that requires that funding be offset against universal service contributions owed by participating service providers, and instead propose to allow service providers participating in the health broadband services program, telecommunications program, and health infrastructure program to receive rural health care funds directly from USAC.

3. The Commission also seeks comment on the following: (1) How to prioritize funding requests for rural health care support to the extent demand exceeds the annual $400 million funding cap; and (2) ways to enhance ongoing program evaluation and implementation of performance measures to ensure that the public realizes benefits from the investment of universal service funding to improve broadband connectivity for health care providers.

4. In addition to the changes discussed below, the proposed rules include non-substantive changes to the rules applicable to the telecommunications program. We seek comment on such changes.

II. Health Infrastructure Program

5. The National Broadband Plan stated that the Pilot Program "represents an important first step in extending broadband infrastructure to unserved and underserved areas and ensuring that health care providers in rural areas and Tribal lands are connected with sophisticated medical centers in urban areas." However, the National Broadband Plan noted that, despite the efforts of the Commission to date, many health care providers remain under-connected. The National Broadband Plan recommended that the Commission continue to support broadband infrastructure for health care purposes, incorporating lessons learned from the Pilot Program.

6. In establishing the Pilot Program, the Commission noted that many health care providers were unable to access certain telehealth services without deployment of broadband facilities. Despite the overwhelming interest and participation levels in the Pilot Program, the National Broadband Plan found that a large broadband connectivity gap still exists, particularly among small, rural providers. For example, the National Broadband Plan identified a broadband connectivity gap among an estimated 3,600 out of approximately 307,000 small providers. 70 percent of those small providers lacking access to mass-market broadband services—approximately 2,500 providers—are located in areas that the Commission defines as rural. The National Broadband Plan also found that larger physician offices (*i.e.,* five or more physicians), larger clinics and hospitals also face broadband connectivity barriers; it noted that due to their size and health IT service needs, such health care providers cannot utilize mass-market broadband, but require dedicated Internet access (DIA) solutions.

7. Consistent with its authority under section 254(h)(2)(A) of the Act, the Commission proposes to create a "*health infrastructure program*" to fund up to 85 percent of eligible costs for the design, construction and deployment of dedicated broadband networks that connect public or non-profit health care providers in areas of the country where the existing broadband infrastructure is inadequate. The program would provide support for the construction of State or regional broadband health care networks that can, for example, connect rural and urban health care providers, facilitate the transmission of real time video, pictures, and graphics, bridge the silos that presently isolate relevant patient data, make communications resources more robust and resilient, and maximize the efficiency and reliability of packet routing. Broadband infrastructure projects may include either new facilities or improvements to upgrade existing facilities (for example, converting a copper facility to a fiber facility capable of broadband delivery). In addition, funding may be used to support up to 85 percent of the cost of connecting health care networks to Internet2 or National LambdaRail (NLR), both of which are non-profit, nationwide backbone providers.

A. Program Process

8. The Commission proposes an application and selection process for the health infrastructure program in which eligible health care providers may seek funding for qualified projects through a streamlined process. The Commission seeks comment on each step of the process described below. To the extent a commenter disagrees with a particular aspect of the proposed process, the Commission asks them to identify that with specificity and propose an alternative.

9. *Initial Application Phase.* First, applicants may request consideration for funding by completing a user friendly online application available on a Web site to be developed and maintained by the Universal Service Administrative Company (USAC). Applications would be accepted during the first quarter of each funding year (July 1 to September 30). As part of this initial application phase, an applicant would be required to (1) Verify that either there is no available broadband infrastructure or the existing available broadband infrastructure is insufficient for health IT needed to improve and provide health care delivery, (2) provide letters of agency for each of the eligible health care providers in the applicant's proposed network, (3) include a preliminary budget and an infrastructure funding request, not in excess of the per-project caps discussed below, and (4) certify that it will comply with all program requirements if selected for funding.

10. *Project Selection Phase.* The Commission proposes that applications submitted for funding be made publicly available on USAC's Web site. Publicly available information would include the names of the parties seeking funding, their geographic location, and information filed by the applicants to corroborate that sufficient broadband infrastructure is unavailable or insufficient in their geographic location. During the second quarter of each funding year (October 1 to December 31), USAC would review all applications received during the initial application phase. The Commission seeks comment below on limiting the total number of projects that may be selected in a given year. The Commission also seeks comment below on prioritization rules to be applied by USAC in the event that funding requests exceed the annual amount available under the health infrastructure program. After applications have been reviewed, and prioritization rules have been applied, USAC would notify selected participants of their project eligibility status. This would normally occur during the third quarter of each funding year (January 1 to March 30). After a participant is notified of project eligibility, it may proceed with the project commitment phase per the requirements set forth below. During the project commitment phase, participants may receive funding from the health infrastructure program for a portion of the reasonable administrative expenses incurred in connection with the project, subject to certain caps as discussed further below.

11. *Project Commitment Phase.* After being selected based on their initial application, the Commission proposes that participants in the health infrastructure program would complete and submit all application materials and comply with all program requirements, including: (1) 15 percent minimum contribution requirement; (2) project milestones; (3) detailed project description; (4) facilities ownership, IRU or capital lease requirements; (5) standard terms and conditions; (6) sustainability plan; (7) excess capacity disclosures; (8) vendor cost reporting requirements; (9) quarterly reporting requirements, (10) competitive bidding and vendor selection requirements; (11) completion of project; and (12) NEPA and NHPA requirements. USAC would review each step of the project commitment phase to confirm the participant's compliance with all data and information requirements and compliance with program rules. USAC would conduct technical and financial review of all proposed projects to ensure that they comply with the Commission's rules. USAC may request additional information from applicants and participants if deemed necessary to substantiate, explain or clarify any materials submitted as part of the funding process.

12. *Build-Out Period.* The Commission proposes that participants have a period of three funding years (commencing with the funding year in which the initial online application was submitted) to file all forms and supporting documents necessary to

receive funding commitment letters from USAC; and a period of five years (commencing on the date on which the participant receives its first funding commitment letter for the project) in which to complete build-out.

B. Demonstrated Need for Infrastructure Funding

13. The Commission proposes that applicants under the health infrastructure program demonstrate that broadband, at the connectivity speeds defined below, is presently unavailable or insufficient for health IT needed to improve or provide health care delivery requested by the eligible health care providers seeking funding. The Commission seeks comment on this proposal.

14. *Connectivity Speed.* The Commission seeks comment on setting a minimum threshold for broadband connectivity speeds under the health infrastructure program. The National Broadband Plan suggested that most businesses in the United States, including health care providers, have two choices of broadband service: Mass-market, small business solutions of 4 Mbps or more, or dedicated Internet access (DIA) solutions of 10 Mbps or more. Because the focus of the health infrastructure program is to fund dedicated networks, the Commission proposes setting 10 Mbps as the minimum broadband speed for infrastructure deployment supported under the health infrastructure program. The Commission seeks comment on this proposal. The Commission also seeks comment on minimum levels of reliability, including physical redundancy, to support health IT services and what can be done to encourage reliability. The Commission also seeks comment on the minimum quality of service standards necessary to meet health IT needs. The Commission seeks comment on whether the health infrastructure program should contain a minimum quality of service requirement.

15. The National Broadband Plan recommended that the Commission establish demonstrated-needs criteria to ensure that deployment is focused in those areas of the country where the existing broadband infrastructure is insufficient. It suggested that such criteria could include: Demonstration that the health care provider is located in an area where sufficient broadband is unavailable or unaffordable; or certification that the health care provider has posted for services for an extended period of time and has not received any viable proposals from qualified network vendors for such services.

16. Building a dedicated broadband network involves significant effort and costs. It is important, therefore, to adopt a process that will help ensure that projects are funded only in those regions where providers cannot obtain access to broadband adequate for health care purposes due to a lack of sufficient infrastructure. Accordingly, the Commission proposes that applicants seeking funding under the health infrastructure program demonstrate that broadband adequate to meet their health care needs is unavailable or insufficient in the geographic area where health care providers are to be connected by the proposed dedicated network, by using any of the following methods:

- Provide a survey of current carrier network capabilities in the geographic area, compiled by a preparer reasonably qualified to make such surveys. The survey should provide details as to the identity and broadband capabilities of all existing carriers in the proposed network area, and discuss and justify the methodology used to make such determinations. The survey should be accompanied by a statement of the preparer's professional, educational, and business background that make the preparer qualified for conducting the survey. For example, indicate the preparer's prior experience, technical or engineering degrees, telecommunications background, and knowledge of methods typically employed to perform such surveys. In addition to the survey, the applicant would be required to provide a report detailing either that there is no available broadband infrastructure, or explaining why existing broadband infrastructure would be insufficient for health IT needed to provide or improve health care delivery requested by the health care providers that are proposing the infrastructure project.
- Provide copies or linked references to recognized broadband mapping studies, such as NTIA's national broadband map, State or local broadband maps, and other mapping sources that adequately depicts the available broadband in the proposed network area. In addition to referencing such NTIA or State broadband mapping studies, the applicant would be required to provide a report detailing why existing broadband infrastructure would be insufficient to meet the needs of the eligible health care providers that are proposing the infrastructure project.
- Certify that, for a continuous period of not less than six months, the health care providers in the proposed dedicated network requested broadband services under the telecommunications program or the health broadband services program, and did not receive any proposals from qualified network vendors meeting the terms of the requested services. The Commission proposes six months as the minimum time period for which applicants must show that they were unable to acquire broadband services sufficient for their needs. This period would allow existing carriers to compete to provide services to the health care providers prior to any health infrastructure funding from the health infrastructure program. The Commission seeks comment on whether six months is a sufficient period of time. To the extent commenters propose other time periods, they should provide specific information to support their recommended time periods.

17. The National Broadband Plan also suggested that health care providers could justify funding from an infrastructure program by providing a financial analysis showing that the cost of new network deployment would be significantly less expensive over a specified time period (*e.g.,* 15–20 years) than purchasing services from an existing network carrier. The Commission seeks comment on whether it should adopt such criteria, in addition to the three options proposed above, and, if so, what should be included in the financial analysis? If the Commission requires that applicants demonstrate that network deployment would be less expensive over a period of time, what period of time is appropriate? For example, should such period of time be equivalent to the useful economic life of the funded network? Should an applicant provide a net present value to demonstrate cost effectiveness? Are there other methodologies that can be included in a financial analysis to demonstrate the cost effectiveness of network deployment?

18. The Commission invites comments on whether the above criteria are sufficient to establish that broadband is unavailable or insufficient. In addition, the Commission invites comments on other ways in which health care providers could demonstrate, or interested stakeholders could challenge, the sufficiency of existing broadband infrastructure. When possible, such comments should indicate publicly available sources that could be used to determine the existence or absence of adequate broadband infrastructure.

19. All information submitted by applicants to establish that broadband is unavailable or insufficient would be

subject to review and verification by USAC.

C. Letters of Agency

20. The Commission proposes that as part of the initial application phase for infrastructure projects, applicants identify (1) all eligible health care providers on whose behalf funding is being sought, and (2) the lead entity that will be responsible for completing the application process. In addition, as in the Pilot Program, the Commission would require that the application include a Letter of Agency (LOA) from each participating health care provider, confirming that the health care provider has agreed to participate in the applicant's proposed network, and authorizing the lead entity to act as the health care provider's agent for completing the application process. Such letters of agency will serve as confirmation that the identified health care providers endorse the proposed network, and will also avoid improper duplicate support for health care providers participating in multiple networks. All such letters of agency would be delivered by the applicant as part of the initial application.

21. *Consortium Applications.* The Commission recognizes that eligible health care providers may wish to obtain broadband services as part of consortia that may include other entities that are not eligible health care providers. For example, health care providers may join with State organizations, public sector (governmental) entities, and non-profit entities that are not eligible health care providers. The Pilot Program allowed State organizations, public entities and non-profits to act as administrative agents for eligible health care providers within a consortium. The Commission proposes retaining this same flexibility for the health infrastructure program. Although State organizations, public entities and non-profits may not constitute eligible health care providers, they may apply on behalf of eligible health care providers as part of a consortium (*e.g.,* as consortia leaders) to function in an administrative capacity for eligible health care providers within the consortium. In doing so, however, State organizations, public entities and non-profits would be prohibited from receiving any funding from the health infrastructure program (other than some administrative expenses, as discussed below). The Commission proposes that any discounts, funding, or other program benefits secured by a State organization, public sector (governmental) entity or non-profit entity acting as a consortium leader under the health infrastructure program would be passed on to the consortium members that are eligible health care providers.

22. The Commission also proposes that in the case of a consortium, the legally and financially responsible entity that owns dedicated facilities funded by the health infrastructure program could be a State organization, public sector (governmental), or not-for profit entity acting as a fiduciary agent for eligible health care providers within such consortium. For example, a State, public (government) or non-profit entity acting as administrative agent for a consortium of eligible health care providers seeking funding for a dedicated network could also serve as the title owner of the dedicated network. However, the Commission proposes that title to the dedicated network would be held exclusively for the benefit of eligible health care providers. The Commission seeks comment on the above proposals.

D. Funding Requests and Budgets

23. The Commission proposes that every applicant's initial application include a funding request, a brief project description and a detailed budget. The funding request should not exceed 85 percent of the eligible costs identified in the budget. The Commission seeks comment on the proposals set forth below.

24. *Cap on Amount Funded per Project.* The Commission seeks comment on whether there should be a cap on the total amount for which a project may seek funding. A per project cap would help ensure that multiple projects across varying unserved geographic areas will be eligible to receive funding for infrastructure. The Commission notes that nearly 90 percent of the projects in the Pilot Program had proposed budgets below $15 million. For example, the Commission could provide that no single project would be eligible for more than $15 million in funding. The Commission seeks comment on whether $15 million, or some other figure, is the correct per project cap to use. The Commission notes that it would retain authority to consider an applicant's request for waiver of the per project cap on a case-by-case basis if warranted by the particular circumstances and the public interest.

25. *Cap on Number of Projects per Year.* Further, the Commission seeks comment on whether to adopt a rule setting a maximum number of projects to be selected for funding each year. One of the lessons learned from the Pilot Program is that many applicants were ill-prepared to undertake the complex process of developing a new health care network, and consequently many required ongoing coaching and support to navigate their way through the process. A smaller number of projects will allow USAC to devote greater resources and time in ensuring their success. Also, unlike the Pilot Program, projects not selected for funding in any funding year will have opportunities to apply for funding in subsequent funding years. If the number of projects that apply and qualify for funding in any year exceeded such a cap, should priority be given to those projects that connect the greatest number of rural health care providers? If the Commission adopts a cap on the number of projects that may be funded per year, it seeks comment on whether such cap should be in addition to or in lieu of a cap on the amounts funded per project.

26. *Budget.* The Commission proposes that together with the funding request, applicants submit a detailed budget that identifies all costs related to the proposed project. The budget should be reasonable, and should be based on pricing information available to the applicant. All material assumptions used in preparing the budget should be noted and discussed in narrative form. The budget should separately identify the following (each subject to the limitations identified in this NPRM): (1) Eligible non-recurring costs; (2) eligible administrative expenses; (3) eligible network design costs; (4) eligible maintenance costs; (5) eligible NLR or Internet2 membership fees; and (6) all costs that are necessary for completion of the project, but that are not eligible for support under the health infrastructure program. If a budget line item contains both eligible and ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components.

27. Requiring applicants to prepare and submit a budget would ensure that the applicant has given adequate consideration to the project requirements, has undertaken a preliminary analysis of potential costs, and has identified the amount of funds that they will be required to contribute to the overall project. The Commission seeks comment on whether to require applicants to include any additional information in their preliminary budget.

28. The Commission proposes that USAC review all project budgets for compliance with program rules. USAC could assist prospective applicants with tools that provide benchmark cost estimates for certain items common to

all infrastructure projects. The Commission proposes allowing budgets submitted by program applicants and program participants to be made available publicly so that other prospective applicants may use such information as a basis for preparing their own budgets. The Commission seeks comment on the above proposals.

E. Eligible Costs

29. *Non-Recurring Costs.* The Commission proposes that the health infrastructure program may provide support for the following non-recurring costs for the deployment of infrastructure: (1) Initial network design studies (but not in excess of the cap identified below); (2) engineering, materials and construction of fiber facilities or other broadband infrastructure; and (3) the costs of engineering, furnishing (*i.e.,* as delivered from the manufacturers), and installing network equipment. The Commission seeks comment on these proposals and on whether the health infrastructure program should offer support for other non-recurring infrastructure costs.

30. *Network Design.* While network design would be eligible for funding, the primary focus of the health infrastructure program should be capital costs for infrastructure construction and deployment. Therefore, the Commission proposes that support for eligible network design costs be limited to $1 million per project or 15 percent of the project's eligible costs, whichever is less. The Commission seeks comment on this proposal.

31. *Administrative Expenses.* The Commission proposes that, for the health infrastructure program only, reasonable administrative expenses incurred by participants for completing the application process may be eligible for some limited support. Examples of administrative expenses are costs incurred in preparing request for proposals, negotiating with vendors, reviewing bids, *etc.* The Commission's experience with the Pilot Program supports the need to provide some amount of funding for administrative expenses in infrastructure projects, to support the process of designing the network and securing necessary agreements. Participants have indicated that the costs associated with infrastructure deployment can be a considerable financial burden on participants that are designing and deploying networks over vast geographic areas. Allowing a portion of funding to be used for administrative expenses could enable program participants to explore more efficient, effective means of deploying broadband for the delivery of health care. Accordingly, the Commission proposes that after a participant is selected for funding based on its initial application, it may request funding for up to 85 percent of the reasonable administrative expenses incurred in connection with the project.

32. Because the primary focus of the program should be to fund infrastructure and not project administration, the Commission proposes three limitations on administrative expenses. First, support for such expenses will be limited to 36 months, commencing with the month in which a participant has been notified that its project is eligible for funding. This period should be sufficient for completing the majority of program requirements, and support should not be provided beyond this period. Second, the Commission proposes that the rate of support will not exceed $100,000 per year. This amount should be sufficient for one full-time employee (or the equivalent) dedicated to project administration. Participants would be required to submit certifications and maintain records confirming the number of hours provided by one or more employees for tasks related to the health infrastructure program project, and that the administrative expense for which support is sought is not more than the reasonable costs for the amount of time such employee(s) spent on the project. Third, the Commission proposes that the aggregate amount of support a project may receive for administrative expenses shall not exceed ten percent of the total budget for the project. The Commission acts conservatively in proposing a ten percent cap, which is similar to funding limits on administrative expenses used in some Federal grant programs. The Commission seeks comment on this proposal to provide limited support for administrative expenses.

33. *Maintenance Costs.* The Commission proposes allowing limited support for up to 85 percent of the reasonable, necessary and customary ongoing maintenance costs for networks funded by the health infrastructure program. Such costs would include, for example, service agreements to operate and maintain dedicated broadband facilities. The primary focus of the health infrastructure program is to create a sustainable broadband infrastructure where access is presently inadequate. The Commission seeks comment on whether support for maintenance costs should be limited to a defined period of time, such as three years from completion of build-out of a project, or five years from the first funding commitment letter issued for such project (whichever period is shorter). Participants should be able to demonstrate in their sustainability plans that the costs of network operations and maintenance will be sustainable after such period of support from the health infrastructure program. Service agreements for network maintenance will be subject to competitive bidding rules, and may be bid either at the time of construction of the network or at a later time. The Commission seeks comment on this proposal.

34. *National LambdaRail and Internet2.* The Commission proposes that participants may receive support for not more than 85 percent of the membership fees for connecting their networks to the dedicated nationwide backbones, Internet2 or NLR. As in the Pilot Program, while the Commission allows such connections as an eligible expense, the Commission does not indicate that such connections are mandatory or preferred. Thus, under the health infrastructure program, applicants would be free to propose the construction of State or regional dedicated networks that do not connect to a nationwide backbone. It is reasonable to allow, as an eligible expense, membership fees to connect to NLR and Internet2. As noted in the Pilot Program, both of these backbone providers are non-profit entities that already link a number of institutions such as government research institutions and academic, public and private health care providers that house significant medical expertise. By connecting to either of these two dedicated national backbones, health care providers at the State and local levels could have the opportunity to benefit from advanced applications in continuing education and research. While the membership fees for joining NLR or Internet2 would be an eligible cost, the Commission does not propose allowing other recurring costs related to connecting to such backbone networks. The Commission seeks comment on this proposal.

35. For the Pilot Program, the Commission provided that connections to Internet2 or NLR were not subject to the competitive bidding rules requirement. For the health infrastructure program, the Commission proposes that participants may either pre-select to connect with either Internet2 or NLR, and seek funding for such connection, or may (at their discretion) seek competitive bids from NLR and Internet2 through the normal competitive bidding process. Allowing a participant to pre-select NLR on

Internet2 should provide the participant with an opportunity to more fully develop the specific elements of its infrastructure proposal, particularly where only a specific non-profit nationwide backbone provider will fulfill the participant's network plan or meet its need to access a particular institution that is currently connected to only one nationwide network. If Internet2 or NLR are pre-selected by a participant, the costs of connection to such nationwide backbone must be reasonable. The Commission invites comment on its proposal to exempt connections to Internet2 and NLR from the competitive bidding rules in the new health infrastructure program. Regardless of whether they choose to pre-select NLR or Internet2, participants in the health infrastructure program will be subject to the Commission's audit authority. The Commission emphasizes that it retains the discretion to evaluate the activities of participants and determine on a case-by-case basis whether waste, fraud, or abuse has occurred and whether corrective action is necessary.

F. Ineligible Costs

36. *Examples of Ineligible Costs.* The Commission proposes that, for the health infrastructure program, as in the Pilot Program, ineligible costs are those costs that are not directly associated with network design, construction, or deployment of a dedicated network for eligible health care providers. The Commission seeks comment on this proposal. Participants would be required to certify that support from the health infrastructure program will not be used to pay for ineligible costs. The Commission proposes that, as in the Pilot Program and consistent with the Act, the authorized purposes of the health infrastructure program would include the costs of *access* to advanced telecommunications services. Ineligible costs would include (but not be limited to) the following costs, because the following costs are not directly related to access or to network design, construction or deployment:

- Personnel costs (including salaries and fringe benefits), except for those costs that qualify as administrative expenses, subject to the limitations set forth in paragraphs 37 and 38 of this NPRM.
- Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project.
- Legal costs.
- Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations. For example, costs for end-user training, *e.g.,* training of health care provider personnel in the use of telemedicine applications, are ineligible.
- Program administration or technical coordination, except for those costs that qualify as administrative expenses, subject to the limitations set forth in paragraphs 37 and 38 of this NPRM.
- Inside wiring or networking equipment (*e.g.,* video/Web conferencing equipment and wireless user devices) on health care provider premises except for equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment.
- Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops), unless used exclusively for network management.
- Helpdesk equipment and related software, or services.
- Software, unless used for network management, maintenance, or other network operations; software development (excluding development of software that supports network management, maintenance, and other network operations); Web server hosting; and Website portal development.
- Telemedicine applications and software.
- Clinical or medical equipment.
- Electronic records management and expenses.
- Connections to ineligible network participants or sites (*e.g.,* for-profit health care providers).
- Costs related to any share of a project that is not allocable to the dedicated health care network.
- Administration and marketing costs (*e.g.,* administrative costs; supplies and materials; marketing studies, marketing activities, or outreach efforts; evaluation and feedback studies), except for those costs that qualify as eligible administrative expenses, subject to the limitations set forth in paragraphs 37 and 38 of this NPRM.
- Continuous power source.

37. *Billing and Operational Expenses.* The Commission proposes that the health infrastructure program not provide support for billing and operational expenses incurred either by a health care provider or its selected vendor. An example of billing or operational costs is the expense that service providers may charge for allocating costs to each health care provider in a project's network. Because the Commission does not require that costs be allocated in this manner, such billing and operational costs should not be eligible for support. The Commission seeks comment on this proposal.

G. Fifteen Percent Contribution Requirement

38. *Minimum Participant Contribution.* The Commission proposes that as one of the conditions to receiving any funding commitments from USAC, participants submit certification of the availability of funds, from eligible sources, for at least 15 percent of all eligible costs. The Commission seeks comment on this proposal. The Pilot Program similarly required a 15 percent minimum contribution requirement for all eligible costs. As recognized by the National Broadband Plan, the participant contribution requirement aligns incentives and helps ensure that the health care provider values the broadband services being deployed, and makes financially prudent decisions regarding the project. Ensuring that each participant has a financial stake in the project is an important part of the implementation of infrastructure projects, as well as critical to maintaining overall accountability for prudent use of finite universal service funds. The Commission therefore proposes that the health infrastructure program would pay not more than 85 percent of eligible project costs, and participants would be required to pay the remaining 15 percent of such eligible projects costs. In addition, participants would be required to pay all costs that are related to the project but that do not qualify as eligible project costs.

39. The Commission notes that the matching funds requirement for the Broadband Technology Opportunities Program (BTOP), established pursuant to the Recovery Act, is generally 20 percent of eligible costs, and that the Broadband Initiatives Program (BIP), also established pursuant to the Recovery Act, will fund 75 percent in grants and 25 percent in loans. The Commission has learned from its experience with the Pilot Program that some applicants have difficulty even meeting a 15 percent contribution requirement. At the same time, one of the benefits of increasing the contribution requirement to 20 percent or higher would be that more funds would be available under the program to fund additional projects. The Commission invites comment on whether it should consider a higher level of participant contribution for

health infrastructure projects. Commenters should identify whether, in light of higher levels of participant contributions in the BTOP and BIP programs, the contribution requirement for the health infrastructure program should be more than 15 percent to ensure better efficiencies and greater level of "at risk" commitment by participants to their projects.

40. *Evidence of Viable Source for 15 Percent Contribution.* The Commission proposes that, within 90 days after being notified of project selection, participants demonstrate that they have a reasonable and viable source for the minimum 15 percent contribution. Many projects in the Pilot Program indicated deployment delays due to many factors, including difficulty in obtaining the minimum 15 percent contribution. This, among other factors, resulted in the Bureau extending (by one year) the deadline for participants in the Pilot Program to select vendors and request funding commitments from USAC. To ensure that projects are completed in a timely manner, it is important for participants in the health infrastructure program to meet a date certain by which they have secured the minimum 15 percent contribution for eligible project costs. Doing so will ensure that program funds are not indefinitely allocated to projects that cannot proceed to completion due to lack of adequate financial contribution from the participant. The Commission therefore proposes that after a participant has been notified that, based on its initial application, its project is eligible for funding, the participant have a period of 90 days to submit letters of assurances confirming funds from eligible sources to meet the 15 percent minimum contribution requirement. The Commission seeks comment on this proposal.

41. *Eligible Sources.* The Commission proposes placing limitations on the eligible sources for matching funds. Selected participants would be required to identify with specificity their source(s) of funding for the minimum 15 percent contribution of eligible network costs. Only funds from an eligible source may apply towards meeting this requirement. As in the Pilot Program, eligible sources would be limited to (1) Eligible health care providers; (2) State grants, funding, or appropriations; (3) Federal funding, grants, loans, or appropriations (but not other universal service funding); and (4) other grant funding, including private grants. Participants who do not demonstrate that their 15 percent contribution comes from an eligible source or whose minimum 15 percent contribution is derived from an ineligible source would be denied funding by USAC. Ineligible sources would include (1) in-kind or implied contributions; (2) a local exchange carrier (LEC) or other telecom carrier, utility, contractor, consultant, or other service provider; and (3) for-profit participants. Moreover, selected participants may not obtain any portion of their 15 percent contribution from any universal service support program. These limitations on eligible sources would safeguard against program manipulation, and would prevent conflicts of interest or influence from vendors and for-profit entities that may lead to waste, fraud, and abuse. The Commission therefore proposes that these limitations, which were applied to the Pilot Program, be applied to the health infrastructure program. The Commission seeks comment on the proposed list of eligible sources.

H. Project Milestones

42. To ensure that projects proceed to completion, the Commission proposes that participants submit a project schedule that identifies the following project milestones: start and end date for network design; Start and end date for drafting and posting RFPs; start and end date for selecting vendors and negotiating contracts; start date for commencing construction and end date for completing construction; and target dates for each health care provider to be connected to the network and operational. The project schedule should be submitted within 90 days after a participant has been notified that, based on its initial application, the project is eligible for funding. The project schedule would also have to be updated at the time that quarterly reports are filed by the participants, noting which project milestones have been met and any progress or unanticipated delays in meeting other milestones. The Commission proposes that in the event a project milestone is not achieved, or there is a material deviation from the project schedule, the participant would provide an explanation in the quarterly reports. Requiring participants to establish a schedule and report on project milestones for infrastructure projects would assist USAC and the Commission in assessing a participant's progress in completing project build-out, and would reduce fraud, waste and abuse. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should require participants to include other information in addition to or in lieu of project milestones. Such information should serve as a way to monitor project progress.

I. Detailed Project Description

43. The Commission proposes that, within 90 days after a participant is notified that its project is eligible for funding based on its initial application, the participant complete and submit a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible and reasonably scalable, and describes each specific development phase of the project (*e.g.,* network design phase, construction period, deployment and maintenance period). The Commission seeks comment on these proposals, as described below.

44. *Technology Neutral.* While a project description must establish feasibility and scalability, the Commission does not propose restricting the type of technology participants may use. Eligible health care providers participating in the health infrastructure program may choose any currently available technology that meets the definition of broadband as adopted for purposes of the Rural Health Care program. The Commission seeks comment on this proposal. Allowing health care providers flexibility in designing their networks furthers the "competitive neutrality" provision of section 254(h)(2) of the Act by ensuring that universal service support does not favor or disfavor one technology over another. The Commission notes that the various projects in the Pilot Program employed different solutions with varying levels of broadband capacity to meet the specific needs of the health care providers participating in each network.

45. *Network Coverage.* The Commission proposes that the project description should include the identity and location of all network participants, and should include a network diagram. Participants would be required to indicate how they plan to fully utilize their proposed network to provide health care services, and would be required to present a strategy for aggregating the specific needs of health care providers within a State or region, including providers that serve rural areas. The project description should also discuss whether the proposed network will connect to a national backbone, such as NLR or Internet2. Networks may be limited to a particular State or region, but participants should describe feasible ways in which such networks will connect to a national broadband network. Designing networks so that they may, where feasible, connect to a dedicated national network will allow health care providers the

opportunity to benefit from advanced applications in continuing education and research and will also enhance the health care community's ability to provide a rapid and coordinated response in the event of a national crisis. The Commission seeks comment on these proposals.

46. *Service Speeds and Scalability.* The Commission proposes that the project description include a discussion of the speeds and services necessary for the particular network, and how the minimum broadband speed, proposed above, will be provided. Networks should be adequately designed for the exchange of identifiable health information, and capable of meeting transmission speed requirements necessary for health care applications to be used by the health care providers. To demonstrate their broadband needs, participants would be required to explain and provide reasonable support for the type of health care providers that will use the network, the bandwidth and speed requirements for such network, and the health care services that necessitate broadband connections at the desired speeds. Participants would also be required to explain how the proposed network will be designed to meet the current broadband needs of the network members, and would be required to address whether or how the proposed network will be scalable to handle projected future demand. The Commission seeks comment on these proposals.

47. *Health IT Purposes.* The Commission proposes requiring that, as part of the project description, participants specify how the dedicated broadband network will be used by eligible health care providers for health IT to improve or provide health care delivery. As defined in the National Broadband Plan, "health IT" refers to information-driven health practices and the technologies that enable them. Health IT includes billing and scheduling systems, e-care, electronic health records (EHRs) and telehealth and telemedicine. In adopting the Pilot Program, the Commission recognized the benefits of telehealth and telemedicine. The Commission seeks comment on this proposal. Consistent with the National Broadband Plan's recommendation to adopt outcome-based performance goals for the Rural Health Care program, we seek comment below on how best to monitor how participants are utilizing dedicated broadband networks to support these health IT purposes.

48. *Emergency Response Connectivity.* The Commission seeks comment on whether every project should be required to include ways in which the proposed network will be used in emergency response and meet disaster preparedness requirements. The Commission also seeks comment on whether every project should be required to include ways in which the proposed network will provide effective and secure connectivity, and peering with other networks in order to address global public health and border issues.

J. Facilities Ownership, IRU or Capital Lease Requirements

49. The Commission proposes requiring health care providers to have an ownership interest, indefeasible right of use (IRU), or capital lease interest in facilities funded by the program. The Pilot Program did not restrict the form of agreement that health care providers could enter into with vendors for projects funded by that program. In some instances, Pilot Program projects opted to enter into short-term or operating leases, which placed them at greater risk and more dependent on the vendor than if they had obtained an ownership or long-term interest. For example, if a vendor becomes insolvent, a project that does not have an IRU or ownership interest could be left with a non-operational network with limited recourse. Moreover, in the case of a participant that enters into a short-term or operating lease for network access, once the term of the lease expires, the participant could potentially lose access to the network. In some instances, lease arrangements may result in proposals in which vendors incur infrastructure costs and pass these costs to the health care providers as either a one-time construction charge or an amortized cost over the term of the lease. Funding from the health infrastructure program should confer optimal long-term interests in a funded network with the least amount of risk. The Commission therefore proposes that health care providers seeking funding for infrastructure projects should either: (1) Own the infrastructure facilities funded by the program, (2) have an IRU for such facilities, or (3) have a capital lease. The Commission seeks comment on the proposals described below.

50. *Ownership or IRU.* The Commission proposes permitting facilities subject to an IRU to be funded under the health infrastructure program. An IRU is an indefeasible right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset, generally 20 years. An IRU confers on the grantee the vestiges of ownership, and is customarily used in the telecommunications industry. It normally involves a substantial sum paid up front, generally priced as a certain amount (depending on market rates) per mile or per fiber mile. The Commission proposes that any contract that involves paying for the full cost of new construction with eligible funds should not be treated as an IRU, but simply as a construction project with assurances that the participant owns all constructed facilities. The Commission also proposes that an IRU should include maintenance of the fiber/network for the term (vendor should be responsible for maintenance and repairs); costs of maintenance and operation of associated electronics can be (and usually are) addressed in a separate service agreement. An IRU should be independent of any contract for services or electronics. Unlike a lease, an ownership interest or IRU ensures that the vestiges of network ownership will remain with the eligible health care provider members for the period of time delineated by the IRU, and that the network assets supported by universal service funds will not revert to the vendor. While IRUs are often for 20 years, the Commission does not propose setting a fixed number of years for an IRU. Rather, the period of the IRU should be commensurate with the remaining economic life of the facility funded by the program. The Commission seeks comment on this proposal.

51. *Capital Lease.* The Commission also proposes permitting capital leases to be funded under the health infrastructure program, but proposes to prohibit short-term or operating leases. A capital lease is a lease of a business asset which represents ownership and is reflected on the lessee's balance sheet as an asset. This is in contrast to an operating lease, in which the lessee has no ownership interest. Under Generally Accepted Accounting Principles (GAAP), a lease is a capital lease if it meets one or more of the following criteria: The lease term is greater than 75 percent of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceeds 90 percent of the fair market value of the property. The Commission proposes that participants in the health infrastructure program be permitted to seek support for the cost of leasing facilities required to provide broadband service if such lease qualifies as a capital lease under GAAP. If there is doubt regarding the classification of a

particular lease under GAAP, the participant may be required to provide an explanation justifying the classification of its leasing arrangement as a capital lease. The Commission invites comment on this proposal.

52. *No Short-Term Leases.* The Commission proposes that short-term or operating leases are not eligible for funding under the health infrastructure program. Because the primary focus of the health infrastructure program is the construction and sustainability of broadband infrastructure facilities, the Commission does not believe that short-term or operating leases are appropriate. In a short-term lease, ownership of the funded asset would revert back to the vendor at the conclusion of the term of the lease, conferring a benefit on the vendor and not the health care provider. This is inconsistent with the goal of funding infrastructure programs for the creation of sustainable, long-term dedicated broadband networks used for health care purposes. The Commission therefore proposes that short-term or operating leases are not an acceptable vehicle for deploying facilities under the health infrastructure program. The Commission invites comment on this proposal.

53. *Depreciation of Network Components.* Because of the restrictions against the sale, resale, or other transfer of universal service funds contained in section 254(h)(3) of the Act, health care providers would not normally be able to dispose of equipment or other improvements funded by the health infrastructure program. The Commission seeks comment on whether it should adopt rules that allow for the disposition of assets after the full economic useful life of funded projects (as determined, for example, under GAAP or as determined for tax depreciation reporting purposes). The Commission notes, however, that the full economic useful life of infrastructure projects in most instances should be ten to twenty years. The Commission also seeks comment on whether it should adopt rules that allow for the transfer of ownership of funded projects to subsidiaries or affiliates of the original applicants, provided that eligible health care providers continue to have a controlling beneficial ownership interest in the project.

K. Standard Terms and Conditions

54. The Commission proposes adopting requirements that construction contracts, IRUs or eligible capital leases entered into by health care providers for infrastructure projects contain certain mandatory provisions. This would ensure consistency among projects, and will help health care providers to negotiate contracts that meet at least a basic level of assurance. The Commission emphasizes that such standard terms and conditions would not be a substitute for further negotiated terms that health care providers may deem necessary in their business judgment. The Commission expects health care providers to exercise due diligence in negotiating such contracts with vendors. The Commission seeks comments on these proposed terms and conditions, and inquires whether additional or different provisions should be required.

55. *Construction Contracts.* The Commission proposes that the following provisions should be included in all construction contracts:

- *Work Standards.* All work shall conform to identified standards and specifications. The vendor shall not use any defective material in the performance of the work.
- *Withholding of Payments.* The health care provider may withhold money due for any portion of the work which has been rejected by the health care provider and which has not been corrected by the vendor to the reasonable satisfaction of the health care provider.
- *Defects in Work.* For a period of not less than one year after project completion, the vendor shall correct at its expense all defects and deficiencies in the work which result from (1) labor or materials furnished by the vendor, (2) workmanship, or (3) failure to follow the plans, drawings, standards, or other specifications made a part of the contract.

56. *IRU.* The Commission proposes that the following provisions should be included in all IRUs:

- *Term of the Agreement.* The health care provider is granted an exclusive and irrevocable right to use the facility funded by the health infrastructure program, for the remainder of facility's useful life.
- *Beneficial Ownership Interest.* The health care provider receives beneficial title and interest or equitable title in the facilities funded by the health infrastructure program. Such title should include the right to use the facilities, the right to have access for repairs, and the right to let others use such facilities.

57. *Capital Leases.* The Commission proposes requiring that the payment structure in a capital lease should be reflective of the term of the lease. Lease payments in advance of the lease term would not be allowed. For example, in a ten-year lease, the Commission would not allow an upfront payment of the entire ten-year lease period. Such prepayments present a significant risk that the vendor could default or go into bankruptcy after the pre-payment has been made, resulting in the loss of funds.

58. *Provisions Applicable to all Contracts.* Whether a construction contract, an IRU, or a capital lease, the Commission proposes that all contracts should have provisions that address the following:

- *Laws and Regulations.* The vendor shall comply with all Federal, State and municipal laws, ordinances and regulations (including building and construction codes) applicable to the performance of the work.
- *Environmental Protection.* The vendor shall comply with all applicable Federal, State and municipal environmental laws and regulations which relate to environmental protection, inspection and monitoring of property and environmental reporting and information requirements.
- *Performance Bonds.* For contracts in excess of $150,000, the vendor shall deliver a performance bond. For construction contracts, performance bonds should be for the construction term of the contract plus a period of not less than one year (*i.e.,* the same period in which the health care provider may require the vendor to remedy defects in the work). For a lease or an IRU, performance bonds should be for the entire term of the agreement.
- *Indemnification.* The vendor agrees to indemnify and hold harmless the health care provider from any and all claims, actions, or causes of action to the extent the claimed loss or damages arises out of the vendor's negligent performance or nonperformance of its obligations under the contract.

L. Sustainability Reporting Requirement

59. Consistent with the recommendations of the National Broadband Plan, the Commission proposes requiring that, prior to receiving a funding commitment letter from USAC, participants submit a sustainability report demonstrating that the project is sustainable. Although participants would be free to include additional information to demonstrate a project's sustainability, the Commission proposes that a sustainability plan would at a minimum address the following points:

- *Principal Factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability.
- *Minimum Fifteen Percent Funding Contribution.* Discuss the status of obtaining the minimum 15 percent

contribution for eligible project costs. If project funding is dependent on appropriations or other special conditions, such conditions should be discussed.

• *Projected Sustainability Period.* Indicate a reasonable sustainability period, which is at least equal to the useful life of the funded facility. Although a sustainability period of 10 years is generally appropriate, the period of sustainability should be commensurate with the investments made from the health infrastructure program.

• *Terms of Membership in the Network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.,* participation agreements, memoranda of understanding, usage agreements, or other documents). Describe financial and time commitments made by proposed members of the network. If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed. If the network will include eligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

• *Ownership Structure.* Explain who will own each material element of the network, and arrangements made to ensure continued use of such elements by the network members for the duration of the sustainability period.

• *Sources of Future Support.* If sustainability is dependent on fees to be paid by eligible health care providers, then the sustainability plan should confirm that the health care providers are committed and have the ability to pay such fees. If sustainability is dependent on fees to be paid by network members that will use the network for health care purposes, but are not eligible health care providers under the Commission's rules, then the sustainability plan should identify such entities. Alternatively, if sustainability is dependent on revenues from excess capacity not related to health care purposes, then the sustainability plan should identify the proposed users of such excess capacity. If rural health care provider members of the network qualify for continued support under the health broadband services program, this should be discussed in the sustainability plan.

• *Management.* Describe the management structure of the network for the duration of the sustainability period, and how management costs will be funded.

60. The Commission seeks comment on whether additional or different sustainability requirements should be included.

M. Shared Use

61. Given the nature of high capacity networks capable of supporting the health IT requirements of health care providers, it is customary to build excess capacity when deploying such networks. The Commission therefore needs to resolve: (i) What capacity should properly be funded by universal service funds? (ii) Should eligible health care providers be allowed to share this excess capacity with non-eligible entities and, if so, (a) with which entities and (b) what percentage of the total cost should such non-eligible entities be required to pay?

62. The Commission recognizes that there may be cost-savings and other benefits from allowing community users to participate in infrastructure projects funded by the health infrastructure program. However, the Commission seeks to ensure that the health infrastructure program is not indirectly subsidizing unauthorized uses, and that funds are not wasted. Rules governing the sharing of this subsidized infrastructure are necessary to prevent waste, fraud and abuse, and to control the size of the disbursements, particularly given the annual limits on the health infrastructure program.

63. *Fully-Distributed and Incremental Costs.* Telecommunications networks generally provide multiple services over a shared plant. Telecommunications regulators in setting prices for telecommunications services have generally had to allocate the costs of the shared plant to the various services. Two traditional methods for assigning costs to services are to employ incremental cost or fully distributed costs. In economic theory, the term "incremental cost" refers to "the additional costs (usually expressed as a cost per unit of output) that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or service." The term "common cost" refers to "cost that are incurred in connection with the production of multiple products or services, and remains unchanged as the relative proportion of those products or services varies * * *" Where multiple services are produced by a shared plant, pricing those services on the basis of their incremental cost is unlikely to generate revenues sufficient to recover the total costs of production. Accordingly, regulators traditionally have allocated the common costs among the multiple services so as to recover the total costs of the plant. A common approach has been to adopt "fully distributed cost" (or fully allocated cost) pricing rules, which allocate costs on the basis of relative output levels, revenues or attributable costs.

64. The Commission seeks comment on how to define fully distributed costs for purposes of the health infrastructure program. For instance, what allocators should the Commission use for allocating common costs? Should the Commission allocate costs on the basis of directly attributable costs? Or should the Commission allocate costs based on relative capacity assigned to eligible versus ineligible users? Are there other allocators that would be more appropriate to employ?

65. The Commission also seeks comment on whether it should provide guidance on how incremental cost should be estimated. For example, should the cost of building laterals to other community institutions, the cost of electronics to light the fibers used by the other institutions, and any additional costs associated with purchasing a higher-capacity fiber cable all be deemed to be incremental costs? Should other costs be included in estimating incremental costs?

66. The Commission seeks comment on these proposed distinctions between fully-distributed costs and incremental costs, and solicits alternative proposals.

67. The Commission proposes that the health infrastructure program only support the infrastructure costs associated with the eligible health care providers' current and anticipated bandwidth requirements. To the extent that the deployed network has excess capacity and the eligible entities seek to share that excess capacity with ineligible entities, the Commission proposes that the ineligible entities should pay an appropriate portion of the costs of the network. The Commission seeks comment on whether the share of costs borne by the ineligible entities should be based on incremental cost or fully-distributed cost. The Commission seeks comment on the likely proportion of network costs ineligible entities would be required to bear if we adopt an incremental cost approach. The Commission seeks comment on whether it would be administratively simpler or more appropriate to adopt a fully distributed cost approach. For example, if eligible health care providers plan to use 75 percent of the network capacity and 25 percent of the capacity is planned for use by the community, should the Commission require a showing that the ineligible users pay 25 percent of the total cost of the network? In this example, should this 25 percent proportionate share of costs include costs associated with trenching,

planning and design, obtaining rights of way, deployment, modulating equipment costs, and maintenance and operation costs?

68. In the event the Commission adopts an incremental cost approach, should it make a bright line distinction so if ineligible users take more than a set percentage of the network's capacity, then they would be required to pay a larger share based on fully-distributed costs (rather than merely incremental cost)?

69. The Commission seeks comment on which allocators it might adopt. For example, in fiber projects, should the Commission allocate the cost of the common infrastructure on the basis of the relative number of fibers used by the health care providers compared with other users? Should we use some other measure of relative capacity or demand? Alternatively, should the Commission allocate common costs on the basis of directly attributable costs? Are there other allocators that would be simpler to implement? Would use of a fully distributed cost allocation methodology reduce the likelihood of waste, fraud and abuse? What effect would such an approach have on the incentives of the eligible health care provider, the vendor and other potential users of the infrastructure to invest in a fiscally responsible manner in broadband networks?

70. *Protecting Against Fraud, Waste and Abuse.* The Commission seeks comment on what limitations on additional capacity for community use are necessary to protect the integrity of dedicated health care networks, and to help ensure that eligible health care providers receive the maximum benefit from infrastructure funded by universal service funds. The Commission seeks comment on what restrictions or measures it should adopt to prevent fraud, waste and abuse as a result of projects that involve dedicated health care networks and additional capacity for use by entities that are not eligible health care providers under our rules. For instance, if the Commission allows excess capacity to be shared by other community uses at incremental cost, should it require that:

- The eligible health care providers or consortium of eligible health care providers should own (or have an IRU or capital lease interest in) in all physical elements of the dedicated network that are part of the project, including any excess capacity.
- All revenues generated by the network from allowing non-eligible health care providers to use the network's excess capacity must be retained by the network to operate, maintain and support the network. This could include, for example, purchasing equipment or applications necessary for the network or the applications that run over it.
- The participant's sustainability plan must indicate reasonable assumptions for the use of excess capacity.
- Either all excess capacity will be used for the health care purposes identified in the participant's application for funding; or, if used by non-eligible entities, the users of such excess capacity will pay (to the network) a market or arm's length negotiated rate to use such excess capacity.
- Network members must have a written agreement or organizational document that specifies the members' respective rights and obligations, including access and maintenance, and reasonable (*i.e.,* arm's length) allocation of recurring and non-recurring costs.

71. *Excess Capacity Disclosures.* If an infrastructure project includes excess capacity, the Commission proposes requiring applicants to disclose the estimated amount of excess capacity as part of its sustainability plan, and to explain how they plan to allocate the cost of the network between the network members that are eligible health care providers and the members that are not eligible health care providers. In doing so, participants would be required to: (1) identify non-eligible users of such excess capacity and explain what proportion of the network non-recurring and recurring costs they will bear, and (2) describe all agreements made between the eligible health care providers and other participants in the network (*e.g.,* cost allocation, facility sharing agreements, maintenance and access obligations, ownership rights). The Commission seeks comment on this proposal, and on how recipients should be required to document the required cost allocation (whether fully-distributed cost or/and incremental cost). Particularly, the Commission seeks comment on how to determine what constitutes "fully-distributed costs" in situations where there are various types of ownership interests (*e.g.,* IRU or capital lease) proposed in this notice.

72. *Additional Capacity for Community Use.* In addition to the proposed rules above (regarding excess capacity for health care purposes), the Commission seeks comment on whether it should encourage, permit, or restrict the following categories of joint projects that include additional capacity for use by the community (not for health care purposes):

- Additional capacity for use by schools and libraries;
- Additional capacity for use by governmental entities (State and local); and
- Additional capacity for use by other entities in the community, such as local non-profits, community or civic organizations, low-income residents, local businesses, anchor institutions and other residents.

73. *Priority Preferences for Projects That Include Additional Capacity for Community Use.* For each of the above types of additional capacity for community use listed in paragraph 77, the Commission seeks comments on whether projects funded by the health infrastructure program should include, restrict, or allow these types of joint or shared projects. The Commission also invites comment on priority preference and other issues. For example:

- If the Commission caps the number of projects per year, or if the number of projects per year under the health infrastructure program exceeds the proposed $100 million funding cap, should the Commission give special prioritization treatment to projects that plan to allow use of excess capacity by schools and libraries that are otherwise eligible for universal service funding?
- Should the Commission give priority to projects that allow use of excess capacity by State or local government (including government offices, police, fire departments and Emergency Medical Services)?
- Should other community use be allowed or restricted?

74. *Other Considerations Regarding Additional Capacity for Community Use.* Should there be additional restrictions on the terms and conditions on which additional capacity may be made available for community use? For example, should the Commission restrict, limit, or add specific requirements as to who should own the portion of a network dedicated for community use?

75. Should the Commission require that additional capacity for community use be physically separated from the dedicated capacity reserved for the health care network? If so, the Commission seeks comment on how such separation may be effectuated. For example, should the Commission require capacity to be separated by fiber strand, channel, wavelength, or by some other method?

76. Commenters should address how permitting joint projects that include additional capacity for community use would be consistent with the resale restrictions contained in section 254(h)(3) of the Act. The use of such

additional capacity by the community would not violate the restrictions against sale, resale or other transfer contained in section 254(h)(3) of the Act because, in such instances, health care providers would retain ownership of the additional capacity, and payments to the network for the use of such additional capacity would be retained to sustain the network. The Commission seeks comment on this analysis.

N. Vendor Cost Reporting Requirements

77. The Commission proposes requiring that health care providers obtain certain cost information from vendors. The Commission seeks comment on its proposal, as detailed below. Because infrastructure projects are complex and involve a significant amount of funding, it is important that participants exercise due diligence in determining costs. To assist participants in this process, and to mitigate waste, fraud and abuse, the Commission proposes that participants in the health infrastructure program should:

- Require the vendor to certify either that: (1) The infrastructure project will only involve the construction and deployment of the dedicated healthcare network, and will not involve the construction or deployment of additional facilities or capacity that will not be part of the dedicated network; or (2) The infrastructure project will include both the construction and deployment of the dedicated network and the construction and deployment of additional facilities or capacity for uses other than the dedicated network, but: (a) The cost charged to the dedicated network will not exceed fully distributed costs given the use, quality of service, term (length of service) and other terms and conditions for use of the dedicated facility; and (b) the vendor will pay all costs related to the additional facility or capacity.
- To assist the health care providers to determine sustainability of the network, require that the vendor provide a depreciation schedule showing the useful life of fixed assets.
- Require the vendor to maintain books and records that support all cost allocations.

O. Quarterly Reporting Requirements

78. The Commission proposes requiring that health infrastructure program participants submit quarterly reports that provide information on the following: (1) Attaining project milestones, (2) status of obtaining the 15 percent minimum match, (3) status of the competitive bidding process, (4) details on how the supported network has complied with HHS health IT guidelines or requirements, such as meaningful use, if applicable; and (6) performance measures. The Commission seeks comment on this proposal, and on whether such reports should only be required annually or semi-annually. Such information could inform the Commission's understanding of cost-effectiveness and efficacy of the different State and regional networks funded by the program and guide future decision-making. This information should also enable the Commission to ensure that universal service funds are being used in a manner consistent with section 254 of the Act and the Commission's rules and orders. In particular, collection of this information is critical to the goal of preventing waste, fraud, and abuse by ensuring that funding is flowing to its intended beneficiaries. Participants should also note that submission of a quarterly report is not a substitute for seeking consent for any material modification to the original application.

P. Competitive Bidding

79. The Commission proposes that all projects funded by the health infrastructure program be subject to fair and open competitive bidding. Currently, health care providers seeking support under the Rural Health Care Support Mechanism post a request for services on USAC's Web site for a period of at least 28 days, using FCC Form 465, which serves as a method for USAC and potential vendors to be aware of requests for services. Because of the complexity of infrastructure projects, participants in the health infrastructure program should be explicitly required to prepare a detailed request for proposals (RFP) that provides sufficient information to define the scope of the project, and to distribute the RFP in a method likely to garner attention from interested venders. For example, participants could (1) post a notice of the RFP in trade journals or newspaper advertisements, (2) send the RFP to known or potential service providers, (3) include the RFP on the health care provider's Web page or other Internet sites, or (4) follow other customary and reasonable solicitation practices used in competitive bidding. Adding this mandatory RFP preparation and distribution requirement could increase the quality and quantity of bids received by health care providers for their network projects, and will therefore result in a more efficient use of funding under the health infrastructure program. The Commission seeks comment on whether participants also should be required to post an FCC Form 465 and note on that form that they have issued a detailed RFP. If participants using an RFP are not required to use an FCC Form 465, then the certifications that are contained in the Form 465 would be included in a substitute form.

80. The Commission recognizes that in certain smaller projects, or in projects that are subject to mandatory, State or local procurement rules, its proposed RFP preparation and distribution requirements may not be practical or cost-effective. Accordingly, the Commission's proposed RFP requirements would not be applicable to infrastructure projects of $100,000 or less or projects that are subject to mandatory State or local procurement rules. However, such projects would still be required to complete a request for services on an Form 465 and post this request on USAC's Web page for a period of at least 28 days before selecting a vendor. The Commission proposes that health care providers be required to certify that each service or facility provider selected for an infrastructure project supported by the health infrastructure program is, to the best of the health care provider's knowledge, the most cost-effective service or facility provider available, as defined in our rules. The Commission seeks comment on the above proposals.

Q. Designation of Successor Projects

81. The Commission proposes that USAC monitor each funded participant's progress, as defined by their project milestones, and alert the Wireline Competition Bureau (Bureau) in the event of any significant project delays or concerns. Similar to the Pilot Program, the Commission proposes delegating to the Bureau the authority to waive the relevant sections of Subpart G of Part 54 of the Commission's rules to the extent waiver may be necessary to the sound and efficient administration of the health infrastructure program.

82. The Commission also proposes that in instances where a participant is unable to complete its project, the Wireline Competition Bureau would have authority to designate a successor project, similar to the delegation of authority for the Pilot Program. Such designation of a successor could be made upon request of the participant, or on the Bureau's own motion. The Bureau would exercise such discretion in instances where a project fails to meet a specified milestone, or a participant fails to adequately notify the Commission of modifications to the project milestone deadlines. In selecting a successor project, the Bureau would take into consideration the likelihood that the successor will be able, at a minimum, to complete the project in a

manner that provides new broadband infrastructure to the identified region or area. The Commission also proposes delegating authority to the Bureau to revoke funding awarded to any selected participant making unapproved material changes to the network design plan set forth in the participant's detailed project description submitted as part of the funding application materials. The Commission seeks comment on the proposals outlined above. As a final matter, the Commission also seeks comment on ways for the Bureau and USAC to improve outreach efforts in assisting projects through the Commission's administrative process.

R. NEPA and NHPA Requirements

83. Certain projects funded by the health infrastructure program could implicate the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). If NEPA and NHPA are implicated by a particular proposed project, the Commission invites comment on the point in the application process at which participants should be required to comply with the requirements codified in the Commission's rules.

II. Health Broadband Services Program

84. In the *2003 Rural Health Care Internet Access Order,* the Commission amended the Rural Health Support mechanism to fund the recurring costs associated with Internet access for rural health care providers in two ways. First, the program subsidizes the rates paid by rural health care providers for telecommunications services to eliminate the rural/urban price difference within each State (via the telecommunications program). Second, to support advanced telecommunications and information services, the program provides a 25 percent flat discount on monthly Internet access for rural health care providers and a 50 percent discount for health care providers in States that are entirely rural (via the Internet access program).

85. In establishing the level of support for the Internet access program, the Commission concluded that a flat discount percentage of 25 percent off the cost of monthly Internet access would assist health care providers seeking to purchase Internet services, while also providing incentives for rural health care providers to make prudent economic decisions concerning their telehealth needs. The Commission found that a flat discount would be easy to administer and consistent with section 254(b)(5), which requires "a specific, sufficient, and predictable mechanism * * * because it limits the amount of support that each health care provider may receive per month to a reasonable level." The Commission also determined that a flat discount would lead to greater predictability and fairness among health care providers. In setting the discount level at 25 percent, the Commission acted conservatively based on the belief that this amount would provide an incentive for rural health care providers to choose a level of service appropriate to their needs, ensure that demand for Internet access support would not exceed the annual funding cap, and deter wasteful expenditures. The Commission stated that as it gained more experience with this aspect of the support mechanism, it would reassess the appropriateness of the 25 percent discount level.

86. Noting the under-utilization of the current support mechanism, the National Broadband Plan recommended that the Internet access program be replaced with a broadband services access program that expands the definition of funded services and provides greater support than the 25 percent subsidy under the current Internet access program in order to better meet the health IT needs of health care providers. To better encourage program participation, the National Broadband Plan also recommended that the Commission simplify the application process for the program, while also continuing to protect against potential waste, fraud and abuse in the program.

A. Eligible Services

87. *Eligible Access and Transport Services.* Pursuant to section 254(h)(2)(A), and consistent with the recommendations made in the National Broadband Plan, the Commission proposes to replace the existing Internet access program with a new health broadband services program, which will subsidize 50 percent of an eligible rural health care provider's recurring monthly costs for any advanced telecommunications and information services that provide point-to-point broadband connectivity, including Dedicated Internet Access. The Commission seeks comment on this proposal. The Commission notes that section 254(h)(2)(A) is not limited to health care providers in rural areas. The Commission seeks comment on whether an appropriate first step for expanding funding for broadband services should be to focus on rural areas, given the particular challenges that rural communities often face in obtaining access to health care. The Commission also invites comment on whether this proposal implicates section 254(h)(1)(A), and if so, how the Commission would implement the proposed health broadband services program in light of section 254(h)(1)(A). For instance, should the Commission require that recipients seeking funding for telecommunications services make an election as to whether they wish to receive support under the telecommunications program or under the new proposed health broadband services program?

88. As noted by the National Broadband Plan, when used effectively, broadband-based technologies can "help health care professionals and consumers make better decisions, become more efficient, engage in innovation, and understand both individual and public health more effectively." Currently, the Internet access program provides support equal to 25 percent of the monthly cost of Internet access reasonably related to the health care needs of rural health care providers. The Commission's current rules define Internet access as "an information service that enables rural health care providers to post their own data, interact with stored data, generate new data, or communicate over the World Wide Web." Under this definition, the Commission determined that Internet access provides access to the world-wide information resource of the Internet, and includes all features typically provided by Internet service providers to provide adequate functionality and performance. To qualify as Internet access under the definition, the Commission further stated that transmissions must traverse the Internet in some fashion.

89. Access to advanced telecommunications and information services for health care delivery is provided in a variety of ways today, and is not limited to the public Internet and the features typically provided by Internet service providers. For example, due to privacy laws and electronic health care record requirements, secure transmission of health IT data needs to occur over a private dedicated connection between health care providers. In addition, as evidenced in the networks being funded under the Pilot Program, many health care providers rely on private wide area networks to provide Health IT and access applications for the delivery of health care to rural areas. Limiting funding to transmission over the public Internet therefore may inhibit access to health IT necessary to improve health care delivery. The low utilization rate of the existing Internet access program suggests the narrow definition of

Internet Access does not align with the needs of health care practitioners.

90. The Commission proposes that the health broadband services program provide support to eligible rural health care providers for the recurring costs of access to advanced telecommunications and information services that enable rural health care providers to post their own data, interact with stored data, generate new data, or communicate over private dedicated networks or the public Internet for the provision of health IT.

91. The Commission seeks comment on whether it should define a minimum level of broadband capability for purposes of providing support under the new health broadband services program. The National Broadband Plan suggested that 4 Mbps downstream is the minimum necessary for a solo practitioner to support the deployment of health IT applications today and in the near future, whereas the recommended bandwidth for other health care providers is 10 Mbps for small clinics and health care providers with 2 to 4 physicians, 25 Mbps for larger clinics and health care providers with 5 or more physicians, 100 Mbps for hospitals and 1,000 Mbps for large medical centers. Would 4 Mbps be an appropriate minimum for purposes of the new health broadband services program, or should we require different minimum speeds depending on the type of health care provider? Four (4) Mbps could be a sufficient minimum requirement since the health broadband services program would be used to fund broadband services without funding additional infrastructure. In contrast, for the health infrastructure program, given the use of funding specifically for broadband deployment, the minimum broadband speed should be higher. The Commission also seeks comment on minimum levels of reliability, including physical redundancy, to support health IT services and what can be done to encourage reliability. The Commission also seeks comment on the minimum quality of service standards necessary to meet health IT needs. The Commission seeks comment on whether the health broadband services program should contain a minimum quality of service requirement.

92. *Eligible Service Providers.* In the past, the Commission has permitted health care providers to seek discounts on "the most cost-effective form of Internet access, regardless of the platform." Consistent with section 254(h)(2)(A), the Commission proposes that participants in the health broadband services program may seek supported services from any type of broadband provider, as long as the participant selects the most cost-effective option to meet its health care needs. The Commission seeks comment on this proposal.

93. *Limitations to Prevent Waste, Fraud, and Abuse.* To guard against the possibility of waste, fraud, and abuse in the health broadband services program, the Commission proposes that the supported services must be reasonably related to the provision of health care services by an eligible health care provider. Second, eligible health care providers that seek support for telecommunications service offerings may not also request support from the telecommunications program for the same service. Lastly, all requests for discounts under the health broadband services program would comply with our rules on competitive bidding and cost-effectiveness, as discussed below. The Commission seeks comment on these proposals.

B. No Capital or Infrastructure Costs

94. The National Broadband Plan recommended that the Rural Health Care Support Mechanism maintain a distinction between subsidies for recurring costs (*i.e.,* the monthly service price) and subsidies for other costs (*e.g.,* infrastructure, equipment). Given the proposed availability of funding for infrastructure deployment and upgrades in the health infrastructure program, the Commission proposes placing limits on the use of funding under the health broadband services program for non-recurring costs. Under the Internet access program, USAC allows participants to receive one-time support equal to 25 percent of the cost of Internet access installation. The existing Internet access program, however, does not provide support for the costs of construction or infrastructure build-out necessary for the installation of Internet access services. The Commission proposes that under the health broadband services program, participants may receive a one-time support equal to 50 percent of reasonable and customary installation charges for broadband access. Installation charges would be defined as charges that are normally charged by service providers to commence service, and are not charges that are based on amortization or pass through of construction or infrastructure costs. The health broadband services program would only subsidize health care providers' recurring costs—that is, the monthly price for providers' eligible services and one-time installation charges. The Commission seeks comment on this proposal.

95. The National Broadband Plan recommended that "federal and state policies should facilitate demand aggregation and use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet their connectivity." The Commission proposes that eligible health care providers should be able to receive support for the lease of dark or lit fiber to provide broadband connectivity from any provider. Under such an approach, applicants would, for instance, be able to lease dark fiber that may be owned by State, regional or local governmental entities, when that is the most cost-effective solution to their connectivity needs.

96. The Commission recognizes that, in some situations, service providers may deploy new facilities to serve eligible health care entities, and may seek to recover all or part of those costs through non-recurring charges when service is initiated. Consistent with policies adopted in the schools and libraries support mechanism, the Commission proposes that applicants may not seek upfront support for non-recurring charges of $500,000 or more. If non-recurring charges are more than $500,000, they must be part of a multi-year contract, and must be prorated over a period of at least five years. The Commission seeks comment on these proposals.

C. Restrictions on Satellite Services

97. Section 254 directs the Commission to adopt rules that enhance access to advanced telecommunications and information services to the extent "technologically feasible and economically reasonable." As noted by the National Broadband Plan, "the high fixed costs of designing, building and launching a satellite mean that satellite-based broadband is likely to be cheaper than terrestrial service only for the most expensive-to-serve areas." The Commission proposes to require that a health care provider seeking support for satellite service demonstrate that it is the most cost-effective option available to meet the provider's health care needs. The Commission also proposes to incorporate the rules currently governing the purchase of satellite services under the telecommunications program into the new health broadband services program. Currently, eligible health care providers may seek support for rural satellite services, even if a similar terrestrial-based service is available. However, discounts are capped at the amount that the provider would have received if they purchased a functionally similar terrestrial-based

alternative. The Commission seeks comment on these proposals.

D. Level of Support

98. The National Broadband Plan recommended that the Commission base discount levels for the health broadband services program on criteria that address such factors as lack of broadband access, lack of affordable broadband, price discrepancies for similar broadband services between health care providers, the health care provider's inability to afford broadband services, special status for health care providers in the highest Health Professional Shortage Areas (HPSAs) of the country, and special status for public or safety net institutions.

99. The National Broadband Plan further recommended that, to enable health care providers to afford higher bandwidth broadband services, the subsidy support amount under the health broadband services program should be greater than the 25 percent subsidy available under the Internet access program. In addition, the National Broadband Plan suggested that support be adjusted to better match the costs of services for disadvantaged health care providers. Additionally, to encourage participation in the health broadband services program, the National Broadband Plan stated that the Commission should "simplify the application process and provide clarity on the level of support that providers can reasonably expect, while protecting against potential waste, fraud and abuse."

100. The Commission notes that, on average, health care providers that applied for the urban/rural cost difference for eligible telecommunications services under the existing telecommunications program received funding commitments for a 60 percent discount on their cost of service; a significant number of those funding commitments are for T–1 lines. The Commission does not have sufficient information at this time regarding the comparative costs of higher bandwidth services that increasingly may be used by health care providers in the future as they employ health IT applications for telehealth and e-care, nor does the Commission have information that would enable it to develop an administratively workable affordability benchmark. Given the dearth of available information, a cautious approach could be to adopt a flat discount of 50 percent for monthly recurring costs and evaluate, after some period of time, whether such a flat discount results in increased adoption and utilization of broadband for health care purposes. The Commission seeks comment on this proposal, as discussed in this section.

101. One potential advantage of adopting a 50 percent discount is that the participating health care provider has a financial stake in paying for its selected services, thereby providing an incentive for cost-effective decision making and promoting the efficient use of universal service funding. In particular, unlike a rural/urban benchmark methodology, a flat discount requires that providers seek cost efficient solutions to their broadband needs because they have their own investment in the recurring service costs. In conjunction with the competitive bidding process, a financial stake in services supported by the health broadband services program will help in keeping costs lower for the same quality services.

102. The National Broadband Plan also recommended that, to better encourage participation in the health broadband services program, the Commission should provide clarity as to the level of support that health care providers can reasonably expect to receive. Not only does a 50 percent flat discount promote prudent decision-making, it provides a clear and predictable support amount, thereby assisting rural health care providers in planning for their broadband needs and purchasing services. Moreover, a flat rate discount is easy to administer, which should expedite the application process and reduce administrative expenses incurred by USAC.

103. The Commission also seeks input on whether affordability metrics could be incorporated into the flat rate methodology proposed above. Are there factors that could be considered under a flat rate funding mechanism that target health care providers in rural areas that still could not afford broadband access services under the 50 percent funding threshold?

E. Competitive Bidding

104. The National Broadband Plan suggests that the Commission should evaluate the tools at its disposal, such as competitive bidding, to enhance its oversight of the Rural Health Care Support Mechanism. The Commission proposes to extend the competitive bidding requirements that are currently applicable to the Internet access program to the new health broadband services program. Specifically, the Commission proposes that each participant undertake a competitive bidding process by posting an FCC Form 465 prior to selecting a service provider, and certify that it considered all bids received and selected the most cost-effective bid. The Commission seeks comment on this proposal. Are there changes the Commission can make to the competitive bidding mechanism to make it more successful or efficient? Are there certain types of situations that should be exempted from the competitive bidding requirements?

105. *Multi-year contracts.* Under the current internet access program, certain service contracts have "evergreen" status, meaning that for the life of the contract, the parties do not have to rebid the service or post an FCC Form 465. A health care provider covered under an evergreen contract may apply annually for Internet access support by filing only an FCC Form 466–A. Conversely, a health care provider who does not have an evergreen contract is considered to have a "month-to-month, tariffed service and must post an FCC Form 465 and select the most cost-effective service and service provider each year."

106. The Commission proposes to codify this practice as part of the new health broadband services program. If they choose to do so, program participants will be allowed to enter into multi-year contracts for recurring broadband services. Further, the Commission proposes that multi-year contracts that are competitively bid in accordance with the Commission's rules and are deemed to have evergreen status by USAC do not need to be re-bid each year, for the life of the contract. However, consistent with current policy, all health care providers would be required to continue to request support annually by filing an FCC Form 466–A. Additionally, any changes to the parties' evergreen contract, such as an extension, renewal, or the addition of services, would require the posting of a new FCC Form 465. Codifying this existing practice would maintain consistency while transitioning from the existing Internet access program to the new health broadband services program. Health care providers would also benefit from the opportunity to enter into long-term contracts with service providers, which may offer lower pricing than would be available on an annual basis. Moreover, the administrative obligations would be reduced for those providers who do not file a Form 465 each year. The Commission seeks comment on this proposal.

107. *Opting into the Health Broadband Services Program.* Under the Pilot Program, the Commission permitted participants to seek support for both the recurring and non-recurring costs associated with the deployment of broadband health care networks and the advanced telecommunications and

information services provided over those networks. When the Pilot Program ends, some participants may wish to transition to the new health broadband services program to subsidize the recurring costs formerly funded by the Pilot Program. The Commission seeks comment on whether Pilot Program participants whose original request for competitive bids included both non-recurring and recurring costs should be permitted to transition to the health broadband services program without undergoing a new competitive bidding process.

III. Eligible Health Care Providers

A. Administrative Offices

108. Under the Commission's current rules, health care providers housing their administrative operations in off-site offices may not seek rural health care support for those offices. The National Broadband Plan recommended that the Commission expand its interpretation of eligible health care provider to allow participation in the Rural Health Care Support Mechanism by off-site administrative offices. Off-site administrative offices that are owned or controlled by an eligible health care provider should have the opportunity to receive rural health care support, and, as detailed below, the Commission proposes to amend its rules to reflect this change. The Commission seeks comment on this proposal.

109. There are several reasons why the Commission thinks it appropriate to revisit this issue. In today's environment, while administrative offices do not provide "hands on" delivery of patient care, they often perform support functions that are critical to the provision of clinical care by rural health care providers. For example, administrative offices may coordinate patient admissions and discharges, ensure quality control and patient safety, and maintain the security and completeness of patients' medical records. Administrative offices also perform ministerial tasks, such as billing and collection, claims processing, and regulation compliance. Without an administrative office capable of carrying out these functions, an eligible health care provider may not be able to successfully provide patient care. From the Pilot Program, the Commission has also learned that administrative costs can be significant for rural health care providers and, in some cases, may prevent providers from adopting telemedicine at all. For example, one Pilot Program participant stated in its response to the *NBP Public Notice #17* that, despite efforts to minimize costs, it had spent over $160,000 on administrative expenses in approximately two years. By expanding the Commission's interpretation of section 254(h)(7)(B) to include funding for off-site administrative offices, the Commission could help to reduce the costs of telemedicine adoption for rural providers.

110. The Commission also recognizes that there is a wide variation in the way that health care providers structure their facilities. While some providers perform both clinical and administrative functions at a single, stand-alone facility, other providers require multiple sites and choose to house their administrative and clinical operations in separate buildings. It is becoming a best practice among health care providers to locate their administrative facilities off-site from the provider's primary facility. To the extent that administrative offices are owned or controlled by an eligible health care provider, the Commission proposes that they should be funded as a part of the eligible health care provider under section 254(h)(7)(B). It is impractical to distinguish administrative offices that are located off-site but otherwise perform the same functions as in-house administrative offices. The Commission seeks comment on this proposed change.

111. If the Commission revises its rules to indicate that off-site administrative offices may qualify as eligible health care providers, additional limitations may be needed to protect the program from waste, fraud, and abuse. First, the Commission proposes that an off-site administrative office must be at least 51 percent owned or controlled by an eligible non-profit or public health care provider listed in section 254(h)(7)(B) of the Act. An off-site facility would not qualify for support, therefore, simply by entering into an outsourcing relationship with an eligible health care provider. The Commission also seeks comment on whether an off-site administrative office that is less than 51 percent owned or controlled by an eligible health care provider should be eligible for support on a pro-rated basis or should be excluded from support altogether. Second, the Commission notes that, in some cases, off-site administrative offices may serve several purposes, some of which are unrelated to health care or performed on behalf of ineligible entities. The Commission therefore proposes to allow eligible health care providers to seek support for off-site administrative offices only in those instances where the health care provider certifies that the administrative office is used primarily for performing services that are integral to the provision of health care by eligible health care providers. The Commission seeks comment on these proposals.

C. Data Centers

112. Currently, off-site data centers are not eligible health care providers under the Commission's rules. The National Broadband Plan recommended that the Commission expand its interpretation of "eligible health care provider" to include off-site data centers used for health care purposes and owned (directly or indirectly) by an eligible health care provider. As the Commission learned from the Pilot Program, data centers often perform functions, such as housing patient records or serving as operations centers, which are critical to the delivery of health care in rural communities. For example, the Utah Telehealth Network Pilot Program Project uses a primary and a secondary data center to deliver approximately 2,500 clinical and financial applications across wide area networks to eligible health care facilities. Similarly, the Western New York Rural Area Health Education Center (Western New York Area Health Pilot Program Project plans to "connect all participating hospitals and clinics in the rural and under-served areas over a dedicated broadband Internet Protocol network to a centralized conferencing and server core at the Western New York Area Health data center facility * * * which aggregates, and expands the primary- and secondary-care capacities of these hospitals and clinics for telemedicine, radiological imaging, and community-based health information exchange, as well as clinical collaboration, mentoring, and distance learning and education applications." Commenters responding to the *NBP Public Notice #17* stressed that if the connections between the data centers and the individual network sites are not funded, information transfer will not occur and the network cannot operate, thereby inhibiting patient care.

113. As health care providers rely more on advanced applications to meet the challenges of sharing, storing and retrieving electronic medical data and images, health care providers and organizations will likely need to depend more heavily on high-speed connectivity between key sites and data centers. As an administrative matter, it is impractical to disallow funding to data centers that provide the same functions as on-site entities, but happen to be located off-site. Like off-site administrative offices, the Commission therefore proposes that off-site data

centers that are owned or controlled by eligible health care providers should receive rural health care support as a part of the eligible health care provider under section 254(h)(7)(B).

114. As with the case of administrative offices, the Commission notes that off-site data centers can serve several purposes, some of which may be unrelated to health care or performed on behalf of ineligible entities. Many private companies, for example, offer off-site data center services that may be purchased by any member of the public. In those cases, it is possible that some of the entities served are not eligible health care providers. As such, the Commission proposes to allow eligible health care providers to seek support only for off-site data centers in which the eligible health care provider has at least a 51 percent ownership or controlling interest. The Commission also seeks comment on whether an off-site administrative office that is less than 51 percent owned or controlled by an eligible health care provider would be eligible for support on a pro-rated basis or should be excluded from support altogether. Additionally, because of the possibility that off-site data centers may provide services unrelated to health care or on behalf of ineligible entities, the Commission proposes to require eligible health care providers seeking support for off-site data centers to certify that the data center is used primarily for performing services that are integral to the provision of health care. The Commission seeks comment on these proposals.

D. Skilled Nursing Facilities

115. The Commission proposes that non-profit skilled nursing facilities be considered eligible for rural health care support under the category of "not-for-profit hospitals." Skilled nursing facilities provide some of the same post-acute services that are traditionally provided at hospitals, such as the management, observation, and evaluation of patient care. As noted by the National Broadband Plan, under the changing technological landscape of rural health care, services are no longer clearly divided into traditional delivery models. The CDC reports that the number of acute care facilities has decreased, and services traditionally provided in hospital settings are increasingly performed at non-acute and post-acute care facilities. Skilled nursing facilities are an example of this trend. Specifically, due to advances in telemedicine, in many instances patients no longer need to be transferred to hospitals for treatment because they can receive the same or similar treatment at a skilled nursing facility.

116. The evolution of skilled nursing facilities as a recognized provider of post acute services is demonstrated by their coverage under Medicare. Medicare covers skilled nursing care when certain conditions are met: (1) The patient enters the skilled nursing facility shortly following a hospital stay of three consecutive days or more; (2) a doctor has ordered skilled nursing care which requires the skills of professional personnel such as nurses, physical therapists, occupational therapists or speech pathologists or audiologists; and (3) the patient needs skilled care on a daily basis on an in-patient basis. The Commission proposes that facilities that provide skilled nursing services that are covered by Medicare should be eligible for support as a "not-for-profit hospital" under section 254(h)(7)(B) of the Act.

117. The Commission recognizes, however, that certain facilities (such as nursing homes) may provide both skilled nursing services and custodial services. Unlike skilled nursing services, custodial services involve assisting patients with daily activities such as eating, clothing, bathing, *etc.,* and are not services covered by Medicare. It is therefore important that rural health care support be available only to those facilities with a sufficient volume of skilled nursing patients. The Commission seeks comment on how to distinguish a facility that is primarily engaged in providing skilled nursing services as opposed to facilities that are primarily engaged in providing custodial care. For example, should the Commission allow a facility to receive support as a skilled nursing facility if: (1) It has a certificate of need to provide skilled nursing services for at least 51 percent of its total beds; or (2) at least 51 percent of the facility's revenues for the last twelve months are from skilled nursing services? Alternatively, should designation as a skilled nursing facility be based on the number of patients at a facility that received skilled nursing services over a three-month period of time compared to the total number of patients at the facility for the same period of time? The Commission invites comment on this issue. Additionally, the Commission seeks comment on whether support should be limited to skilled nursing facilities that maintain an average patient stay not exceeding 20 consecutive days, which is consistent with the Centers for Medicare and Medicaid Services (CMS) restrictions on reimbursement for skilled nursing care.

E. Renal Dialysis Centers and Facilities

118. Consistent with the National Broadband Plan's suggestion to examine funding those institutions that have become integral in the delivery of health care, the Commission proposes to indicate that non-profit renal dialysis centers and non-profit renal dialysis facilities may receive support as eligible health care providers under the category of not-for-profit hospitals. As defined by CMS, a renal dialysis center is "a hospital unit that is approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of End Stage Renal Disease (ESRD) dialysis patients (including inpatient dialysis furnished directly or under arrangement and outpatient dialysis)." More limited services are provided by a renal dialysis facility, which is "a unit that is approved to furnish dialysis service(s) directly to ESRD patients."

119. Acute care provided by renal dialysis centers and renal dialysis facilities is consistent with the general schema of services traditionally provided by hospitals. The Commission also believes that inclusion of renal dialysis centers and renal dialysis facilities is consistent with CMS's classification of these facilities. Additionally, the Commission proposes that a renal dialysis center or renal dialysis facility seeking rural health care support should be required to certify that, over the 12-month period preceding the date of application for support, the facility provided life-preserving ESRD treatment to at least 51 percent of its patients. The Commission seeks comment on the above proposals.

6. Annual Caps and Prioritization Rules

120. The aggregate annual cap for the Rural Health Care Support Mechanism is $400 million. Given that current demand under the existing program has historically been less than $70 million, we see no need to revisit the overall funding cap. The Commission does, however, believe it would be prudent to set an initial cap for the proposed health infrastructure program (within the overall $400 million cap) to manage the portion of funding that supports new deployment as opposed to ongoing services. The Commission proposes to allocate up to $100 million for infrastructure projects under the health infrastructure program, leaving at least $300 million available annually for the telecommunications program and the health broadband services program. In the existing Pilot Program, the Commission made funding commitments to 62 infrastructure

projects in 42 States, which represented $139 million per year. As discussed above, funding a smaller number of infrastructure projects on an annual basis, at least as it initially implements the new program, would be more administratively workable, and therefore the Commission proposes a cap of $100 million per year for infrastructure projects. As the Commission gains more experience, it can re-evaluate and make subsequent changes to the program as appropriate.

121. The Commission seeks comment on this proposal to set $100 million cap for the health infrastructure program and $300 million for the telecommunications program and the health broadband services program. Because there are limited funds available for both the health broadband services program and the health infrastructure program, the Commission also seeks comment and proposals on what funding priority rules it should apply in those instances where funding requests exceed the amount of funds available in a particular funding year.

122. Initially, the Commission does not believe that the funding requests in the health broadband services program will exceed the amount of available funds. However, in the event that USAC receives funding requests that exceed available funds, it would be necessary to allocate funding. One approach would be to apply a pro-rata deduction among all eligible health care providers, thereby reducing the amount that each health care provider receives for such funding year. Another approach would be to fund eligible health care providers based on their Health Professional Shortage Area (HPSA) score for primary care as designated by HHS. For example, health care providers in areas with the highest possible HPSA score (presently, 26) would receive support first, and health care providers with scores below the highest HPSA score would receive support in descending order, until available funds are exhausted. The Commission seeks comments on alternative proposals to prioritize funding for the health broadband services program if funding limits are reached.

123. For the health infrastructure program, the Commission seeks comments on how to prioritize funding in the event projects apply and qualify for funding in any funding year that collectively exceed the proposed $100 million cap. For example, one method for prioritizing projects could be based on the following factors: (1) Total number of rural health care providers in the proposed network; (2) total number of health care providers (both urban and rural) in the proposed network, and (3) the combined HPSA scores for all urban health care providers in the proposed network. Under this method, USAC would give first priority to projects that have the highest number of eligible rural health care providers, not to exceed $100 million in the aggregate and second priority to projects that have the highest number of health care providers (urban and rural). In the event projects have the same number of eligible health care providers in their proposed networks, they would be sub-ranked according to the number of rural health care providers in the proposed network. If further sub-ranking is required, projects would be ranked according to the aggregate HPSA scores of the urban health care providers in the proposed network. Other ways to prioritize projects could be to consider the relative size of the patient base or population density of the area served by the health care providers, or to consider measures such as the cost per served population or other factors that demonstrate the most cost effective use of funds. The Commission seeks comment on these or other methods that commenters may suggest for prioritizing project funding. Commenters recommending the use of one prioritization method over another should explain the basis for such prioritization, and explain how the prioritization system would work.

124. One readily available source of information to prioritize funding requests would be to use HPSA scores. HPSA scores rank urban and rural geographic areas based on the shortage of primary care health professionals. HPSA designations and scores are used across the Federal government to allocate resources, with more than 30 Federal programs providing benefits based on HPSA designations or scoring. Geographic areas are scored on a scale of 0 to 26, with 26 representing the highest professional shortage area. Scores are provided for three categories of providers: Primary Care, Mental Health and Dental. The factors considered by HHS for calculating HPSA scores for a geographic area include population-to-provider ratios, population poverty rates, and travel time and distance to the nearest source of care. Additional factors that influence the score include infant mortality rates and low birth weight data. The Commission seeks comment on the use of HPSA scores as a component of any prioritization considerations.

125. The Commission also seeks comment on whether there are other publicly available criteria, in addition to HPSA scores, that could be used to prioritize funding. Alternatively, should the Commission collect additional information from applicants that could be used to prioritize applications, and if so, what information should be collected in a standardized fashion for such purpose? Commenters should discuss the burden or additional reporting obligations that would be imposed on health care providers in compiling and submitting such information as part of their applications for funding.

126. The Commission also seeks comment generally on whether it should set aside some amount of funding each year that could be awarded through a competitive process that takes into account factors other than those proposed above. For instance, should the Commission set aside a defined amount of the annual $400 million funding for recipients that can demonstrate innovative uses of broadband connectivity to meet health care needs in a community?

7. Offset Rule

127. The Commission has historically required contributors to Federal universal service support mechanisms to treat the support received for providing services under the Rural Health Care Support Mechanism as an offset to the amount they must otherwise contribute to the universal service fund. When the Commission adopted this requirement, it was construing the statutory language that authorized both the rural health care mechanism and the schools and libraries mechanism. However, the Commission ultimately implemented the offset rule as a mandatory requirement only for the Rural Health Care Support Mechanism and not for the schools and libraries mechanism. Although the Commission concluded it had authority to allow direct reimbursement, it considered a mandatory offset rule for the Rural Health Care Support Mechanism to be "less vulnerable to manipulation and more easily administered and monitored."

128. While the original intent of the offset rule was to prevent fraud, waste and abuse, it may no longer make sense today, particularly in light of the proposed reforms in this NPRM. The Commission has recognized that the offset rule can create inequities and inefficiencies, and has modified its applicability in the past. In establishing the Pilot Program, the Commission determined that the offset rule should not apply to that program because both telecommunications carriers and non-telecommunications carriers were eligible to provide services under the

program. The Commission determined it was in the public interest to distribute support to Pilot Program service providers in a neutral fashion, where neither the telecommunications carriers nor the non-telecommunications carrier would be subject to the offset rule. The Commission recognizes that the offset rule could create administrative difficulties in the future, if the Commission authorizes support for services provided by entities that do not contribute to the universal service fund.

129. Accordingly, the Commission proposes to eliminate the offset rule for participants in the health broadband services program, telecommunications program, and health infrastructure program and replace it with a rule allowing service providers in the program to receive monies directly from USAC. The Commission seeks comment on this proposal. Notably, the schools and libraries mechanism has an optional offset method, yet only a small percentage of service providers elect to offset their obligation against their contribution to the universal service fund. The Commission seeks comment on whether to retain the offset rule as an option for contributors that wish to utilize an offset in the context of the new programs proposed in this NPRM. The Commission also seeks comment on whether the reimbursement mechanism should be unified across all of the new rural health care programs.

8. Protecting Against Waste, Fraud, and Abuse

130. The Commission proposes that participants in the health infrastructure program and the health broadband services program should continue to be subject to any currently applicable rules pertaining to audits, recordkeeping, and duplicate support. The Commission seeks comment on the proposals described below.

131. With respect to audits, the Commission proposes that participants in both programs will be subject to random compliance audits to ensure compliance with program rules and orders. The Commission also proposes that program participants and service providers will be required to maintain certain documentation related to the purchase and delivery of services funded by the Rural Health Care Support Mechanism, and will be required to produce those records upon request. However, the Commission proposes to make the following clarifications to its recordkeeping rules: First, the Commission proposes to clarify that the documents to be retained by participants and service providers under the program should include all records related to the participant's application for, receipt of, and delivery of discounted services. Second, the Commission proposes to amend the Commission's existing rules to mandate that service providers, upon request, produce the records kept pursuant to the Commission's recordkeeping requirement.

132. Finally, the Commission proposes that health care providers may not receive funds for the same services under the health broadband services program and the telecommunications program. Similarly, the Commission proposes to prohibit participants from receiving funds for the same services under the Rural Health Care Support Mechanism and any other universal service program (*i.e.,* the E-rate program, the High Cost program, and the Low Income program), or from any other Federal program, including, for example, Federal grants, awards, or loans. The Commission seeks comment on these proposals.

IV. Data Gathering and Performance Measures

A. "Meaningful Use" Criteria

133. The National Broadband Plan recommended that the Commission align the Rural Health Care Support Mechanism with other Federal government criteria intended to measure the efficient use of health IT, such as the "meaningful use" criteria being developed by HHS. Meaningful use criteria are intended to encourage physicians and hospitals to use broadband services and infrastructure in a way that improves the Nation's health care delivery system. HHS is still developing and considering regulations to implement meaningful use requirements for electronic health records, but is expected to adopt final rules later this year. Initially, under the HHS requirements, health care providers will be given financial incentives if they meet the HHS definition of meaningful use of electronic health records. In 2015, full Medicare and Medicaid support will be conditioned on compliance with meaningful use requirements, and health care providers will receive reduced Medicare or Medicaid reimbursement if they do not meet the requirements of meaningful use.

134. The National Broadband Plan suggested that the Commission should condition receipt of rural health care support on providers' compliance with the HHS meaningful use requirements after a certain period of time, such as three years. The Commission recognizes that any new compliance obligations may impose burdens on health care providers, and that these burdens may be more significant for rural providers. At the same time, the goals reflected in the HHS meaningful use requirements are important, and there may be benefits both to providers and the Federal government in aligning policies to the extent feasible. The Commission seeks comment on whether and how the Commission could align its performance measures with HHS's meaningful use criteria. The Commission also seeks comment on whether there are other Federal criteria that it should consider adopting.

135. The Commission seeks comment on whether, assuming full implementation of meaningful use requirements in 2015, recipients of funding from the Rural Health Care Support Mechanism should be required to document their compliance with meaningful use requirements as a condition of receiving support. What would be the practical and operational implications of such a requirement? The Commission notes that, under HHS' draft proposed regulations, meaningful use will be certified at the individual physician level (with the exception of hospitals), while the Commission's program provides support to a variety of eligible entities that do not necessarily include physician offices (such as post-secondary educational institutions offering health care instruction, local health departments, community health centers, community mental health centers and rural health clinics). If the Commission were to adopt a meaningful use requirement, how should it evaluate whether the health care entity has satisfied meaningful use? The Commission also seeks comment on what the remedy should be for failure to meet such a requirement, if adopted? For instance, if a health care provider is required to comply with HHS meaningful use regulations as of 2015, should the Commission reduce or eliminate rural health care support if the entity has not achieved the HHS meaningful use standard by 2018?

C. Other Performance Measures

136. To measure the impact of the Commission's universal service programs, it is important for participants in the health broadband services program and the health infrastructure program to have measurable performance goals to demonstrate how they are using the Federal support to take advantage of broadband capabilities for medical services or support. The Commission therefore seeks comment on what generally-applicable performance

criteria the Commission should adopt. For example, the Commission could adopt criteria regarding consistency or frequency of use of broadband services for record-keeping, remote monitoring, or remote consultation on complex or non-routine medical issues. The Commission seeks comment on these and other possible criteria by which to measure performance. The Commission also seeks comment on whether the Commission should employ existing industry standards or metrics, such as the American Telemedicine Association's Standards and Guidelines for Teledermatology, Telemental Health and Telepathology, as part of its performance measure criteria. Are there other existing metrics that would be suitable for measuring accomplishments related to the Rural Health Care Support Mechanism?

137. The Commission also recognizes there are a wide variety of eligible entities that may obtain support from the proposed health broadband services program and the health infrastructure program, and therefore there may be a need for some flexibility in performance measures to reflect the many potential uses and varying needs of program beneficiaries. Therefore, the Commission seeks comment on whether to require each program beneficiary to identify more specific performance measures. For example, the Commission might require all beneficiaries to report on progress of bringing services online, and the individual recipient would identify a specific timeline and report on whether it met the timeline. The Commission might require beneficiaries to identify particular goals, such as increasing network speed or reliability, and the beneficiary would identify the specific goal and report on whether the goal was accomplished. The Commission seeks comment on this proposal. The Commission seeks comment on how this process should work. For example, the Commission might require a beneficiary to submit specific performance measures within 60 days of notification that its application for support has been approved. The Commission also seeks comment on whether it should have the opportunity to reject or propose modifications to the individualized performance measurements that beneficiaries submit.

138. The Commission seeks comment on the frequency of assessing performance and how often the beneficiary should report on performance. For example, should performance measures be made annually or more frequently? Should ongoing support be conditioned wholly or partly on demonstrated satisfaction of performance standards? The Commission also seeks comment on what, if any, additional information the report should contain, such as an explanation for any failure to meet performance goals or the opportunity to propose revisions to the performance measurements.

D. Data Gathering and Analysis

139. *Health Care Broadband Status Report and Testing Mechanisms.* The National Broadband Plan recommended that the Commission periodically publish a health care broadband status report that discusses the state of health care broadband connectivity, reviews health IT industry trends, describes government programs and makes reform recommendations. Further, the National Broadband Plan suggested that the Commission should work in conjunction with HHS (which has experience in evaluating the effectiveness of clinical programs) to measure and assess the impact that the health broadband services program and the health infrastructure program have on health care and health IT. For example, the National Broadband Plan suggested that the Commission could conduct the following tests:

- Determine how health care providers that receive Rural Health Care Support for broadband differ in the utilization of e-care from health care providers that do not receive program support;
- Assess the impact of changing the level of broadband subsidies to a targeted community and determine if there is an increased use of broadband and health IT as a result of such subsidies;
- Explore whether expanding the Rural Health Care Support Mechanism to include funding for training would lead to better broadband utilization and improved care; and
- Evaluate the impact the Rural Health Care Support Mechanism is having on vulnerable populations, such as the elderly, racial and ethnic minorities, or low-income rural and urban communities, to understand whether targeted efforts would be more effective.

140. The National Broadband Plan suggested that in order to ensure sufficient support for these tests, the Commission should allocate a portion of the Rural Health Care Support Mechanism (*e.g.,* $5 million) for a testing program that funds innovative ideas for evaluating the existing broadband efforts or improve upon them in the future. The Commission seeks comment on the recommendation to allocate a portion of the rural health care funding for running trials of and evaluating innovative concepts, and if so, what amount should be set aside for that purpose?

141. The Commission seeks comment on whether and how to develop the periodic broadband status reports and testing mechanisms suggested by the National Broadband Plan. In particular, the Commission is interested in suggestions for how to evaluate objectively the impact of the Rural Health Care Support Mechanism and how the Commission can direct support to make greatest use of limited resources. The Commission also seeks comment on whether to create a working group to develop recommendations for the direction of the Rural Health Care Support Mechanism, and if so, who should participate in such a group and how should it be structured?

142. The Commission also proposes to collect data that will help it analyze how the support is being used, such as requiring beneficiaries to annually identify the speed of the connections supported by the Rural Health Care Support Mechanism and the type and frequency of utilization of telehealth or telemedicine applications as a result of broadband access. This data could assist the Commission in its ongoing oversight over this program and help the Commission determine how beneficiaries are using broadband services to improve the provision of medical services or support. The Commission seeks comment on this proposal. The Commission also seeks comment on the services or applications that should be included.

V. Procedural Matters

A. Initial Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Notice for Proposed Rulemaking

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. The changing technological landscape in rural health care over the past decade has prompted us to propose a new structure for the rural health care universal service support mechanism.

3. In this NPRM, the Commission seeks comment on a package of potential reforms to the rural health care program that could be implemented in funding year 2011 (July 1, 2011–June 30, 2012). The proposed reforms include: (1) Establishing a broadband infrastructure program (the "health infrastructure program") that would support up to 85 percent of the construction costs of new regional or statewide networks to serve public and non-profit health care providers in areas of the country where broadband is unavailable or insufficient; (2) establishing a broadband services access program (the "health broadband services program") that would subsidize 50 percent of the monthly recurring costs for access to broadband services for eligible public or non-profit rural health care providers, which should make broadband connectivity more affordable for providers operating in rural areas; (3) expanding the Commission's interpretation of "eligible health care provider" to include acute care facilities that provide services traditionally provided at hospitals, such as skilled nursing facilities and renal dialysis centers and facilities, and administrative offices and data centers that do not share the same building as the clinical offices of a health care provider but that perform support functions critical for the provision of health care; (4) clarifying the Commission's existing recordkeeping requirements to enhance our ability to protect against waste, fraud and abuse; and (5) eliminating the current rule that requires that funding be offset against universal service contributions owed by participating service providers, and instead propose to allow service providers participating in the health broadband services program, telecommunications program, and health infrastructure program to receive rural health care funds directly from USAC.

2. Legal Basis

4. This Notice of Proposed Rulemaking, including publication of proposed rules, is authorized under sections 1, 2, 4(i)–(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 254, 257, 303(r), 503, 1302.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

6. Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

a. Rural Health Care Providers

7. Section 254(h)(5)(B) of the Act defines the term "health care provider" and sets forth seven categories of health care providers eligible to receive universal service support. In addition, non-profit entities that act as "health care providers" on a part-time basis are eligible to receive prorated support and the Commission has no ability to quantify how many potential eligible applicants fall into this category.

8. As noted earlier, non-profit businesses and small governmental units are considered "small entities" within the RFA. In addition, the Commission notes that census categories and associated generic SBA small business size categories provide the following descriptions of small entities. The broad category of Ambulatory Health Care Services consists of further categories and the following SBA small business size standards. The categories of small business providers with annual receipts of $7 million or less consists of: Offices of Dentists; Offices of Chiropractors; Offices of Optometrists; Offices of Mental Health Practitioners (except Physicians); Offices of Physical, Occupational and Speech Therapists and Audiologists; Offices of Podiatrists; Offices of All Other Miscellaneous Health Practitioners; and Ambulance Services. The category of such providers with $10 million or less in annual receipts consists of: Offices of Physicians (except Mental Health Specialists); Family Planning Centers; Outpatient Mental Health and Substance Abuse Centers; Health Maintenance Organization Medical Centers; Freestanding Ambulatory Surgical and Emergency Centers; All Other Outpatient Care Centers, Blood and Organ Banks; and All Other Miscellaneous Ambulatory Health Care Services. The category of such providers with $13.5 million or less in annual receipts consists of: Medical Laboratories; Diagnostic Imaging Centers; and Home Health Care Services. The category of Ambulatory Health Care Services providers with $34.5 million or less in annual receipts consists of Kidney Dialysis Centers. For all of these Ambulatory Health Care Service Providers, census data indicate that there are a combined total of 368,143 firms that operated for all of 2002. Of these, 356,829 had receipts for that year of less than $5 million. In addition, an additional 6,498 firms had annual receipts of $5 million to $9.99 million; and an additional 3,337 firms

had receipts of $10 million to $24.99 million; and an additional 865 had receipts of $25 million to $49.99 million. The Commission therefore estimates that virtually all Ambulatory Health Care Services providers are small, given SBA's size categories. The Commission notes, however, that its rules affect non-profit and public health care providers, and many of the providers noted above would not be considered "public" or "non-profit." In addition, the Commission has no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

9. The broad category of Hospitals consists of the following categories with an SBA small business size standard of annual receipts of $34.5 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals; and Specialty (Except Psychiatric and Substance Abuse) Hospitals. For these health care providers, census data indicate that there is a combined total of 3,800 firms that operated for all of 2002, of which 1,651 had revenues of less than $25 million, and an additional 627 firms had annual receipts of $25 million to $49.99 million.. The Commission therefore estimates that most Hospitals are small, given SBA's size categories. In addition, the Commission has no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

10. The broad category of Social Assistance consists, *inter alia,* of the category of Emergency and Other Relief Services with a small business size standard of annual receipts of $7 million or less. For all of these health care providers, census data indicate that there was a total of 55 firms that operated for all of 2002. All of these firms had annual receipts of below $1 million. The Commission therefore estimates that all such firms are small, given SBA's size standard. In addition, the Commission has no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

b. Providers of Telecommunications and Other Services

Telecommunications Service Providers

11. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Thus, under this category and associated small business size standard, the Commission estimates that the majority of entities are small.

12. The Commission has included small incumbent local exchange carriers in this RFA analysis. A "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

13. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the Commission's *2008 Trends Report,* 300 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses.

14. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the *2008 Trends Report,* 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

15. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

16. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. The Commission has estimated that 222 of these are small under the SBA small business size standard.

17. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less

in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in these categories.

18. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

19. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by its action.

Internet Service Providers

20. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

Vendors and Equipment Manufacturers

21. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. The closest applicable definition of a small entity are the size standards under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment." According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most recent available Census Bureau data indicates that there are 1,187 establishments with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, the Commission estimates that the majority of the 1,458 internal connections manufacturers are small.

22. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways." The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

23. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

24. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under

this size standard, the majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. The reporting and recordkeeping requirements in this NPRM could have an impact on both small and large entities. However, even though the impact may be more financially burdensome for smaller entities, the Commission believes the impact of such requirements is outweighed by the benefit of providing the additional support necessary to make broadband available for rural health care providers to provide health care to rural and remote areas, and to make broadband access rates for public and non-profit rural health care providers affordable. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

26. The Commission proposes an application and selection process for the health infrastructure program in which eligible health care providers may seek funding for qualified projects through a streamlined process. The Commission seeks comment on each step of the process described below. To the extent a commenter disagrees with a particular aspect of the proposed process, the Commission asks them to identify that with specificity and propose an alternative.

27. *Initial Application Phase.* First, applicants may request consideration for funding by completing a user friendly online application available on a Web site to be developed and maintained by USAC. Applications would be accepted during the first quarter of each funding year (July 1 to September 30). As part of this initial application phase, an applicant would be required to (1) verify that either there is no available broadband infrastructure or the existing available broadband infrastructure is insufficient for health IT needed to improve and provide health care delivery, (2) provide letters of agency for each of the eligible health care providers in the applicant's proposed network, (3) include a preliminary budget and an infrastructure funding request, not in excess of the per-project caps discussed below, and (4) certify that it will comply with all program requirements if selected for funding.

28. *Project Selection Phase.* The Commission proposes that applications submitted for funding be made publicly available on USAC's Web site. Publicly available information would include the names of the parties seeking funding, their geographic location, and information filed by the applicants to corroborate that sufficient broadband infrastructure is unavailable or insufficient in their geographic location. During the second quarter of each funding year (October 1 to December 31), USAC would review all applications received during the initial application phase. After applications have been reviewed, and prioritization rules have been applied, USAC would notify selected participants of their project eligibility status. This would normally occur during the third quarter of each funding year (January 1 to March 30). After a participant is notified of project eligibility, it may proceed with the project commitment phase per the requirements set forth below. During the project commitment phase, participants may receive funding from the health infrastructure program for a portion of the reasonable administrative expenses incurred in connection with the project, subject to certain caps.

29. *Project Commitment Phase.* Within 90 days after a participant in the health infrastructure program is notified that, based on its initial application, the participant's project is eligible for funding, the participants would complete and submit all application materials and comply with all program requirements, including the following: (1) Certification of the availability of funds for not less than 15 percent of all eligible costs; (2) a project schedule; and (3) a detailed project description. The project schedule would identify key milestones that the project will accomplish and the date that the tasks would be achieved. The detailed project description would describe the network, identify the proposed technology, demonstrates that the project is technically feasible and reasonably scalable, and describe each specific development phase of the project (*e.g.,* network design phase, construction period, deployment, maintenance period).

30. In addition, prior to receiving a funding commitment letter from USAC, participants would be required to submit a sustainability report demonstrating that the costs of network operations and maintenance will be sustainable after such period of support from the health infrastructure program. If an infrastructure project includes bandwidth that may be used by entities that are not eligible health care providers, the Commission will consider the extra bandwidth to be excess capacity and would require the participant to file excess capacity disclosures. The Commission would require the excess capacity disclosures to: (1) Identify users of the excess capacity and delineate how they are paying for their portion of the costs, and (2) describe generally agreements made between the health care network portion of the project and the community use portion of the project (*e.g.,* cost allocation, sharing agreements, maintenance and access, ownership).

31. We also propose adopting a rule that would require health care providers to obtain certain cost information from vendors. Vendors would be required to make certain certifications with respect to the construction and deployment of the dedicated network. They would also be required to provide participants with a depreciation schedule showing the useful life of fixed assets, as well as maintain books and records that support all cost allocations.

32. USAC would review each step of the project commitment phase to confirm the participant's compliance with all data and information requirements and compliance with program rules. USAC would conduct technical and financial review of all proposed projects to ensure that they comply with the Commission's rules. USAC may request additional information from applicants and participants if deemed necessary to substantiate, explain or clarify any materials submitted as part of the funding process.

33. Health infrastructure program participants would be required to submit quarterly reports that provide information regarding the following: (1) Attaining project milestones, (2) status of obtaining 15 percent minimum match, (3) status of the competitive bidding process, (4) details on how the supported network has complied with HHS health IT initiatives, and (6) performance measures. The project milestones would be updated at the time that quarterly reports are filed by the participants, noting which project milestones have been met and any delays or progress in meeting other milestones. The Commission believes that requiring participants in the health infrastructure program to establish a schedule and report on project milestones will assist USAC and the Commission in assessing a participant's progress in completing project buildout, and will reduce waste, fraud, and abuse.

34. The Commission also proposes several reporting and recordkeeping requirements for the health broadband services program and the health infrastructure program. The Commission proposes that health care providers that receive support under the health broadband services program or

the health infrastructure program would be required to complete a certification that identifies the speed of any connection supported by the Rural Health Care Support Mechanism. They would also indicate, as a result of broadband access, the type of health IT applications they were using and the frequency with which they used they used the applications. The Commission also proposes the retention of the existing competitive bidding requirements for both programs, because the Commission believes that competitive bidding has been successful regarding the prevention of waste, fraud, and abuse in the Rural Health Care Support Mechanism.

35. Finally, the current rules establish a five year document retention period for health care providers. The Commission recommends that it adopt the same requirement for service providers and non-telecommunications carriers. The Commission believes that it should clarify that the documents would include all records related to the application for, receipt and delivery of discounted services. The Commission also seeks comment on whether it should adopt any additional rules regarding recordkeeping requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. In this NPRM, the Commission makes a number of proposals that may have an economic impact on small entities that participate in the universal service support mechanism for rural health care providers. Specifically, as addressed above, the Commission seeks comment on: (1) Establishing a broadband infrastructure program (the "health infrastructure program") for eligible health care providers; (2) establishing a broadband services access program (the "health broadband services program") for eligible health care providers; (3) expanding the number of entities eligible for discounts by broadening the interpretation of the definition of eligible health care providers to include off-site data centers and administrative offices, as well as skilled nursing facilities and renal dialysis centers; and (4) establishing performance measures for eligible health care providers receiving broadband support. If adopted, these proposals will change the size of the overall pool of eligible applicants that may receive universal service support under the Rural Health Care Support Mechanism, as well as affect the amount of support that eligible entities may receive.

38. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, the Commission has invited comment on how these proposals might be made less burdensome for small entities. The Commission again invites commenters to discuss the benefits of such changes on small entities and whether these benefits are outweighed by resulting costs to rural health care providers that might also be small entities. The Commission anticipates that the record will reflect whether the overall benefits of such programmatic changes would outweigh the burdens on small entities, and if so, suggest alternative ways in which the Commission could lessen the overall burdens on small entities. The Commission encourages small entities to comment.

39. The Commission has taken the following steps to minimize the impact on small entities. First, to ease the administrative burden on applicants, the Commission proposes an approach that simplifies the application process for rural health care providers. The Commission believes that this will help ensure that applicants, including small entities, will not be deterred from applying for support due to administrative burdens. Applicants for support from the health infrastructure program may choose between three methods in order to demonstrate the need requirement for infrastructure funding. An applicant may choose a method that would not require preparation by a third party. The Commission also proposes that participants in the health infrastructure program may receive funding for a portion of their administrative expenses in order to ease the financial burden of compliance with the various reporting requirements associated with participation in the health infrastructure program.

40. The Commission also recognizes that participants in the health infrastructure program, particularly smaller projects, or projects that are subject to mandatory, State or local procurement rules, may find the proposed RFP preparation and distribution requirements to be overly burdensome. Accordingly, the Commission has included an exception for such projects that would exclude infrastructure projects of $100,000 or less or projects that are subject to mandatory, State or local procurement rules. However, such projects would still be required to complete a request for services on a Form 465 and posting this request on USAC's Web page for a period of at least 28 days before selecting a vendor.

41. Next, in order to encourage participation in the health broadband services program, the Commission proposes a simplified application process that clearly identifies the level of support that providers can reasonably expect to receive. The proposed 50 percent flat discount promotes prudent business decisions thereby assisting rural health care providers in planning for their Health IT needs. Moreover, a flat rate discount is easy to administer and consistent with section 254(b)(5), which requires "a specific, sufficient, and predictable mechanism * * * because it limits the amount of support that each health care provider may receive per month to a reasonable level." The Commission proposes to simplify the forms process used in the application process.

6. Federal Rules That May Duplicate, or Conflict With Proposed Rules

42. None.

B. Paperwork Reduction Act Analysis

43. This document contains proposed [new or modified] information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Presentations

44. The rulemaking this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance

with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart G—Universal Service Support for Health Care Providers

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Add § 54.600 and an undesignated center heading to subpart G to read as follows:

Defined Terms and Eligibility

§ 54.600 Index of defined terms.

The following definitions apply to this subpart.

Administrative office is defined in § 54.601.

Broadband access services is defined in § 54.631(b).

Capital lease (for purposes of the health infrastructure program) is defined in § 54.659(c).

Data centers is defined in § 54.601(c).

Eligible sources (for purposes of the health infrastructure program) is defined in § 54.656(c).

Evergreen status or *evergreen contract* (for purposes of the health broadband services program) is defined in § 54.641(b).

Excess capacity (for purposes of the health infrastructure program) is defined in § 54.662.

HCP consortium leader is defined in § 54.652(c).

Health broadband services program is defined in § 54.602(c).

Health care provider is defined in § 54.601(a)(2).

Health infrastructure program is defined in § 54.602(b).

Health IT is defined in § 54.658(d)(2).

Ineligible costs (for purposes of the health infrastructure program) is defined in § 54.655(a).

Ineligible sources (for purposes of the health infrastructure program) is defined in § 54.656(d).

Installation charges is defined in § 54.633.

IRU (for purposes of the health infrastructure program) is defined in § 54.659(b).

Maximum supported distance (for purposes of the telecommunications program) is defined in § 54.625(a).

Minimum broadband speed for purposes of the health infrastructure program is defined in § 54.651(c), and for purposes of the health broadband services program is defined in § 54.631(e).

Minimum contribution (for purposes of the health infrastructure program) is defined in § 54.656(a).

NTIA is defined in § 54.651(a)(2).

Renal dialysis centers is defined in § 54.601(e).

Renal dialysis facilities is defined in § 54.601(e).

Rural health care provider is defined in § 54.601(a)(3).

Rural rate (for purposes of the telecommunications program) is defined in §§ 54.607(a) and 54.607(b).

Selected participants (for purposes of the health infrastructure program) is defined in § 54.650(c)(2).

Skilled nursing facilities is defined in § 54.601(d).

Standard urban distance or *SUD* (for purposes of the telecommunications program) is defined in § 54.605(c).

Telecommunications program is defined in § 54.602(a).

Urban rate (for purposes of the telecommunications program) is defined in §§ 54.605(a) and 54.605(b).

3. Section 54.601 is revised to read as follows:

§ 54.601 Eligibility.

(a) *Eligible health care providers.* (1) Only an entity that is either a public or non-profit health care provider, as defined in this section, shall be eligible to receive supported services under this subpart.

(2) For purposes of this subpart, a "health care provider" is any public or non-profit:

(i) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(ii) Community health center or health center providing health care to migrants;

(iii) Local health department or agency;

(iv) Community mental health center;

(v) Not-for-profit hospital;

(vi) Rural health clinic; or

(vii) Consortium of health care providers consisting of one or more entities described in paragraphs (a)(2)(i) through (vi) of this section.

(3) *Rural health care providers.* For purposes of this subpart, a "rural health care provider" is an eligible health care provider located in a rural area, as that term is defined for purposes of the rural health care universal service support mechanism in § 54.5 of this part.

(i) Any health care provider that was located in a rural area under the definition used by the Commission prior to July 1, 2005, and that had received a funding commitment from USAC since 1998, remains eligible for support under this subpart through the funding year ending on June 30, 2011.

(ii) [Reserved]

(4) *Per location determination.* Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.

(b) *Administrative offices.* As used in this subpart, an "administrative office" means a facility that does not provide hands-on delivery of patient care, but performs support functions that are critical to the provision of clinical care by eligible health care providers. Administrative offices qualify as part of an eligible health care provider if they are located on the main campus of an eligible health care provider listed in paragraph (a) of this section, or they are located off-site and comply with the following provisions:

(1) The off-site administrative office is at least 51 percent owned or controlled by an eligible health care provider listed in paragraph (a) of this section. For purposes of this paragraph, "control" of an administrative office is presumed to exist if one or more eligible health care providers listed in paragraph (a) of this section, directly or indirectly, own, control, or hold the power to vote or proxies for at least 51 percent of the voting rights or governance right of the entity that owns the administrative offices.

(2) Eligible health care providers seeking support for off-site administrative offices must certify that the administrative office is used primarily for performing services that are integral to the eligible health care provider's provision of health care.

(c) *Data centers.* As used in this subpart, a "data center" means a facility that serves as a centralized repository for the storage, management, and dissemination of an eligible health care provider's computer systems, associated components, and data. Data centers qualify as part of an eligible health care provider if they are located on the main campus of an eligible health care provider listed in paragraph (a) of this section, or they are located off-site and comply with the following provisions:

(1) The off-site data center is at least 51 percent owned or controlled by an eligible health care provider listed in paragraph (a) of this section. For purposes of this paragraph, "control" of a data center is presumed to exist if one or more eligible health care providers listed in paragraph (a) of this section, directly or indirectly, own, control, or hold the power to vote or proxies for at least 51 percent of the voting rights or governance right of the entity that owns the data center.

(2) Eligible health care providers seeking support for off-site data centers must certify that the data center is used primarily for performing services that are integral to the eligible health care provider's provision of health care.

(d) *Skilled nursing facilities.* As used in this subpart, a "skilled nursing facility" means a facility that primarily provides post-acute services that are traditionally provided at not-for-profit hospitals, including the management, observation, and evaluation of patient care. Public or non-profit skilled nursing facilities qualify as eligible health care providers as not-for-profit hospitals under paragraph (a)(5) of this section, provided that the facility primarily provides (for at least 51 percent of its total beds) services that are recognized as skilled nursing care by the Centers for Medicare and Medicaid Services.

(e) *Renal dialysis centers and facilities.* As used in this subpart, a "renal dialysis center" means a hospital unit that is approved by the Centers for Medicare and Medicaid Services (CMS) to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of End Stage Renal Disease (ESRD) dialysis patients (including both inpatient and outpatient dialysis services). As used in this subpart, a "renal dialysis facility" is a unit that is approved by CMS to furnish dialysis services directly to ESRD patients. Public or non-profit renal dialysis centers or facilities qualify as eligible health care providers as not-for-profit hospitals under paragraph (a)(5) of this section, provided that the facility or center seeking support certifies that, over the 12-month period preceding the date of application for support, the facility or center provided life preserving ESRD treatment to at least 51 percent of its patients.

(f) *Consortia.* (1) An eligible health care provider may join a consortium with other eligible health care providers; with schools, libraries, and library consortia eligible under Subpart F; and with public sector (governmental) entities to order telecommunications services. With one exception, eligible health care providers participating in consortia with ineligible private sector members shall not be eligible for supported services under this subpart. A consortium may include ineligible private sector entities if such consortium is only receiving services at tariffed rates or at market rates from those providers who do not file tariffs.

(2) For consortia, universal service support under this subpart shall apply only to the portion of eligible services used by an eligible health care provider.

4. Add § 54.602 to read as follows:

§ 54.602 Eligible services.

(a) *Telecommunications program.* Rural health care providers may request support for the difference, if any, between the urban and rural rates for telecommunications services, subject to the provisions and limitations beginning at § 54.604. This support is referred to as the *telecommunications program.*

(b) *Health infrastructure program.* Eligible health care providers may request support for broadband infrastructure, subject to the provisions and limitations beginning at § 54.650. This support is referred to as the *health infrastructure program.*

(c) *Health broadband services program.* Rural health care providers may request support for the recurring costs for broadband access services, subject to the provisions and limitations beginning at § 54.631. This support is referred to as the *health broadband services program.*

(d) *Allocation of discounts.* An eligible health care provider that engages in eligible and ineligible activities or that collocates with an entity that provides ineligible services shall allocate eligible and ineligible activities in order to receive a prorated discount (or prorated support) for eligible activities. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.

(e) *Health care purposes.* Telecommunications and broadband access services for which eligible health care providers receive support from the telecommunications program, the health infrastructure program or the health broadband services program, must be reasonably related to the provision of health care services by the eligible health care provider.

5. Section 54.603 is revised to read as follows:

§ 54.603 Competitive bid and certification requirements.

(a) *Competitive bidding requirements.* Each eligible health care provider shall participate in a competitive bidding process pursuant to the requirements established in this section and any additional and applicable State, local, or other procurement requirements to select the telecommunications carriers or other services providers that will provide services eligible for universal service support under this subpart.

(b) *Additional bidding requirements for health infrastructure program.* In addition to the requirements in paragraph (a) of this section, eligible health care providers seeking support from the health infrastructure program for projects of $100,000 or more that are not subject to mandatory State or local procurement rules, must (prior to selecting a service provider) prepare a detailed request for proposal (RFP) that provides sufficient information to define the scope of the project. Such RFP must be distributed in a method likely to garner attention from interested service providers. Examples include: Post a notice of the RFP in trade journals or newspaper advertisements, send the RFP to known or potential service providers, include the RFP on the health care provider's Web page or other Internet sites, or follow other customary and reasonable solicitation practices used in competitive bidding for infrastructure projects.

(c) *Posting of FCC Form 465; health care provider certification requirements.*

(1) An eligible health care provider seeking to receive services eligible for universal service support under this subpart (whether under the telecommunications program, the health broadband services program, or the health infrastructure program) shall submit a completed FCC Form 465 to the Administrator. FCC Form 465 shall be signed by the person authorized to order telecommunications or information services for the health care provider and shall include, at a minimum, that person's certification under oath that:

(i) The requester is a public or not-for-profit entity that falls within one of the categories set forth in the definition of

health care provider, listed in § 54.601(a), 54.601(b) or 54.601(c);

(ii) The requester is physically located in a rural area, unless the health care provider is requesting services eligible for support under the health infrastructure program;

(iii) If the requester is seeking services eligible for support under the health infrastructure program, that the requester has complied with the initial application requirements listed in § 54.650(b);

(iv) The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the State in which such health care services or instruction are provided;

(v) The requested service or services will not be sold, resold or transferred in consideration of money or any other thing of value;

(vi) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider; and

(vii) The requester is required to comply with the performance measures listed in § 54.677.

(2) The Administrator shall post each FCC Form 465 that it receives from an eligible health care provider on its Rural Health Care Division Web site designated for this purpose.

(3) After posting an eligible health care provider's FCC Form 465 on the Rural Health Care Division Web site, the Administrator shall send confirmation of the posting to the entity requesting services. The health care provider shall wait at least 28 days from the date on which its FCC Form 465 is posted on the Web site before selecting a service provider(s). The confirmation from the Administrator shall include the date after which the requester may sign a contract with its chosen service provider(s).

(4) *Selecting a service provider.* In selecting a service provider for services eligible for universal service support under this subpart, a health care provider shall consider all bids submitted by service providers and select the most cost-effective alternative. After selecting a service provider for services eligible for support under this subpart: The health care provider shall certify to the Administrator that the health care provider is selecting the most cost-effective method of providing the requested service or services, where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services; and The health care provider shall submit to the Administrator paper copies of the responses or bids received in response to the requested services.

6. Add an undesignated centered heading "TELECOMMUNICATIONS PROGRAM" above § 54.604 subpart G.

7. Section 54.604 is revised to read as follows:

§ 54.604 Telecommunications services.

(a) *Telecommunications services.* Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support for the difference, if any, between the urban rate and the rural rate, subject to the limitations described in this paragraph. The length of a supported telecommunications service under the telecommunications program may not exceed the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the largest city in a State as defined in § 54.625(a).

(b) *Existing contracts.* A signed contract for services eligible for telecommunications program support pursuant to this subpart between an eligible health care provider as defined under § 54.601 and a telecommunications carrier shall be exempt from the competitive bid requirements set forth in § 54.603(a) as follows:

(1) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirement for the life of the contract.

(2) [Reserved]

(c) For rural health care providers that take service under or pursuant to a master contract, as defined in § 54.500(f), the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the rural health care provider is exempt from the competitive bid requirements.

(d) The competitive bid system will be deemed to be operational when the Administrator is ready to accept and post FCC Form 465 from rural health care providers on a Web site and that Web site is available for use by telecommunications carriers.

8. Section 54.605 is amended by revising paragraphs (a) and (c), to read as follows:

§ 54.605 Determining the urban rate.

(a) If a rural health care provider requests support for an eligible service to be funded from the telecommunications program that is to be provided over a distance that is less than or equal to the standard urban distance, as defined in paragraph (c) of this section, for the State in which it is located, the "urban rate" for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that State, calculated as if it were provided between two points within the city.

* * * * *

(c) The "standard urban distance" (or "SUD") for a State is the average of the longest diameters of all cities with a population of 50,000 or more within the State.

* * * * *

9. Section 54.609 is amended by revising paragraphs (a) introductory text, (a)(1)(iv), (a)(3), (d)(1), (d)(2), and (e)(1) to read as follows:

§ 54.609 Calculating support.

(a) For a public or non-profit rural health care provider, the amount of universal service support provided for an eligible service to be funded from the telecommunications program shall be the difference, if any, between the urban rate and the rural rate charged for the service, as defined herein. In addition, all reasonable charges that are incurred by taking such services, such as State and Federal taxes shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. Rural health care providers may choose one of the following two support options.

(1) * * *

(iv) A telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the actual distance-based charges for the health care provider's portion of the shared telecommunications services.

* * * * *

(3) *Base rate support-consortium.* A telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must

establish the applicable rural base rates for telecommunications service for the health care provider's portion of the shared telecommunications services, as well as the applicable urban base rates for the telecommunications service.

* * * * *

(d) * * *

(1) Rural public and non-profit health care providers may receive support for rural satellite services under the telecommunications program, even when another functionally similar terrestrial-based service is available in that rural area. Support for satellite services shall be capped at the amount the rural health care provider would have received if they purchased a functionally similar terrestrial-based alternative.

(2) Rural health care providers seeking support from the telecommunications program for satellite services shall provide to the Administrator with the Form 466, documentation of the urban and rural rates for the terrestrial-based alternatives.

* * * * *

(e) * * *

(1) *Calculation of support.* The support amount allowed under the telecommunications program for satellite services provided to mobile rural health care providers is calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Discounts for satellite services shall not be capped at an amount of a functionally similar wireline alternative. Where the mobile rural health care provider provides service in more than one State, the calculation shall be based on the urban areas in each State, proportional to the number of locations served in each State.

* * * * *

10. Section 54.611 is revised to read as follows:

§ 54.611 Election to offset support against annual USF contribution.

(a) A telecommunications carrier providing services eligible for telecommunications program support under this subpart to eligible health care providers may, at the election of the carrier: Treat the amount eligible for support under this subpart as an offset against the carrier's universal service support obligation for the year in which the costs for providing eligible services were incurred; or receive direct reimbursement from the Administrator for that amount.

(b) Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(c) If a telecommunications carrier providing services eligible for support from the telecommunications program elects to treat that support amount as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be provided to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

11. Section 54.613 is amended by revising paragraph (b) to read as follows:

§ 54.613 Limitations on supported services for rural health care providers.

* * * * *

(b) This section shall not affect a rural health care provider's ability to obtain services supported under the health broadband services program or the health infrastructure program, provided that eligible health care providers that seek support for bundled services that include basic telecommunications service supported under the health broadband services program may not also request support from the telecommunications program for the same basic telecommunications service.

12. Section 54.615 is amended by revising paragraphs (b) and (c) to read as follows:

§ 54.615 Obtaining services.

* * * * *

(b) *Receiving supported rate.* Upon receiving a bona fide request, as defined in paragraph (c) of this section, from a rural health care provider for a telecommunications service eligible for support under the telecommunications program, a telecommunications carrier shall provide the service at a rate no higher than the urban rate, as defined in § 54.605, subject to the limitations set forth in this Subpart.

(c) *Bona fide request.* In order to receive services eligible for support under the telecommunications program, an eligible health care provider must submit a request for services to the telecommunications carrier, signed by an authorized officer of the health care provider, and shall include that person's certification under oath that:

(1) The requester is a public or non-profit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.601(a);

(2) The requester is physically located in a rural area; or, if the requester is a mobile rural health care provider requesting services under § 54.609(e), that the requester has certified that it is serving eligible rural areas.

(3) [Reserved].

(4) The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the State in which such health care services or instruction are provided;

(5) The requested service or services will not be sold, resold or transferred in consideration of money or any other thing of value;

(6) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider; and

(7) The requester is selecting the most cost-effective method of providing the requested service or services, where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.

§ 54.617 [Redesignated as § 54.671]

13. Redesignate § 54.617 as § 54.671.

§ 54.619 [Redesignated as § 54.673]

14. Redesignate § 54.619 as § 54.673.

§ 54.621 [Removed]

15. Remove § 54.621.

§ 54.623 [Redesignated as § 54.675]

16. Redesignate § 54.623 as § 54.675.

17. Section 54.625 is revised to read as follows:

§ 54.625 Support for telecommunications services beyond the maximum supported distance for rural health care providers.

(a) The maximum support distance for the telecommunications program is the distance from the health care provider to the farthest point on the jurisdictional boundary of the city in that State with the largest population, as calculated by the Administrator.

(b) An eligible rural health care provider may purchase an eligible telecommunications service supported under the telecommunications program that is provided over a distance that exceeds the maximum supported distance.

(c) If an eligible rural health care provider purchases an eligible telecommunications service supported under the telecommunications program that exceeds the maximum supported distance, the health care provider must pay the applicable rural rate for the distance that such service is carried beyond the maximum supported distance.

18. Add an undesignated centered heading "HEALTH BROADBAND SERVICES PROGRAM" below § 54.625 of subpart G.

19. Add § 54.631 to read as follows:

§ 54.631 Eligible services.

(a) *Recurring costs for broadband access services.* Subject to the provisions of §§ 54.631 through 54.641, rural health care providers may request support from the health broadband services program for 50 percent of the recurring monthly costs for broadband access services at the minimum broadband speeds defined below.

(b) For purposes of this subpart, "broadband access service" is any advanced telecommunications or information service that enables rural health care providers to post their own data, interact with stored data, generate new data, or communicate over private dedicated networks or the public Internet for the provision of health IT.

(c) Eligible health care providers that seek support from the health broadband services program for broadband access services must certify that such services are reasonably related to the provision of health IT for the delivery of health care services by the eligible health care provider.

(d) Eligible health care providers that seek support under the health broadband services program for telecommunications services may not also request support from the telecommunications program for the same service.

(e) For purposes of the health broadband services program, "minimum broadband speed" means 4 Mbps.

20. Add § 54.633 to read as follows:

§ 54.633 Installation charges and other non-recurring costs.

(a) Rural health care providers may request one-time support from the health broadband services program for 50 percent of the reasonable and customary installation charges for broadband access services. "Installation charges" are defined as charges that are normally charged by service providers to commence service, and are not charges that are based on an amortization of construction or infrastructure costs.

(b) Except as provided in paragraph (c) of this section, no universal service support is available under the health broadband services program for the non-recurring costs associated with the construction or deployment of broadband infrastructure.

(c) Rural health care providers may not seek support for non-recurring charges of $500,000 or more. If non-recurring charges are more than $500,000, they must be part of a multi-year contract, and must be prorated over a period of at least five years.

21. Add § 54.635 to read as follows:

§ 54.635 Eligible service providers.

Broadband access services may be provided by a telecommunications carrier or other qualified broadband access service provider, provided that the health care provider selects the most cost effective option to meet its health care needs in accordance with § 54.603.

22. Add § 54.637 to read as follows:

§ 54.637 Competitive bidding requirements.

Rural health care providers seeking broadband access services to be supported by the health broadband services program must comply with the competitive bidding and certification requirements set forth in § 54.603.

23. Add § 54.639 to read as follows:

§ 54.639 Restrictions on satellite services.

(a) Rural health care providers may seek support for rural satellite-based broadband access services under the health broadband services program, even when another functionally similar terrestrial-based service is available in the rural area, subject to the provisions of this section.

(b) Support for satellite services will be capped at the amount of support the eligible health care provider would be eligible to receive under the health broadband services program if it had purchased such service from a functionally similar terrestrial-based alternative.

(c) Where an eligible health care provider seeks a more expensive satellite-based service when a less expensive terrestrial-based alternative is available, the health care provider will be responsible for the difference between the satellite-based service and the terrestrial-based alternative.

(d) An eligible health care provider seeking support for satellite service must submit documentation to the Administrator demonstrating that satellite service is the most cost-effective option available to meet the provider's health care needs at the same time information is submitted pursuant to § 54.603(c)(4).

24. Add § 54.641 to read as follows:

§ 54.641 Multi-year contracts.

(a) Participants in the health broadband services program are permitted to enter into multi-year contracts for recurring broadband access services, but may not receive funding commitments from the Administrator for more than one funding year at a time.

(b) Multi-year contracts entered into by a rural health care provider after complying with the competitive bid requirements of § 54.603, are deemed to have "evergreen" status. Health care providers do not have to rebid for services during the term of a multi-year contract with evergreen status. However, health care providers may not add services to a multi-year contract or extend the term of a multi-year contract and retain "evergreen" status. Such modifications to a multi-year contract are deemed a new request for services, and require that the health care provider rebid the services in compliance with the provisions of § 54.603 and select the most cost-effective service provider.

(c) All program participants, including those covered by evergreen contracts, must submit a request for support each funding year to continue receiving funding from the health broadband services program for recurring broadband access services. Requests for support each funding year are subject to the program funding and prioritization rules set forth in § 54.675. Rural health care providers with multi-year contracts do not have a priority preference over other rural health care providers seeking support from the health broadband services program in any funding year.

25. Add an undesignated centered heading and § 54.650 to read as follows:

Health Infrastructure Program

§ 54.650 Obtaining support.

(a) Subject to the provisions in §§ 54.650 through 54.664, eligible health care providers may request universal service support to fund up to 85 percent of eligible costs for the design, construction and deployment of dedicated broadband networks that connect public or non-profit health care providers in areas of the country where there is no available broadband infrastructure or the existing broadband infrastructure is insufficient for health IT needed to improve and provide health care delivery. Broadband infrastructure projects may include either new facilities or improvements to upgrade existing facilities (for example, converting a copper facility to a fiber facility capable of broadband delivery). In addition, funding may be used to support up to 85 percent of the cost of connecting health care networks to Internet2 or National LambdaRail.

(b) *Initial application phase.* Eligible health care providers may apply for funding under the health infrastructure program by submitting an application to the Administrator. Applications will be accepted during the first quarter of each funding year (July 1 to September 30). As part of this initial application phase, an applicant will be required:

(1) To either verify that either there is no available broadband infrastructure, or demonstrate, pursuant to § 54.651, that the existing broadband infrastructure is insufficient for health IT needed to improve and provide health care delivery;

(2) To provide letters of agency, as set forth in § 54.652, for each of the eligible health care providers in the applicant's proposed network, and identify the lead entity that will be responsible for completing the application process;

(3) To include a preliminary budget and an infrastructure funding request as set forth in § 54.653; and

(4) To certify that it will comply with all program requirements if selected for funding.

(c) *Project selection phase.* (1) Applications submitted for funding will be made publicly available on the Administrator's Web site.

(2) After applications have been reviewed, the Administrator will notify those applicants whose projects have been selected in that funding year as eligible to participate in the program ("selected participants"). After a selected participant is notified of project eligibility, it may proceed with the project commitment phase as set forth in paragraph (d) of this section.

(3) Health care providers whose projects are not selected for funding in any funding year may apply for funding in subsequent funding years.

(d) *Project commitment phase.* Selected participants must complete and submit all additional materials and comply with all program requirements as set forth in §§ 54.656 through 54.663. The Administrator may request additional information from applicants and selected participants if necessary to substantiate, explain or clarify any materials submitted as part of the funding process.

(e) *Build-out period.* All projects funded by the health infrastructure program must be subject to fair and open competitive bidding, as provided in § 54.603. The Administrator will review all applications and additional information provided by selected participants to confirm compliance with the program rules. The Administrator will issue funding commitment letters for projects after a selected participant has completed all requirements and selected a service provider. Selected participants have a period of three funding years, commencing with the funding year in which the initial online application was submitted pursuant to § 54.650(b), to file all forms and supporting documents necessary to receive funding commitment letters from the Administrator. Selected participants have a period of five funding years, commencing with the funding year on which the selected participant receives its first funding commitment letter for the project, in which to complete build-out.

26. Add § 54.651 to read as follows:

§ 54.651 Demonstrated need for infrastructure funding.

(a) Pursuant to § 54.650, applicants seeking funding under the health infrastructure program must demonstrate that broadband at the minimum broadband speed, as defined in paragraph (c) of this section, is unavailable or insufficient in the geographic area where the eligible health care providers are to be connected by the proposed dedicated network, by using any of the following methods:

(1) *Survey method.* Provide a survey of current carrier network capabilities in the geographic area, compiled by a preparer qualified to make such surveys.

(i) The survey must provide details as to the identity and broadband capabilities of all existing carriers in the proposed network area, and discuss and justify the methodology used to make such determinations.

(ii) The survey must be accompanied by a statement of the preparer's professional, educational, and business background that make the preparer qualified for conducting the survey. The statement should include the preparer's prior experience, technical or engineering degrees, telecommunications background, and knowledge of methods typically employed to perform such surveys.

(iii) The applicant must also provide a report detailing either that there is no available broadband infrastructure, or explaining why existing broadband infrastructure would be insufficient for health IT needed to provide or improve health care delivery by the eligible health care providers that are proposing the infrastructure project.

(2) *Broadband mapping method.* (i) Provide copies or linked references to recognized broadband mapping studies, such as the National Telecommunications and Information Administration ("NTIA") national broadband map, State or local broadband maps, and other mapping sources that adequately depict the available broadband in the proposed network area.

(ii) The applicant must also provide a report detailing why existing broadband infrastructure would be insufficient for health IT needed to provide or improve health care delivery by the by the eligible health care providers that are proposing the infrastructure project.

(3) *Certification method.* Certify that, for a continuous period of not less than six months, the health care providers that will participate in the proposed dedicated network requested broadband access services under the telecommunications program or the health broadband services program, at connectivity speeds of not less than the minimum broadband speed, and did not receive any proposals from network service providers meeting the terms of the requested services.

(b) All information submitted by applicants to establish that broadband is unavailable or insufficient will be subject to review and verification by the Administrator.

(c) For purposes of the health infrastructure program, "minimum broadband speed" means 10 Mbps.

27. Add § 54.652 to read as follows:

§ 54.652 Letters of agency.

(a) Pursuant to § 54.650, applicants must identify all eligible health care providers on whose behalf funding is being sought, and the lead entity that will be responsible for completing the application process.

(b) The initial application must include a letter of agency from each participating eligible health care provider, confirming that the health care provider has agreed to participate in the applicant's proposed network, and authorizing the lead entity to act as the health care provider's agent for completing the application process.

(c) As used in this section, "HCP consortium leaders" means State organizations, public entities and non-profits that are not eligible health care providers but that serve in an administrative capacity for eligible health care providers within a consortium. HCP consortium leaders may apply for funding under the health infrastructure program, on behalf of eligible health care providers. In doing so, however, HCP consortium leaders may not receive any funding from the health infrastructure program except as provided in § 54.654(c). The full value of any discounts, funding, or other program benefits under the health infrastructure program that are secured by an HCP consortium leader must be passed on to the eligible health care providers that are members of the consortium.

28. Add § 54.653 to read as follows:

§ 54.653 Funding requests and budgets.

(a) Every applicant's initial application must include a funding request, a brief project description, and a detailed budget that identifies all costs related to the proposed project. The funding request may not exceed 85 percent of the eligible costs identified in the budget.

(b) *Budget requirements.* (1) The budget must be reasonable, and must be based on general pricing information available to the applicant from third parties. All material assumptions used in preparing the budget must be noted and discussed in narrative form. The budget must separately identify the following:

(i) Eligible non-recurring costs, subject to the limitations set forth in § 54.654(a);

(ii) Eligible network design costs, subject to the limitations set forth in § 54.654(b);

(iii) Eligible administrative expenses, subject to the limitations set forth in § 54.654(c);

(iv) Eligible maintenance costs, subject to the limitations set forth in § 54.654(d);

(v) Eligible NLR or Internet2 membership fees, subject to the limitations set forth in § 54.654(e); and

(vi) All costs that are necessary for completion of the project, but that are not eligible for support under the health infrastructure program.

(2) If a budget line item contains both eligible and ineligible components, costs should be allocated between the eligible and ineligible components.

(3) Budgets submitted by applicants and selected participants may be made publicly available by the Administrator so that other prospective applicants may use such information as a basis for preparing their own budgets.

29. Add § 54.654 to read as follows:

§ 54.654 Eligible costs.

(a) *Non-recurring costs.* The health infrastructure program may provide support for the following non-recurring costs for the deployment of infrastructure: initial network design studies not in excess of the cap identified in § 54.654(b); engineering, materials and construction of fiber facilities or other broadband infrastructure; and the costs of engineering, furnishing (*i.e.,* as delivered from the manufacturers), and installing network equipment.

(b) *Network design.* Network design costs are limited to $1 million per project or 15 percent of the project's eligible costs, whichever is less.

(c) *Administrative expenses.* Selected participants may request funding under the health infrastructure program for up to 85 percent of the reasonable administrative expenses incurred in connection with infrastructure projects. Selected participants must submit certifications and maintain records confirming the number of hours provided by one or more employees for tasks related to the health infrastructure program project and that the administrative expense for which support is sought is not more than the reasonable costs for the amount of time such employee(s) spent on the project. Administrative expenses are subject to the following limitations:

(1) Support for such expenses will be limited to 36 months, commencing with the month in which a selected participant has been notified by the Administrator that the selected participant's project is eligible for funding.

(2) The rate of support will not exceed $100,000 per year.

(3) The aggregate amount of support a project may receive for administrative expenses shall not exceed 10 percent of the total proposed budget for the project.

(d) *Maintenance costs.* Selected participants may request funding for up to 85 percent of the reasonable, necessary and customary ongoing maintenance costs for networks funded by the health infrastructure program, subject to the following limitations:

(1) Support for maintenance costs shall be limited to a period of five years from the first funding commitment letter issued for such project.

(2) Selected participants must demonstrate in their sustainability plans, as described in § 54.661, that the costs of network operations and maintenance will be sustainable after such period of support from the health infrastructure program.

(3) Service agreements for network maintenance will be subject to the competitive bidding rules set forth in § 54.603, and may be bid either at the time of construction of the network or at a later time.

(e) *National LambdaRail and Internet2.* (1) Selected participants may request funding under the health infrastructure program for up to 85 percent of the membership fees for connecting their networks to the dedicated nationwide backbones offered by Internet2 or National LambdaRail, or their successors.

(2) Selected participants may either pre-select to connect with either Internet2 or National LambdaRail, and seek funding for such connection, or may (at their discretion) seek competitive bids from National LambdaRail and Internet2 through the normal competitive bidding process. If Internet2 or National LambdaRail are pre-selected by a selected participant, the costs of connection to such nationwide backbone must be reasonable.

30. Add § 54.655 to read as follows:

§ 54.655 Ineligible costs.

(a) *Certification that funds will not be used to pay for ineligible costs.* The authorized purposes of the health infrastructure program include the costs of *access* to advanced telecommunications services. For purposes of the health infrastructure program, "ineligible costs" are those costs that are not directly related to access or are not directly associated with network design, construction, or deployment of a dedicated network for eligible health care providers. Selected participants are required to certify that support from the health infrastructure program will not be used to pay for ineligible costs.

(b) *Examples of ineligible costs.* Examples of ineligible costs include but are not limited to:

(1) Personnel costs, including salaries and fringe benefits, except for those costs that qualify as administrative expenses, subject to the limitations set forth in § 54.654(c).

(2) Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project.

(3) Legal costs.

(4) Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations. For example, costs for training health care provider personnel in the use of telemedicine applications are ineligible.

(5) Program administration or technical coordination, except for those costs that qualify as administrative expenses, subject to the limitations set forth in § 54.654(c).

(6) Inside wiring or networking equipment, *e.g.,* video/Web conferencing equipment and wireless user devices, on health care provider premises, except for equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment.

(7) Computers, including servers, and related hardware, *e.g.,* printers, scanners, laptops, unless used exclusively for network management.

(8) Helpdesk equipment and related software, or services.

(9) Software, unless used for network management, maintenance, or other network operations; software development, excluding development of software that supports network management, maintenance, and other network operations; Web server hosting; and Web site portal development.

(10) Telemedicine applications and software.

(11) Clinical or medical equipment.

(12) Electronic records management and expenses.

(13) Connections to ineligible network participants or sites, *e.g.,* for-profit health care providers.

(14) Costs related to any share of a project that is not allocable to the dedicated health care network.

(15) Administration and marketing costs, *e.g.,* administrative costs; supplies and materials; marketing studies, marketing activities, or outreach efforts; evaluation and feedback studies, except for those costs that qualify as eligible administrative expenses, subject to the limitations set forth in § 54.654(c).

(16) Continuous power source.

(c) *Billing and operational expenses.* The health infrastructure program will not provide support for billing and operational expenses incurred either by a health care provider or its selected vendor. An example of billing or operational costs is the expense that service providers may charge for allocating costs to each health care provider in a project's network.

31. Add § 54.656 to read as follows:

§ 54.656 Minimum participant contribution requirement.

(a) *Minimum participant contribution.* The health infrastructure program will not pay more than 85 percent of eligible project costs, and selected participants are required to pay the remaining amount of all eligible project costs (the "minimum contribution"). Selected participants are required to pay all costs that are related to the project but that do not qualify as eligible project costs. Selected participants must demonstrate that their minimum contribution requirement will be met from an eligible source to receive funding from the health infrastructure program.

(b) *Evidence of eligible sources for minimum participant contribution.* Within 90 days after a selected participant has been notified that its project is eligible for funding, the selected participant must submit to the Administrator letters of assurances: Confirming funds from eligible sources to meet the minimum contribution requirement, and identifying with specificity the eligible sources of funding.

(c) *Eligible sources.* The following are "eligible sources" for meeting the minimum contribution:

(1) Eligible health care providers;

(2) State grants, funding, or appropriations;

(3) Federal funding, grants, loans, or appropriations, but not other universal service funding; and

(4) Other grant funding, including private grants, but not grants from ineligible sources.

(d) *Ineligible sources.* The following are examples of "ineligible sources" for meeting the minimum contribution:

(1) In-kind or implied contributions;

(2) A local exchange carrier (LEC) or other telecom carrier, utility, contractor, consultant, or other service provider;

(3) For-profit participants; and

(4) Any other universal service support program.

32. Add § 54.657 to read as follows:

§ 54.657 Project milestones.

(a) *Project schedule.* Within 90 days after a selected participant has been notified that its project is eligible for funding, the selected participant must submit to the Administrator a project schedule that identifies the following project milestones:

(1) Start and end date for network design;

(2) Start and end date for drafting and posting RFPs;

(3) Start and end date for selecting vendors and negotiating contracts;

(4) Start date for commencing construction and end date for completing construction; and

(5) Target dates for each health care provider to be connected to the network and operational.

(b) *Quarterly updates.* Each selected participant must submit to the Administrator, on a quarterly basis, an update of the selected participant's project schedule, noting which project milestones have been met and any progress or unanticipated delays in meeting other milestones. In the event a project milestone is not achieved, or there is a material deviation from the project schedule, the selected participant must provide an explanation in the project schedule update.

33. Add § 54.658 to read as follows:

§ 54.658 Detailed project description.

(a) *Project description.* Within 90 days after a selected participant has been notified that its project is eligible for funding, the selected participant must submit to the Administrator a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible and reasonably scalable, and describes each specific development phase of the project (*e.g.,* network design phase, construction period, deployment and maintenance period).

(b) *Network coverage.* (1) The project description must include the identity and location of all network participants, and a network diagram.

(2) The project description must indicate how selected participants plan to fully utilize their proposed network to provide health care services, and must present a strategy for aggregating the specific needs of health care providers within a State or region, including providers that serve rural areas. Networks may be limited to a particular State or region, but selected participants should describe feasible ways in which such networks will connect to a national broadband network. The project description should discuss whether the proposed network will connect to a national backbone, such as National LambdaRail or Internet2.

(c) *Service speeds and scalability.* (1) The project description must include a discussion of the speeds and services necessary for the particular network, and how the minimum broadband speed, as defined in § 54.651(c), will be provided.

(2) Networks must be designed for the exchange of identifiable health information, and capable of meeting transmission speed requirements necessary for health care applications to be used by the health care providers. To demonstrate their broadband needs, selected participants are required to explain and provide reasonable support for the type of health care providers that will use the network, the bandwidth and speed requirements for such network, and the health care services that necessitate broadband connections at the desired speeds.

(3) The project description must explain how the proposed network will be designed to meet the current broadband needs of the network members, and must address whether or how the proposed network will be scalable to handle projected future demand. As referenced here, scalability refers to the ability of a system to accommodate a significant growth in the size of the system (*i.e.,* services provided, end users served) without the need for substantial redesign.

(d) *Health IT purposes.* (1) The project description must specify how the dedicated broadband network will be used by eligible health care providers for health IT to improve or provide health care delivery.

(2) For purposes of this subpart, "health IT" is defined as information-driven health practices and the technologies that enable them. Health IT includes billing and scheduling systems, e-care, electronic health records (EHRs) and telehealth and telemedicine.

34. Add § 54.659 to read as follows:

§ 54.659 Facilities ownership, IRU or capital lease.

(a) Health care providers seeking funding for infrastructure projects under the health infrastructure program must:

(1) Own the infrastructure facilities funded by the program,

(2) Have an IRU for such facilities, or

(3) Have a capital lease.

(b) *IRU.* An "IRU" is an indefeasible right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset. An IRU confers on the grantee the vestiges of ownership, and is customarily used in the telecommunications industry. An IRU may include maintenance of the fiber/network for the term, where vendor is responsible for maintenance and repairs. An IRU must be independent of any contract for services or electronics. Costs of maintenance and operation of associated electronics can be (and usually are) addressed in a separate service agreement.

(c) *Capital lease.* A capital lease is a lease of a business asset which represents ownership and is reflected on the lessee's balance sheet as an asset, and meets one or more of the following criteria: The lease term is greater than 75 percent of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceeds 90 percent of the fair market value of the property. If there is doubt regarding a selected participant's classification of a particular lease as a capital lease, the selected participant may be required to provide an explanation justifying the classification of its leasing arrangement as a capital lease.

35. Add § 54.660 to read as follows:

§ 54.660 Standard terms and conditions.

(a) Construction contracts, IRUs or eligible capital leases entered into by health care providers for infrastructure projects receiving support from the health infrastructure program must contain the provisions set forth in this section.

(b) *Construction contracts.* The following provisions must be included in all construction contracts:

(1) *Work standards.* All work shall conform to identified standards and specifications. The vendor shall not use any defective material in the performance of the work.

(2) *Withholding of payments.* The health care provider may withhold money due for any portion of the work which has been rejected by the health care provider and which has not been corrected by the service provider to the reasonable satisfaction of the health care provider.

(3) *Defects in work.* For a period of not less than one year after project completion, the service provider shall correct at its expense all defects and deficiencies in the work which result from: Labor or materials furnished by the service provider, workmanship, or failure to follow the plans, drawings, standards, or other specifications made a part of the contract.

(c) *IRUs.* The following provisions must be included in all construction IRUs:

(1) *Term of the agreement.* The health care provider is granted an exclusive and irrevocable right to use the facility funded by the health infrastructure program, for the remainder of facility's useful life.

(2) *Beneficial ownership interest.* The health care provider receives beneficial title and interest or equitable title in the facilities funded by the health infrastructure program. Such title should include the right to use the facilities, the right to have access for repairs, and the right to let others use such facilities.

(d) *Capital leases.* The payment structure in a capital lease must be reflective of the term of the lease. Leases may not provide for payments in advance of the lease term. For example, a ten year lease may not provide for an upfront payment of the entire ten year lease period.

(e) *Provisions applicable to all contracts.* Any construction contract, IRU or capital lease for projects receiving support from the health infrastructure program must include provisions as follows:

(1) *Laws and regulations.* The service provider shall comply with all Federal, State and municipal laws, ordinances and regulations (including building and construction codes) applicable to the performance of the work.

(2) *Environmental protection.* The service provider shall comply with all applicable Federal, State and municipal environmental laws and regulations which relate to environmental protection, inspection and monitoring of property and environmental reporting and information requirements.

(3) *Performance bonds.* For contracts in excess of $150,000, the service provider shall deliver a performance bond. For construction contracts, performance bonds must be for the construction term of the contract plus a period of not less than one year (*i.e.,* the same period in which the health care provider may require the service provider to remedy defects in the work). For a lease or an IRU, performance bonds should be for the entire term of the agreement.

(4) *Indemnification.* The service provider agrees to indemnify and hold harmless the health care provider from any and all claims, actions, or causes of action to the extent the claimed loss or damages arises out of the service provider's negligent performance or nonperformance of its obligations under the contract.

(f) *Service provider reporting requirements.* Selected participants in the health infrastructure program must, at or prior to the time of selecting a service provider:

(1) Require the service provider to certify either that:

(i) The infrastructure project will only involve the construction and deployment of the dedicated health care network, and will not involve the construction or deployment of

additional facilities or capacity that will not be part of the dedicated network; or

(ii) The infrastructure project will include both the construction and deployment of the dedicated network and the construction and deployment of additional facilities or capacity for uses other than the dedicated network, but: The cost charged to the dedicated network will not exceed fully distributed costs given the use, quality of service, term (length of service) and other terms and conditions for use of the dedicated facility; and the service provider will pay all costs related to the additional facility or capacity.

(2) Require the service provider to provide a depreciation schedule showing the useful life of fixed assets to assist the health care providers in determining their network sustainability.

(3) Require the service provider to maintain books and records that support all cost allocations.

36. Add § 54.661 to read as follows:

§ 54.661 Sustainability.

Prior to receiving funding for infrastructure projects under the health infrastructure program, each selected participant must submit to the Administrator a sustainability report demonstrating that its project is sustainable. Although each selected participant may include additional information to demonstrate a project is sustainable, every sustainability plan is required to address, at a minimum, the following points:

(a) *Principal factors.* Discuss each of the principal factors that were considered by the selected participant to demonstrate sustainability.

(b) *Minimum contribution requirement.* Discuss the status of obtaining the minimum contribution for eligible project costs. If project funding is dependent on appropriations or other special conditions, such conditions should be discussed.

(c) *Projected sustainability period.* Indicate a reasonable sustainability period, which is at least equal to the useful life of the funded facility. Although a sustainability period of 10 years is generally appropriate, the period of sustainability should be commensurate with the investments made from the health infrastructure program.

(d) *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members, *e.g.,* participation agreements, memoranda of understanding, usage agreements, or other documents. Describe financial and time commitments made by proposed members of the network. If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed. If the network will include eligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

(e) *Ownership structure.* (1) Explain who will own each material element of the network, and arrangements made to ensure continued use of such elements by the network members for the duration of the sustainability period.

(2) In the case of a consortium, the legally and financially responsible entity designated to own facilities funded by the health infrastructure program can be a State organization, public sector (governmental) or not-for-profit entity acting as a fiduciary agent for eligible health care providers within such consortium. However, title to the dedicated network must be held exclusively for the benefit of eligible health care providers.

(f) *Sources of future support.* If sustainability is dependent on fees to be paid by eligible health care providers, then the sustainability plan must confirm that the health care providers are committed and have the ability to pay such fees. If sustainability is dependent on fees to be paid by network members that will use the network for health care purposes, but are not eligible health care providers under the Commission's rules, then the sustainability plan must identify such entities. Alternatively, if sustainability is dependent on revenues from excess capacity not related to health care purposes, then the sustainability plan must identify the proposed users of such excess capacity. If rural health care provider members of the network qualify for continued support under the health broadband services program, this should be discussed in the sustainability plan.

(g) *Management.* Describe the management structure of the network for the duration of the sustainability period, and how management costs will be funded.

(h) *Excess capacity disclosures.* If an infrastructure project includes excess capacity, as part of its sustainability plan the selected participant must disclose the estimated amount of excess capacity and explain how it plans to allocate the cost of the network between the network members that are eligible health care providers and the members that are not eligible health care providers. In doing so, selected participants are required to: Identify non-eligible users of such excess capacity and explain what proportion of the network non-recurring and recurring costs they will bear, and describe all agreements made between the eligible health care providers and other participants in the network (*e.g.,* cost allocation, facility sharing agreements, maintenance and access obligations, ownership rights).

37. Add § 54.662 to read as follows:

§ 54.662 Excess capacity.

The health infrastructure program will only provide funds for the infrastructure costs associated with the eligible health care providers' current and anticipated bandwidth requirements. To the extent that a deployed network has excess capacity and the eligible health care providers seek to share that excess capacity with ineligible entities, the ineligible entities must pay an appropriate portion of the costs of the network.

39. Add § 54.663 to read as follows:

§ 54.663 Quarterly reporting requirements.

(a) Selected participants in the health infrastructure program must submit quarterly reports that provide information on the following: Attaining project milestones; status of meeting the minimum contribution requirement; status of the competitive bidding process; details on how the supported network has complied with HHS health IT guidelines or requirements, such as meaningful use, if applicable; and performance measures, as described in § 54.677.

(b) Such reports must be filed with the Administrator and the Commission on a quarterly basis, at such times as determined by the Administrator.

40. Add § 54.664 to read as follows:

§ 54.664 Designation of successor projects.

(a) The Bureau may waive the relevant sections of subpart G of part 54 of the Commission's rules to the extent waiver may be necessary to the sound and efficient administration of the health infrastructure program.

(b) In instances where a selected participant is unable to complete its project, the Bureau has authority to designate a successor project. Such designation of a successor can be made upon request of the selected participant, or on the Bureau's own motion. The Bureau may exercise such discretion in instances where a project fails to meet a specified milestone, or a selected participant fails to adequately notify the Commission of modifications to the project milestone deadlines. In selecting a successor project, the Bureau may take into consideration the likelihood that the successor will be able, at a

minimum, to complete the project in a manner that provides new broadband infrastructure to the identified region or area.

(c) The Bureau may revoke funding awarded to any selected participant making unapproved material changes to the network design plan set forth in the selected participant's detailed project description submitted as part of the funding application materials.

40. Add an undesignated centered heading "GENERAL PROVISIONS" below § 54.664 of subpart G.

41. Amend newly redesignated § 54.671 by revising paragraph (b) to read as follows:

§ 54.671 Resale.

* * * * *

(b) *Permissible fees.* The prohibition on resale set forth in paragraph (a) of this section shall not prohibit a health care provider from charging normal fees for health care services, including instruction related to such services rendered via telecommunications or broadband access services purchased under this subpart.

42. Amend newly redesignated § 54.673 by revising paragraph (d) to read as follows:

§ 54.673 Audits and recordkeeping.

* * * * *

(d) *Service providers.* Telecommunications and other service providers delivering services supported by the telecommunications program, the health broadband services program or the health infrastructure program, shall retain documents related to the delivery of any discounted or supported services for at least 5 years after the last day of the delivery of such discounted or supported services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

43. Amend newly redesignated § 54.675 by revising paragraphs (a), (c), and (f) to read as follows:

§ 54.675 Cap.

(a) *Amount of the annual cap.* The aggregate annual cap on Federal universal service support for health care providers shall be $400 million per funding year, of which up to $100 million per funding year will be available for the health infrastructure program, and the remainder shall be available for the telecommunications program and the health broadband services program.

* * * * *

(c) *Requests.* Funds shall be available as follows:

(1) Generally, funds shall be available to eligible health care providers on a first-come-first-served basis, with requests accepted beginning on the first of January prior to each funding year.

(2) For the telecommunications program and the health broadband services program, the Administrator shall implement a filing window period that treats all rural health care providers filing within the window period as if their applications were simultaneously received.

(3) For the health infrastructure program, the filing window period for applications will be the first quarter of each funding year (July 1 to September 30). The Administrator will treat all applications received during such window period as if they were simultaneously received.

(4) The deadline for all required forms to receive funding under the telecommunications program and the health broadband services program is June 30 for the funding year that begins on the previous July 1.

(5) For applicants selected to participate in the health infrastructure program based on their initial online application, the deadline to file all forms and supporting documents necessary to receive funding commitment letters from the Administrator is three funding years, commencing on July 1 of the funding year in which the initial online application is submitted pursuant to § 54.650(b) and ending 36 months (on June 30) after that. Selected participants have a period of five funding years (commencing with the funding year on which the selected participant receives its first funding commitment letter for the project) in which to complete build-out.

* * * * *

(f) *Pro-rata reductions for telecommunications program support.* The Administrator shall act in accordance with this section when a filing window period for the telecommunications program and the health broadband services program, as described in paragraph (c)(3) of this section, is in effect. When a filing window period described in paragraph (c)(3) of this section closes, the Administrator shall calculate the total demand for telecommunications program and health broadband services program support submitted by all applicants during the filing window period. If the total demand during a filing window period exceeds the total remaining support available for the funding year, the Administrator shall take the following steps:

(1) The Administrator shall divide the total remaining funds available for the funding year by the total amount of telecommunications program support requested by each applicant that has filed during the window period, to produce a pro-rata factor.

(2) The Administrator shall calculate the amount of telecommunications program support requested by each applicant that has filed during the filing window.

(3) The Administrator shall multiply the pro-rata factor by the total telecommunications program dollar amount requested by each applicant filing during the window period. Administrator shall then commit funds to each applicant for telecommunications program support consistent with this calculation.

44. Add § 54.677 to read as follows:

§ 54.677 Data gathering.

Health care providers receiving support under the health broadband services program and the health infrastructure program will be required to annually identify the speed of the connection supported by such funds, and the type and frequency of utilization of health IT applications as a result of broadband access. Such annual report shall be in a form to be prescribed by the Commission.

[FR Doc. 2010–19459 Filed 8–6–10; 8:45 am]

BILLING CODE 6712–01–P

Reader Aids

Federal Register

Vol. 75, No. 152

Monday, August 9, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

45047–45474 2
45475–46836 3
46837–47170 4
47171–47432 5
47433–47698 6
47699–48272 9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8544 46835

Administrative Orders:
Memorandums:
Memo. of August 3, 2010 47433

5 CFR

Proposed Rules:
532 45557

7 CFR

Proposed Rules:
357 46859
989 47490

8 CFR

214 47699
217 47701
274a 47699

9 CFR

Proposed Rules:
307 47726
381 47726
590 47726

10 CFR

Proposed Rules:
37 47494

11 CFR

Proposed Rules:
9428 47729

12 CFR

226 46837
701 47171
707 47173

Proposed Rules:
741 47236
750 47236
1213 47495

13 CFR

134 47435

14 CFR

25 ..... 46838, 46840, 47176
39 ..... 47180, 47182, 47184, 47190, 47194, 47197, 47199, 47201, 47203, 47207, 47208
71 47709
97 ..... 45047, 45049

Proposed Rules:
39 ..... 45075, 45558, 45560, 46861, 46864, 46868, 46873, 47242, 47245, 47247, 47249, 47734
71 ..... 47252, 47736, 47737
234 45562
244 45562
250 45562
259 45562
399 45562

15 CFR

734 45052
748 45052

17 CFR

200 47444
201 47444
202 47444

Proposed Rules:
1 47738
30 47738
140 47738
210 47064
239 47064
240 47064
249 47064
270 47064
274 47064

18 CFR

Proposed Rules:
35 47499

21 CFR

1308 47451

Proposed Rules:
1308 47503

22 CFR

40 45475
42 45475
120 46843

26 CFR

53 46844
54 46844

27 CFR

Proposed Rules:
478 47254

29 CFR

1926 47906

30 CFR

Proposed Rules:
938 46877

31 CFR

Proposed Rules:
50 45563

32 CFR

199 ..... 47452, 47458, 47460, 47710, 47712
706 47210

Proposed Rules:
68.....47504
161.....47515
199.....47519

33 CFR

3.....47211
100.....47212, 47215
117 .....45477, 47217, 47461
165 .....45055, 45478, 47211, 47713, 47715

37 CFR

201.....47464

39 CFR

111.....47717

40 CFR

52 .....45057, 45480, 45483, 46845, 47218
81.....45485, 47218
180 .....46847, 47465, 47475
271.....47223
272.....45489, 47223
300.....47482
Proposed Rules:
51.....45075, 45210
52 .....45075, 45076, 45080, 45082, 45210, 45568, 46880
60.....47520
72.....45075, 45210
78.....45075, 45210
81 .....45571, 46881, 47746
97.....45075, 45210
112.....45572
131.....45579
271.....47256
272.....45583, 47256
300.....47521
1039.....47520
1042.....47520
1065.....47520
1068.....47520

42 CFR

410.....45700
416.....45700
419.....45700
Proposed Rules:
410.....46169
411.....46169
412.....46169
413.....46169
416.....46169
419.....46169
482.....46169
489.....46169

44 CFR

Proposed Rules:
67.....47751

45 CFR

1611.....47487
Proposed Rules:
170.....45584

47 CFR

1.....45494
2.....45058
25.....45058
27.....45058
73.....47488
97.....46854
101.....45496
Proposed Rules:
1.....45590, 47142
27.....47142
54.....48236
73.....46885
95.....47142

48 CFR

205.....45072
207.....45072
208.....45072
209.....45072
211.....45072
215.....45072
216.....45072
217.....45072
219.....45072
225.....45072
228.....45072
232.....45072
237.....45072
246.....45072
250.....45072
252.....45072

49 CFR

541.....47720
595.....47489
Proposed Rules:
27.....47753
37.....47753
38.....47753
192.....45591

50 CFR

17.....45497
218.....45527
Proposed Rules:
17.....45592, 46844
20.....47682
665.....45085

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4861/P.L. 111–217
To designate the facility of the United States Postal Service located at 1343 West Irving Park Road in Chicago, Illinois, as the ''Steve Goodman Post Office Building''. (Aug. 3, 2010; 124 Stat. 2369)

H.R. 5051/P.L. 111–218
To designate the facility of the United States Postal Service located at 23 Genesee Street in Hornell, New York, as the ''Zachary Smith Post Office Building''. (Aug. 3, 2010; 124 Stat. 2370)

H.R. 5099/P.L. 111–219

To designate the facility of the United States Postal Service located at 15 South Main Street in Sharon, Massachusetts, as the ''Michael C. Rothberg Post Office''. (Aug. 3, 2010; 124 Stat. 2371)

S. 1789/P.L. 111–220

Fair Sentencing Act of 2010 (Aug. 3, 2010; 124 Stat. 2372)

Last List August 4, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.