

Some commenters supported the proposed amendments because, among other reasons, local residents would benefit from such investments. Other commenters explained that the NPRM did not go far enough and should have included other types of preferences, in addition to geographic-based.

The Department's proposed NPRM did not make a distinction by project type (e.g., transit vs. maritime project). Many commenters, especially in the transit arena, expressed strong opposition to the application of the NPRM to rolling stock procurements because of the potential effect on existing manufacturing plants and the capital and personnel investments already made in specific parts of the country.

Reason for Withdrawal

The Department operates two experimental contracting pilot programs under FHWA and FTA's existing authorities: (i) Innovative Contracting (Local Labor Hire) (80 FR 12257) and (ii) FHWA HUD Livability Local Hire Initiative (75 FR 36467). The Local Labor Hire pilot is conducted under 23 U.S.C. 502 (i.e., FHWA's Special Experimental Project No. 14 (SEP-14)) and 49 U.S.C. 5312, 5314 and 5325, and the FHWA HUD initiative is conducted under SEP-14. The Department has used these research authorities to advance non-traditional contracting practices for contracts awarded by FTA and FHWA.

Under SEP-14 and 49 U.S.C. 5312, 5314 and 5325, the Department has the flexibility to experiment with innovative approaches to highway and transit contracting. However, the Department is discontinuing these two pilot programs because of minimal interest from intended participants and the difficulty in evaluating cost effectiveness based upon objective criteria.

For additional background, 23 U.S.C. 112 requires a state transportation department to award contracts using federal highway funds by "competitive bidding, unless the State transportation department demonstrates . . . that some other method is more cost effective." 23 U.S.C. 112(b)(1) (2006). For a bidding process to be "competitive," the state transportation department must award contracts for projects "only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility." *Id.* section 112(b)(1). For example, a 1986 opinion from the Office of Legal Counsel (OLC) at the Department of Justice concluded that section 112 obligated the Secretary of

Transportation to withhold federal funding for highway construction contracts that were subject to a New York City law imposing disadvantages on a class of responsible bidders, where the city failed to demonstrate that its departure from competitive bidding requirements was justified by considerations of cost effectiveness. See *Compatibility of New York City Local Law 19 with Federal Highway Act Competitive Bidding Requirements*, 10 Op. O.L.C. 101 (1986) ("*Competitive Bidding Requirements*"). Since that 1986 opinion, FHWA had taken the position that state or local bidding specifications or contract requirements that limit the pool of potential bidders violate section 112's competition requirement unless they directly relate to the bidder's performance of the necessary work in a competent and responsible manner.

In 2013, OLC opined that a state or local requirement that has only an incidental effect on the pool of potential bidders or that imposes reasonable requirements related to the performance of the necessary work would not unduly limit competition. However, a requirement that has more than an incidental effect on the pool of potential bidders and does not relate to the work's performance would unduly limit competition unless it promotes the efficient and effective use of federal funds. OLC stated that generally speaking, state or local government requirements that eliminate or disadvantage a class of potential responsible bidders (and thus have a non-trivial effect on the pool of such bidders) to advance objectives unrelated to the efficient use of federal funds or the integrity of the bidding process (or to the performance of the necessary work in a competent and responsible manner) are likely to unduly impede competition in contravention of the substantive component of section 112's competitive bidding requirement. OLC further reaffirmed the view expressed in its 1986 opinion that "the efficient use of federal funds is the touchstone by which the legality of state procurement rules for federally funded highway projects is to be tested," *Competitive Bidding Requirements*, 10 Op. O.L.C. at 105. In 2013, OLC did not understand section 112's competitive bidding requirement to compel FHWA to reject every state or local bidding specification or contract requirement that may have the effect of reducing the number of potential bidders for a particular contract.

The stated purpose of this NPRM was to permit recipients and subrecipients of certain DOT grant program funds to

impose geographic-based hiring preferences whenever not otherwise prohibited by Federal law. DOT agrees that the efficient use of federal funds is the touchstone by which the legality of state procurement rules, including any proposed geographic-based hiring preferences, for federally funded projects is to be tested. Here, in light of the responses to the NPRM, the lack of data on whether specific local geographic preferences would have an incidental effect on competition, the long-standing Federal government prohibition in the Common Rule on the use of in-State or local geographic-based preferences, the demonstrated minimal interest from intended participants under the two experimental programs, and the inability to evaluate cost-effectiveness based upon objective criteria under the two experimental programs, the Department has determined that promulgating a regulation that would have deviated from the OMB guidance in the Common Rule, by allowing the use of geographic-based hiring preferences in some of the Department's grant programs, is not practicable for the efficient and cost-effective delivery of projects. The comments received did not include any data that demonstrates that the claimed benefits of the proposed rule justify the costs. The Department has also determined that an additional request for public comment based on the proposed NPRM would not provide the information needed to accomplish the stated purpose.

Issued in Washington, DC, on October 2, 2017.

Elaine L. Chao,

Secretary of Transportation.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-115; NRC-2017-0132]

Fire Protection Compensatory Measures

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking dated May 1, 2017, from David Lochbaum with petitioner Paul Gunter, on behalf of the Union of Concerned Scientists and

Beyond Nuclear (the petitioners), requesting that the NRC “promulgate regulations that establish acceptable conditions for use of compensatory measures (e.g., fire watches, surveillance cameras, etc.) during periods when fire protection regulations are not met.” The petition was docketed by the NRC on May 26, 2017, and has been assigned Docket No. PRM-50-115. The NRC is examining the issues raised in PRM-50-115 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition.

DATES: Submit comments by December 20, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0132. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

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

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

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

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jessica Kratchman, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5112, email: Jessica.Kratchman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2017-0132 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0132.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The petition for rulemaking is available in ADAMS under Accession No. ML17146A393.

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

B. Submitting Comments

Please include Docket ID NRC-2017-0132 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner

The petition was filed by David Lochbaum, on behalf of the Union of Concerned Scientists and Beyond

Nuclear, with one co-petitioner, Paul Gunter of Beyond Nuclear.

III. The Petition

On behalf of the Union of Concerned Scientists and Beyond Nuclear, David Lochbaum with co-petitioner Paul Gunter request that the NRC amend its regulations to establish acceptable conditions for the use of compensatory measures (e.g., fire watches, surveillance cameras) during periods when fire protection regulations are not met.

IV. Discussion of the Petition

The petitioners state that the NRC’s “fire protection regulations were primarily established with the issuance of Appendix R to 10 CFR part 50 in 1980 and the NFPA [National Fire Protection Association] 805 alternative regulations adopted in 2004.” The petitioners are referring to the final rule in 1980 that issued appendix R to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) and revised 10 CFR 50.48 (45 FR 76602; November 19, 1980). The 2004 final rule (69 FR 33536; June 6, 2004) further revised 10 CFR 50.48 and added alternative fire protection regulations based on National Fire Protection Association Standard 805, “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants.” The petitioners include as “Figure 1” in their petition a timeline including compensatory measure guidance documents that the NRC has issued. The NRC guidance documents from Figure 1 in the petition include the following:

- (1) NRC Bulletin 1975-004, “Cable Fire at Browns Ferry Nuclear Power Station,” March 25, 1975 (ADAMS Accession No. ML070220189);
- (2) Nuclear Steam Supply System Vendor Standard Technical Specifications (NUREG-0103, “Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors,” Revision 0, 1976 (ADAMS Accession No. ML17266A000), Revision 1 (ADAMS Accession No. ML17266A001); NUREG-0123, “Standard Technical Specifications for General Electric Boiling Water Reactors,” Revision 0, 1976 (ADAMS Accession No. ML17266A007), Revision 1 (ADAMS Accession No. ML17266A008); NUREG-0212, “Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors,” Revision 0, 1976 (ADAMS Accession No. ML17266A003), Revision 1 (ADAMS Accession No. ML17266A004); and NUREG-0452, “Standard Technical Specifications for Westinghouse Pressurized Water

Reactors,” Revision 0, 1976 (ADAMS Accession No. ML17266A005), Revision 1 (ADAMS Accession No. ML17266A006));

(3) Branch Technical Position Auxiliary Power Conversion Systems Branch 9.5–1, “Guidelines for Fire Protection for Nuclear Power Plants,” May 1, 1976 (ADAMS Accession No. ML070660461), Revision 1, May 13, 1979 (ADAMS Accession No. ML070660450); and Appendix A, “Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976,” August 23, 1976 (ADAMS Accession No. ML15322A269), and February 24, 1977 (ADAMS Accession No. ML070660458);

(4) NUREG–0050, “Recommendations Related to Browns Ferry Fire,” February 1976 (ADAMS Accession No. ML070520452);

(5) NRC Generic Letter 1980–100, “Appendix R to 10 CFR Regarding Fire Protection—Federal Register Notice,” November 24, 1980 (ADAMS Accession No. ML070220242);

(6) NRC Generic Letter 1981–012, “Fire Protection Rule (45 FR 76602, November 19, 1980),” February 20, 1981 (ADAMS Accession No. ML031080537);

(7) NRC Generic Letter 1986–010, “Implementation of Fire Protection Requirements,” April 24, 1986 (ADAMS Accession No. ML031150322);

(8) NRC Generic Letter 1988–012, “Removal of Fire Protection Requirements from Technical Specifications,” August 2, 1988 (ADAMS Accession No. ML031150471);

(9) NRC Information Notice No. 1997–048, “Inadequate or Inappropriate Interim Fire Protection Compensatory Measures,” July 9, 1997 (ADAMS Accession No. ML070180068);

(10) NRC Bulletin 1992–01, “Failure of Thermo-Lag 330 Fire Barrier System to Maintain Cabling in Wide Cable Trays and Small Conduits Free from Fire Damage,” June 24, 1992 (ADAMS Accession No. ML031250239);

(11) NRC Regulatory Issue Summary 2005–007, “Performance of Manual Actions to Satisfy the Requirements of 10 CFR part 50 Appendix R Section III.G.2.,” April 19, 2005 (ADAMS Accession No. ML042360547);

(12) NRC Regulatory Guide 1.189, “Fire Protection for Nuclear Power Plants,” Revision 2, October 2009 (ADAMS Accession No. ML092580550);

(13) NRC Regulatory Guide 1.205, “Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,” Revision 0, May 2006 (ADAMS Accession No. ML061100174); Revision 1, December 2009 (ADAMS Accession No. ML092730314); and

(14) NUREG/CR–7135, “Compensatory and Alternative Regulatory Measures for Nuclear Power Plant Fire Protection (CARMEN–FIRE),” Final Report, August 2015 (ADAMS Accession No. ML15226A446).

The petitioners assert that these guidance documents associated with the current regulations are deficient for three reasons:

(1) They are not regulations and, therefore, convey unenforceable expectations;

(2) They create confusion for licensees, NRC inspectors and reviewers, and the public about what constitutes an acceptable substitute for compliance with fire protection regulations following identification of a deficiency, as well as the permissible durations of the substitutions; and

(3) They were not developed through an open process, so the public did not have opportunities to weigh in on the acceptability of various compensatory measures.

The petitioners assert that a proposed rulemaking would ensure that compensatory measures are used appropriately following a violation in fire protection regulations, and that the rulemaking process would provide the public the opportunity to weigh in on the appropriateness of the use of various compensatory measures before the requirements are adopted as final. The petitioners also assert that a final rule would clear up any current confusion caused by the guidance documents for the NRC’s licensees and inspectors and would provide enforceable requirements for the NRC.

Dated at Rockville, Maryland, this 2nd day of October 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2017–21544 Filed 10–5–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0904; Product Identifier 2017–NM–071–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This proposed AD was prompted by a report of an in-service reliability issue of a latent flow sensor failure combined with single cabin air compressor (CAC) operation. This condition resulted in reduced airflow which led to a persistent single CAC surge condition that caused overheated damage to the CAC inlet. This proposed AD would require installing new pack control unit (PCU) software for the cabin air conditioning and temperature control system (CACTCS) and new CAC outlet pressure sensor J-tube hardware, and doing related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 2017.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: <https://www.myboeingfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0904.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0904; 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