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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 357

[Docket No. APHIS–2009–0018]

RIN 0579–AD11

#### Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

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

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

**SUMMARY:** We are adopting as a final rule, without change, an interim final rule that established definitions for the terms *common cultivar* and *common food crop* and several related terms. The 2008 amendments to the Lacey Act expanded its protections to a broader range of plant species; extended its reach to encompass products, including timber, that derive from illegally harvested plants; and required that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms *common cultivar* and *common food crop* but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The interim final rule specifically requested comment on definitions of two related terms: *Commercial scale* and *tree*. This document responds to comments we received on those definitions.

**DATES:** Effective on January 25, 2016, we are adopting as a final rule the interim final rule published at 78 FR 40940–40945 on July 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Parul Patel, Senior Agriculturalist,

Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; 301–851–2351.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in “illegal” wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal, State, tribal, or foreign law that protects plants or that regulates the theft of plants; the taking of plants from a park, forest reserve, or other officially protected area; the taking of plants from an officially designated area; or the taking of plants without, or contrary to, required authorization.

The statute excludes from the definition of the term “plant” the following categories: (i) Common cultivars, except trees, and common food crops; (ii) scientific specimens for laboratory or field research (unless they are listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249); as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction); and (iii) plants that are to remain planted or to be planted or replanted (unless they are listed in an appendix to CITES; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction). The Lacey Act also now makes it unlawful to make or submit any false record, account, or

label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. Currently, enforcement of the declaration requirement is being phased in, as described in two notices we published in the **Federal Register**<sup>1</sup> (74 FR 5911–5913 and 74 FR 45415–45418, Docket No. APHIS–2008–0119).

On August 4, 2010, we published in the **Federal Register** (75 FR 46859–46861, Docket No. APHIS–2009–0018) a proposal<sup>2</sup> to establish a new part in the plant-related provisions of title 7, chapter III of the Code of Federal Regulations (CFR), containing definitions for the terms *common cultivar* and *common food crop*. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms *common cultivar* and *common food crop* but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior (DOI) to define these terms by regulation.

Comments on the proposed rule were required to be received on or before November 29, 2010. The comments we received on the proposed rule included concerns about two additional terms used in the regulations. Specifically, some commenters asked that we define the term *commercial scale* to clarify that the definitions apply to specialty products grown commercially on a smaller scale. One commenter also asked that we define the word *tree* as it is used in the regulations. The commenter noted that there is no globally accepted botanical definition for *tree* and stated that adding a definition to the regulations would help clarify which products require a declaration.

<sup>1</sup> To view these notices and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119>.

<sup>2</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018>.

We agreed with the commenters that adding definitions of these terms would improve clarity. Therefore, in an interim final rule<sup>3</sup> published in the **Federal Register** on July 9, 2013 (78 FR 40940–40945, Docket No. APHIS–2009–0018), we proposed to define *commercial scale* as “production, in individual products or markets, that is typical of commercial activity, regardless of the production methods or amount of production of a particular facility, or the purpose of an individual shipment” and *tree* as “a woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.”

We invited public comment on these two definitions. Comments on the interim final rule were required to be received on or before August 8, 2013. We received two comments by that date. The comments were from an organization of State plant pest regulatory agencies and a retailer selling home furnishings.

One commenter supported the additional definitions as proposed. The other commenter stated that the definitions of *common cultivar*, *common food crop*, and *tree* do not provide enough clarity for importers to determine whether certain products are subject to provisions of the Act, but did not address the specific wording of the definitions. The commenter also asked whether certain products, including rattan, palm leaves, and willow and osier branches, were considered common cultivars and if they would be included on the list of common cultivars.

Willows and osiers are trees and therefore cannot be excepted from the declaration requirement. We note that several species of palms, including African oil palm (*Elaeis guineensis*), carnauba palm (*Copernicia spp.*), and palms in the genera *Astrocaryum*, *Bactris*, and *Euterpe* are included on the list of common cultivars and common food crops that are excepted from the declaration requirement. Rattan and other palms are not currently excepted from the declaration requirement but may be evaluated as common food crops or common cultivars if a member of the public submits a request as described below.

As we explained in the interim final rule, the list of common cultivars and common food crops is intended to be illustrative, not exhaustive. The list is available on the Animal and Plant Health Inspection Service (APHIS) Web

site at [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml). The public may also send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list, by writing to The Lacey Act, ATT: Common Cultivar/Common Food Crop, c/o U.S. Department of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737 or by email to [lacey.act.declaration@aphis.usda.gov](mailto:lacey.act.declaration@aphis.usda.gov) and including the following information:

- Scientific name of the plant (genus, species);
- Common or trade names;
- Annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity; and
- Any other information that will help us make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

Decisions about which products will be included on the list will be made jointly by APHIS and the DOI's Fish and Wildlife Service. We will inform our stakeholders when the list is updated via email and other electronic media. We will also note updates of the list on APHIS' Lacey Act Web site mentioned above.

Therefore, for the reasons given in the interim final rule and in this document, we are adopting the interim final rule as a final rule without change.

This action also affirms the information contained in the interim final rule concerning Executive Orders 12866 and 13563 and the Regulatory Flexibility Act, Executive Orders 12988 and 13175.

#### Paperwork Reduction Act

Section 3 of the Lacey Act makes it unlawful to import certain plants and plant products without an import declaration, which must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country in which the plant was harvested. In addition, there is a supplemental form that must be completed if additional space is needed to declare additional plants and plant products. Also, records of the import declaration and supplemental form must be retained for at least 5 years. These collection activities have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0349. We published a notice in the **Federal Register** on August 21, 2014 (79 FR 49491–49492, Docket No. APHIS–2014–0073) seeking an

extension of the approval for this information collection.

Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. In the July 2013 interim final rule, we advised the public that inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list, be sent in writing to APHIS, including information as to the scientific name of the plant (genus, species), common or trade names, annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity, and any other information that will help us make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

We inadvertently did not obtain OMB approval for this information collection activity. Therefore, in accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we published a notice in the **Federal Register** on October 15, 2014 (79 FR 61846–61847, Docket No. APHIS–2014–0082), announcing our intention to initiate this information collection and to solicit comments. We have asked OMB to approve our use of this information collection for 3 years. When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number, and we will combine this collection with OMB control number 0579–0349 once it is approved by OMB.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

#### List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

#### PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

■ Accordingly, we are adopting as a final rule, without change, the interim final rule that amended 7 CFR part 357 and that was published at 78 FR 40940–40945 on July 9, 2013.

<sup>3</sup> To view the interim final rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018>.



Done in Washington, DC, this 15th day of January 2016.

**Gary Woodward,**

*Deputy Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2016-01399 Filed 1-22-16; 8:45 am]

**BILLING CODE 3410-34-P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 600 and 606

RIN 3052-AD08

#### **Organization and Functions; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Organization of the Farm Credit Administration**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA, we, Agency or our) amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

**DATES:** Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 600 and 606 published on November 5, 2015 (80 FR 68427) is effective January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4124, TTY (703) 883-4056, or Jane Virga, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4071, TTY (703) 883-4056.

**SUPPLEMENTARY INFORMATION:** The Farm Credit Administration amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 25, 2016. (12 U.S.C. 2252(a)(9) and (10))

Dated: January 20, 2016.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2016-01398 Filed 1-22-16; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245-AG49

#### **Small Business Size Standards: Employee Based Size Standards in Wholesale Trade and Retail Trade**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is increasing 47 small business size standards based on a concern's number of employees. These increases affect 46 industries in North American Industry Classification System (NAICS) Sector 42, Wholesale Trade, and one industry in NAICS Sector 44-45, Retail Trade. SBA retains the size standards for the remaining industries in those sectors and the 500-employee size standard for the Federal Government's procurement of supplies under the nonmanufacturer rule. As part of its comprehensive size standards review under the Small Business Jobs Act of 2010, SBA reviewed all 71 industries in NAICS Sector 42, as well as the two industries in NAICS Sector 44-45, that have employee based size standards. The revisions adopted in this rule primarily affect eligibility for SBA's financial assistance programs, and have no impact on Federal procurement programs.

**DATES:** This rule is effective on February 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** On May 19, 2014 (79 FR 28631), SBA proposed to increase employee based size standards for 46 industries in NAICS Sector 42, Wholesale Trade, and one industry in NAICS Sector 44-45, Retail Trade. The Agency proposed keeping the current size standards for the remaining industries in those sectors. SBA also proposed to retain the 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule (13 CFR 121.406).

The proposed rule sought comments from the public on the Agency's proposals and received seven comments. Generally, commenters

opposed the proposed increases to the size standards in the wholesale trade industries. However, while some commenters appeared to be cognizant of the effects of the proposed increases and how they apply to various small business programs and their industries, others did not seem to be aware that the NAICS codes and size standards for the wholesale and retail trade industries do not apply to Federal Government procurement programs and the proposed increases would have no impact on size eligibility for Federal contracts.

What follows is a summary and discussion of the comments, their positions and the issues they raise, and SBA's responses. All comments are available for public review at the Federal Rulemaking Portal, [www.regulations.gov](http://www.regulations.gov).

#### **Summary and Discussion of Public Comments to the May 19, 2014 Proposed Rule**

Two parties submitted identical comments, opposing SBA's proposal to increase the size standards. The commenters stated that current size standards are already too high, and expanding them will make matters worse. The commenters contended that 98 percent of all businesses (including non-employer firms) have 1-19 employees, and those businesses mostly need loans of \$50,000 to \$250,000. Expanding the definition of "small" is crippling their ability to get loans, they added. The commenters maintained that the average size of SBA's loan increased from \$182,000 in 2008 to \$547,000 in 2013, while the share of loans under \$100,000, which they claimed generally go to truly small businesses, decreased from 24 percent to 9 percent.

The European Union defines the smallest unit of small business as less than 10 employees, and Australia defines "small" as 1-14 employees under its Fair Work Act, the commenters noted. In addition, they stated that the U.S. Congress defines small business as 20-25 employees "and rarely as high as 50." The commenters asked SBA to stop focusing on 2 percent of the largest small businesses and refocus on the remaining 98 percent of small businesses because they are the ones who really need the help. The higher size standards, if adopted, will put loan assistance out of reach for most small businesses, they argued.

Another commenter that offers startup workshops to entrepreneurs expressed concerns on how SBA defines small business. Specifically, the commenter stated that almost any business with up

to 500 employees can qualify as small under the current size standards. The commenter maintained that “this definition needs to be changed, but not in the direction SBA suggests, to 1,500 employees for some businesses.” He suggested that the size standard should be revised down to 300 employees.

A Service-Disabled Veteran-Owned Small Business concern opposed the 500-employee nonmanufacturer size standard. The commenter stated that it provides an unfair advantage for larger small businesses. His small business cannot compete with the larger small businesses with up to 500 employees, the commenter added. The commenter noted that pricing is one of the reasons why larger small businesses have an advantage in the bidding process for work set aside for small businesses.

A small woman-owned company submitted a comment, opposing the proposed increase to the size standard for NAICS 423610 (Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers) from 100 employees to 200 employees. The commenter asked how increasing the size standard would assist with startup cost and entry barriers. The commenter stated that it took almost 30 years for her business to grow from one employee to 38 employees. The proposed 200-employee standard is too large for the industry, and no company with 200 employees need assistance, the commenter added. The commenter suggested that SBA should consider converting the size standard for NAICS 423610 from employees to receipts, because it would help the Agency to better collect data on assistance to actual small businesses. The commenter stated that her company is able to compete with similarly sized companies in the industry for work reserved for small businesses, but not with large businesses. The commenter maintained that the difference between a 200-employee size business and a 38-employee business is huge, mainly because a 200-employee size business has considerably more resources when competing for Federal Government contracts. The commenter concluded by stating that the size standard for NAICS 423610 should remain at 100 employees or be converted to gross receipts.

SBA received a collective comment from four parties, including two organizations representing women-owned businesses, a trade group representing small manufacturers, and an attorney representing Federal prime contractors and subcontractors, opposing the Agency’s proposal to increase the size standards for some wholesale and retail trade industries.

The commenters were concerned that with increasing size standards businesses that have outgrown size standards through SBA’s programs will be redefined as small. This is completely unfair to truly small firms that are not able to compete against larger firms, win contracts and grow, they explained. This is contrary to SBA’s mission and the purpose of the Small Business Act to provide small business owners with opportunities to compete for and win Federal contracts, the commenters added.

The commenters stated that 90 percent of U.S. businesses have fewer than 20 employees, and felt that increasing size standards would have a negative impact on those small businesses, and on the broader economy, especially on the underserved communities. “What about the truly small businesses that often do not qualify for financial assistance because they don’t meet funding qualifications, because they are too small, have insufficient capacity and resources, insufficient revenue and cash flow, and not enough relevant past performance?,” the commenters asked. The commenters maintained that larger small firms have more resources, can get better pricing and are more likely to be eligible for loans, and beat out the small firms every time.

The commenters asserted that milestones and goals that are used to justify changing size standards (*i.e.*, number of loans awarded, number of contracts and dollars awarded to small businesses, number of people hired, etc.) should apply to truly small businesses. It is questionable as to how much of \$83 billion awarded in fiscal year 2013 actually went to truly small businesses with 20 or fewer employees, they added. Going from 100 to 200 employees with unlimited revenue is a huge deal, and firms that size already have access to capital and do not need assistance, the commenters maintained. They argued that if the proposed rule is passed small businesses will be at even more risk of losing their companies because they will be competing with firms that generate 10 times their revenues and have 10 times their capacity. Accordingly, they suggested that size standards identified in the proposed rule, and generally, should be changed to gross revenues, because, they claimed, gross revenues is a better indicator of whether a business is small than number of employees. With employee based size standards without a revenue limit, a company with revenues of up to \$100 million or \$1 billion can qualify as small, the commenters noted. They pointed out

that once a specialty trade contractors firm reaches \$14 million (currently \$15 million) in gross receipts, it is no longer small, but a distributor or wholesaler with 100 or 200 employees can have unlimited revenue and can still be considered small. In conclusion, the commenters recommended that SBA not approve the proposal to increase the size standards in NAICS Sectors 42 and 44–45 and that the Agency consider changing the standards to gross receipts.

Opposing the proposed increases to size standards for the wholesale and retail trade industries, a commenter stated that, according to the U.S. Census Bureau data, 98 percent of all U.S. firms have less than 100 employees, 89 percent have less than 20 employees, and the average American small business has approximately 10 employees. Small business size standards should more closely reflect the actual size of American small businesses, the commenter added. He noted that SBA’s size standards allow firms up to 1,500 employees to qualify as small. The commenter maintained that current size standards have an adverse effect on small businesses because, as he claimed, they favor large businesses. He stated that large businesses, including Fortune 500 companies, abuse size standards and end up getting contracts set aside for small businesses. In addition, he argued that SBA’s Office of Inspector General and the Government Accountability Office have found numerous instances of abuse of size standards and small business contracts that were awarded to large businesses.

*SBA’s response:* From time to time, the U.S. Congress has used different thresholds, sometimes below the SBA’s thresholds, to define small firms under certain laws or programs, but those thresholds apply only to those laws and programs and generally are of no relevance to SBA’s size standards. In addition, what constitutes a small business in other countries does not apply and has no relevance to SBA’s small business definitions and U.S. Government programs that use them. Depending on their economic and political realities, other countries have their own programs and priorities that can be very different from those in the U.S. Accordingly, small business definitions that other countries use for their Government programs can be vastly different from those established by SBA for U.S. Government programs.

SBA establishes size standards, in accordance with the Small Business Act, for purposes of establishing eligibility for Federal small business procurement and financial assistance

programs. The primary statutory definition of a small business is that the firm is not dominant in its field of operation, and that a size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. 15 U.S.C. 632(3)(a)(3). Accordingly, rather than representing the smallest size within an industry, SBA's size standards generally designate the largest size that a business concern can be relative to other businesses in the industry and still qualify as small for Federal Government programs that provide benefits to small businesses. In the May 19, 2014 proposed rule, SBA fully explained its Size Standards Methodology (Methodology) to establish size standards. SBA has made the Methodology available on its Web site at [www.sba.gov/size](http://www.sba.gov/size), as well as on the proposed rule (79 FR 28631 (May 19, 2014)) Docket (RIN 3245-AG49) at [www.regulations.gov](http://www.regulations.gov).

Although the smallest business unit may consist of less than 10 employees, SBA's small business size standards do not necessarily reflect the smallest size of businesses. It should be noted that SBA's size standards apply to most Federal programs that provide benefits to small businesses, including small business procurement programs. Accordingly, qualifications and capabilities that businesses need to perform Federal Government contracts are an important factor in determining which company qualifies as small within an industry. Size standards based on the smallest business size would be too small, and there would not be enough capable and qualified small businesses to meet Federal Government small business contracting needs. This would lead agencies to compete contracts on a full and open basis, thereby allowing large corporations to dominate the Federal market. It is imperative that small firms have room to grow and expand without losing their small business status until they are large enough to achieve a competitive size in their industry. Additionally, it is very important to note that while the size standards may appear to include a large segment of an industry in terms of the percentage of firms, small firms represent only about a third of total industry receipts and less than 25 percent of Federal contracting dollars.

SBA does not agree with, and the data does not support, the argument that businesses with 1-19 employees mostly need loans in the amount of \$50,000 to \$250,000. Based on the data on firms in all 71 industries in Sector 42 and the two industries in Sector 44-45 covered in this rule that received SBA's 7(a) and

504 loans in 2014, the median loan amount among firms with less than 20 employees was about \$305,500. In addition, \$250,000 or higher loans accounted for 62 percent of total number of loans and 85 percent of total loan volumes for those firms. SBA also does not agree with the argument that increases in average loan amounts and decreases in smaller loans are solely due to the increases in size standards for two reasons. First, with the passage of the Small Business Jobs Act in 2010 (Jobs Act) (Pub. L. 111-240, § 1116, Sep. 27, 2010), Congress increased the maximum loan amount for SBA's 7(a) loans from \$2 million to \$5 million, for CDC/504 loans from \$1.5 million to either \$5 million or \$5.5 million, depending on the project. Second, at the same time, Congress also increased the tangible net worth and net income limits of the alternative size standard for those programs from \$8.5 million and \$3 million to \$15 million and \$5 million, respectively. 15 U.S.C. 632(3)(a)(5). Under the alternative size standard, businesses that are above their industry size standards can qualify for SBA guaranteed loans. These statutory changes may be important factors for the purported changes in SBA's lending. However, such changes do not necessarily mean that truly small businesses are getting fewer loans now than in 2008. For example, in industries covered by this rule, businesses with less than 20 employees received a total of \$1.2 billion in loans through SBA's 7(a) and 504 programs in 2014, as compared to about \$0.8 billion in 2008. That is an increase of 50 percent. Nearly 85 percent of total loans granted in those industries in 2014 went to firms with less than 20 employees.

The data does not support the argument that increasing small business size standards from 100 employees to 200 or 250 employees and thereby allowing larger businesses to qualify as small would affect the ability of truly small firms to obtain SBA's loans. For example, of the total loan amount disbursed under SBA's 7(a) and 504 programs to firms in Sector 42 during fiscal years 2012-2014, 63 percent went to firms with less than 20 employees, 89 percent to firms with less than 50 employees, and 96 percent to firms with less than 100 employees. Since the vast majority of firms that obtained SBA's loans are well below the current 100-employee size standard, the Agency does not believe that increasing it to 200 or 250 employees will have a significant negative impact on firms below the current size standard. Moreover, even if SBA decided to leave the size standard

for all wholesale trade industries at the current 100-employee level, firms with more than 100 employees may still qualify as small for purposes of SBA's financial assistance. This is because, as stated above, for SBA's 7(a) and CDC/504 loan programs the Jobs Act established an alternative size standard making those firms that exceed their industry size standards eligible for SBA's 7(a) and 504 loans if their tangible net worth does not exceed \$15 million and their average net income, after Federal income taxes, does not exceed \$5 million over their preceding two fiscal years. Accordingly, firms whose annual receipts or number of employees are higher than their industry size standards may still qualify as small under the alternative size standard. In other words, any wholesaler that exceeded the 100-employee size standard would still be eligible for SBA's financial assistance if it met the alternative size standard. However, during fiscal years 2012-2014, less than 4 percent of total loan volume under SBA's 7(a) and 504 programs in Sector 42 went to firms with more than 100 employees. This further supports the earlier conclusion that the proposed increases to size standards in the wholesale and retail trade industries are unlikely to impact smaller firms seeking loans through SBA's financial assistance programs.

SBA does not agree with the comment that a 200-employee company with up to \$1 billion in annual revenue will qualify as small under the proposed higher size standards and would compete with smaller firms for SBA's loans. It is very unlikely that a company with \$1 billion in revenue will qualify for or need SBA's financial assistance. SBA provides business loan assistance only to those businesses for which the desired credit is not available on reasonable terms from non-Federal sources (13 CFR 120.101). A firm with that level of revenue would likely have access to credit with reasonable terms from non-Federal sources, making it ineligible for SBA's assistance.

With respect to the comment that truly small businesses are not able get SBA's loans, SBA has initiated fee relief for certain SBA-guaranteed loans to encourage more lending to smaller businesses. Since 2013, both the up-front guaranty fee and the lender's annual service fee for SBA's 7(a) loans of \$150,000 or less have been set at zero. In addition, in 2014 the Agency introduced SBA Veterans Advantage, which reduced the up-front guaranty fee to zero on its Express loans of \$150,001 up to \$350,000 to qualified small businesses owned by veterans and other

members of the military community. In October 2014, SBA Veterans Advantage was expanded to reduce the up-front guaranty fee by 50 percent on 7(a) loans (other than SBA Express) of \$150,001 up to and including \$5 million to qualified small businesses owned by veterans and other members of the military community. The fee relief provided on these loans helps remove impediments for some businesses looking to take out SBA-guaranteed loans. In 2014, SBA lending in its 7(a) program increased 7.4 percent over 2013. In 2014, SBA guaranteed 52,044 loans, up 12 percent from 2013. Nearly 60 percent of these loans were under \$150,000. The number of loans of this size was up 23 percent in 2014, helped by the agency's decision to eliminate fees on loans below that level. SBA anticipates lending to continue rising, and the Agency will maintain these programs to encourage businesses in need of smaller loans to apply.

SBA does not agree with the commenters' assertion that certain milestones and goals provide impetus for changing size standards (*e.g.*, number of loans awarded, number of contracts and dollars awarded to small businesses, number of people hired, *etc.*). As explained in its Methodology, SBA uses industry factors (such as average firm size, industry concentration, and startup cost and entry barriers) and Federal market conditions (*e.g.*, small business share of total Federal contracts relative to small business share of industry receipts) as bases for changing size standards. In other words, the various milestones and goals identified by the commenters are not the reasons for changing size standards.

SBA finds it difficult to evaluate the suggestion that size standards should not exceed 300 employees, because the comment included no supporting data or analysis. Furthermore, the proposed changes would increase the standard to no more than 250 employees in any of the affected NAICS codes. As a result, this comment is not relevant to the proposed rule.

SBA does not accept the suggestion to change the basis for the size standards for wholesale trade industries from number of employees to annual receipts. In the May 19, 2014 proposed rule, SBA fully explained its Methodology, including why it uses the employee based size standards for certain industries, and receipts based size standards for others. For industries that are highly capital intensive, have low operational costs relative to their receipts, show a variation of firms within industry by stage of production

or degree of vertical integration, and are more horizontally structured, SBA uses employee based size standards. Most mining, manufacturing and wholesale trade industries fall under this category. For most services retail trade, and others with more seasonal and part-time employment (such as hospitality related industries), SBA uses receipts based size standards. Because of a wide variation in values of products sold by different types of wholesalers and retailers covered by this rule, receipts are not an appropriate measure of size for those firms. Moreover, the commenters did not specify what level of receipts based size standards would be appropriate.

SBA does not agree with the argument that the proposed increase in size standards for the wholesale and retail trade industries would affect the ability of firms to compete and win Federal contracts set aside for small businesses, because the increases only apply to SBA's financial programs and other federal programs that use SBA's size standards. As stated in the proposed rule, the increases to the size standards for the wholesale and retail trade industries do not apply to Federal Government procurement programs. Similarly, the proposed increases to size standards for wholesale and retail trade industries will have no effects on size standards in other industries. None of the proposed size standards was over 250 employees. The 1,500-employee size standard that the commenters pointed out only applies to a few industries comprised of firms that are significantly larger than those in most other industries. Such examples would be Petroleum Refineries, Aircraft Manufacturing, Air Transportation, and Telecommunications Carriers. Small business size standards define businesses as small, relative to the size of all firms in the industry. In industries where enterprises are very large, a much higher size standard than for most other industries is warranted. Such industries and size standards were not the subject of the proposed rule that this rule finalizes. The commenter who opposed the SBA's proposal to retain the 500-employee size standard under the nonmanufacturer rule, except for stating that his business cannot compete with larger small businesses with up to 500 employees, did not provide any industry or Federal market data to support this point.

As stated in the proposed rule, firms in Wholesale Trade and Retail Trade industries generally carry multiple items from different industries as inventory, and therefore identify themselves with multiple NAICS codes. Different size standards for individual

industries in Wholesale Trade and Retail Trade under the nonmanufacturer rule would further complicate the contracting decision process, which already entails the decision to establish an applicable manufacturing industry, along with its size standard, associated with manufacturing, production, or processing of the product being procured. SBA believes the current 500-employee size standard makes sense because Wholesale and Retail Trade firms have to compete with manufacturers for supply or product contracts set aside for small businesses, and the anchor and most common size standard for the manufacturing industries is 500 employees. SBA believes that it is appropriate to retain the current 500-employee size standard in the nonmanufacturer rule in order to keep Wholesale and Retail Trade firms competitive with manufacturers.

The revised size standards will have no impact on the ability of small businesses to continue participating in Federal Government procurement programs because their competitive status will not change. Wholesalers, dealers, distributors, retailers, *etc.*, up to 500 employees will continue to be eligible to bid on small business set-asides under the nonmanufacturer rule, as discussed below. The 500-employee nonmanufacturer size standard helps small businesses to compete with larger suppliers so they can sell products or supplies to the Federal Government. In addition, businesses that exceed the revised size standards but have 500 employees or less and qualify under the nonmanufacturer rule are eligible for SBA's financing directly and primarily relating to the performance of that procurement. See 13 CFR 121.305. The increased size standards in this rule will not affect their eligibility for financing in that regard either. Therefore, under the revised size standards adopted in this rule, there will be no adverse impact on small businesses that participate in the Federal Government's small business procurement programs.

To qualify as small on supply or product contracts set aside for small businesses, a business concern must either: (1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States) itself; (2) qualify as a "nonmanufacturer;" or (3) be considered a kit assembler. See 13 CFR 121.406. In general, to qualify as a small business nonmanufacturer the concern must: (i) Have no more than 500 employees; (ii) be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; (iii) take ownership or

possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and (iv) supply the end item of a small business manufacturer, processor or producer made in the United States, or obtain a waiver of such requirement pursuant to SBA's regulations at 13 CFR 121.1201–1204. See 13 CFR 121.406. On a small business set-aside, absent a waiver, the product must be the product of another small business, located in the United States. On a contracting opportunity set aside for small businesses, in the event an unsuccessful offeror believes that the successful bidder is not compliant with the nonmanufacturer rule, the company can and should protest the eligibility of the successful bidder to the Contracting Officer. See 13 CFR 121.1001 *et seq.*

It seems that there exist misconceptions about whether industry size standards for Sectors 42 and 44–45 apply to Federal Government procurement programs. As stated elsewhere in this rule, the industry size standards adopted in this rule do not apply to Federal procurements. Under 13 CFR 121.402, Federal agencies may not use NAICS codes and their size standards in Sector 42 (Wholesale Trade) or Retail Trade (Sector 44–45) for procurement of goods or supplies. Those codes and size standards apply, rather, to SBA's small business lending programs and other Federal Government programs, but not to Federal procurements. For the Federal Government's procurement of manufactured goods, supplies, or other products, the Contracting Officer must use the NAICS code and size standard for the industry that manufactures, produces, or processes the products or supplies being procured. Any nonmanufacturer firm with up to 500 employees that meets the requirements of the nonmanufacturer rule may bid as a small business on those opportunities. See 13 CFR 121.406.

### Conclusion

Based on the results of the analysis of industry data provided in the proposed rule and evaluation of public comments on the proposed rule as discussed above, SBA is adopting all changes to the employee based size standards in Sectors 42 and 44–45, as published in the May 19, 2014 proposed rule.

### Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule is not a “significant regulatory action” for purposes of Executive Order 12866. To help explain the need for this rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis as it did in the May 19, 2014 proposed rule. This rule is also not a “major rule” under the Congressional Review Act (5 U.S.C. 800).

#### *Cost Benefit Analysis*

1. Is there a need for the regulatory action?

The revised size standards in Wholesale Trade and Retail Trade sectors better reflect the economic characteristics of small businesses in the affected industries and maximize the benefits they receive from Federal programs, other than from Federal procurement programs. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (the Act) (15 U.S.C. 632(3)(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Public Law 111–240, sec. 1344, Sep. 27, 2010. The supplementary information section of the May 19, 2014 proposed rule explained SBA's Methodology for analyzing the size standards of industries covered by this rule. SBA makes the Methodology available on its Web site at [www.sba.gov/size](http://www.sba.gov/size), as well as the on the Docket for the proposed rule at [www.regulations.gov](http://www.regulations.gov). The Methodology complies with the Small Business Act requirements and SBA's regulations that govern the establishment of size standards.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses becoming small under these

increases is that they are now eligible for SBA's financial assistance programs. In addition, growing small businesses that are close to exceeding the current size standards can retain their small business status under the higher size standards, thereby enabling them to continue their participation in those programs. These include SBA's 7(a), CDC/504, and Economic Injury Disaster Loan (EIDL) programs.

SBA estimates that in the 47 industries in Sector 42 and Sector 44–45 whose size standards are being revised, nearly 4,000 firms, previously not small, will become small under the revised size standards, and therefore eligible for SBA's financial assistance programs and other Federal programs, except for procurement. That is a 1.1 percent increase to the number of firms classified as small under the current employee based size standards in those sectors. For the industries reviewed in this rule, the data indicate that it is mostly businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loan programs. Based on the fiscal years 2012–2014 data, SBA estimates up to about 40 loans totaling between \$20 million and \$25 million could be made under its 7(a) and CDC/504 programs to these newly defined small businesses under the new size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in those industries, but it is impractical to try to estimate exactly the number and total volumes of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these size standards on its 7(a) and 504 loan programs.

Newly defined small businesses will also benefit from SBA's EIDL program. The EIDL program is contingent on the number and severity of disaster occurrences, and therefore SBA cannot make a meaningful estimate of this impact.

Because NAICS codes in the Wholesale Trade and Retail Trade sectors and their industry size standards do not apply to Federal procurement programs, and because SBA is making no change to the 500-employee size standard under the nonmanufacturer rule, this rule will not affect participation in Federal procurement programs. However, retaining the current 500-employee size standard

under the nonmanufacturer rule will, in fact, enable firms in Wholesale and Retail Trade industries to maintain their eligibility for Federal supply procurements intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as the 8(a) Business Development (BD) program, Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB) and economically-disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB).

More businesses will benefit from a variety of Federal regulatory and other programs that use SBA's size standards. Such benefits may include, but are not limited to, reduced fees, less paperwork, or exemption from compliance or other regulatory requirements.

To the extent that those 4,000 newly defined additional small firms under the revised size standards become active in seeking SBA's financial assistance, the changes may entail some additional administrative costs to the Government because of more businesses being eligible for the assistance. For example, there may be more firms seeking SBA's guaranteed loans. It will not, however, increase the number of firms eligible to enroll in the System of Award Management (SAM) database, because applicants to SBA's loans are not required to register in SAM. It also will not increase the number of firms eligible to seek certification as 8(a) BD, HUBZone, WOSB, EDWOSB, SDVOSB, or SDB status, because revisions to industry size standards in the Wholesale Trade and Retail Trade sectors do not apply to Federal procurement. Among those newly defined small businesses seeking SBA's financial assistance, there could be some additional costs associated with compliance and verification of small business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

The revisions to the existing employee based size standards in Sector 42 and Sector 44–45 are consistent with SBA's statutory mandate to assist those businesses that it considers small. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Government contracts, and

management and technical assistance. Although these revised standards will not increase access to Federal contracts, they will ensure that intended beneficiaries have access to other small business programs designed to assist them.

#### *Executive Order 13563*

A description of the need for this regulatory action and benefits and costs associated with this action that relate to Executive Order 13563 are included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards Methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with a number of industry groups and individual businesses to get their feedback on its Methodology and other size standards issues. In addition, SBA presented its size standards Methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on the size standards review.

Individuals and business persons who have expressed interest in the size standards for one or more NAICS sectors receive a copy of SBA proposed and final rules. SBA sent copies of the May 19, 2014 proposed rule to the interested individuals, seeking their comments on proposed changes to employee based size standards for a number of wholesale trade and retail trade industries, and the Agency's proposal to retain the 500-employee nonmanufacturer size standard. SBA also published the proposed rule in the **Federal Register** and invited comments from any interested members of the public. SBA received seven comments on the proposed rule and has addressed them thoroughly.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this rule.

The review of employee based size standards in NAICS Sector 42 and Sector 44–45 is consistent with Executive Order 13563, Sec. 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards was in the late 1970s and early 1980s. Since then, except for periodic adjustments for inflation to monetary based size standards (most recently, effective July 14, 2014; see 79 FR 33647), most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment, and do a complete review of all size standards not less than once every five years thereafter. Public Law 111–240, sec. 1344, Sep. 27, 2010.

#### *Executive Order 12988*

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### *Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this rule does not have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

#### *Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or record keeping requirements.

*Final Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small businesses in Sector 42, Wholesale Trade, and some small businesses in Sector 44–45, Retail Trade. As described above, this rule may affect small businesses seeking loans under SBA's 7(a), 504/CDC, and Economic Injury Disaster Loan (EIDL) programs, and assistance under other Federal small business programs, except procurement.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the following questions: (1) What are the need for and objectives of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule? (4) What are the relevant federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objectives of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in Sector 42 and Sector 44–45. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses that need Federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

SBA estimates that nearly 4,000 more firms in Sector 42 and Sector 44–45 will become small for financial assistance under the revised employee based size standards. That represents 1.1 percent of total firms that are small under current employee based size standards in all such industries in those sectors. The adopted rule will enable more small businesses to retain their small business status for a longer period. Additionally, many firms that may have exceeded the current size standards and lost their

eligibility for SBA's financial assistance and other Federal programs for small businesses will regain eligibility for those programs under the revised employee based size standards.

3. What are the projected reporting, recordkeeping and other compliance requirements of the rule?

The size standard changes impose no additional reporting or recordkeeping requirements on small businesses. Qualifying for SBA's financial assistance does not require that businesses register in the System for Award Management (SAM) database and certify in SAM that they are small at least once annually. However, some newly qualified small businesses under the revised size standards may want to participate in the Federal Government procurement and other programs that require firms to register and certify in SAM. Small businesses may become aware from this rule that they have been eligible to sell goods and supplies to the Federal Government under the 500-employee nonmanufacturer size standard. Therefore, to participate as a prime contractor, those businesses must comply with SAM requirements. There are no costs associated with either SAM registration or annual recertification. Changing size standards alters the access to SBA's financial assistance programs and other Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant federal rules, which may duplicate, overlap, or conflict with the rule?

Under Section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(3)(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising size standards.

However, the Small Business Act (15 U.S.C. 632(3)(a)(2)(C)) and SBA's regulations (13 CFR 121.903) allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator. The SBA's regulations (see 13 CFR 121.903(c))

authorize a Federal agency to establish an alternative small business definition for the sole purpose of performing a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601(3)), after consultation with the Office of Advocacy of the U.S. Small Business Administration.

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, in the table “Small Business Size Standards by NAICS Industry” revise the entries for “423110”, “423120”, “423130”, “423310”, “423320”, “423330”, “423410”, “423420”, “423430”, “423450”, “423460”, “423490”, “423510”, “423610”, “423620”, “423690”, “423710”, “423720”, “423730”, “423810”, “423860”, “423920”, “424110”, “424120”, “424130”, “424210”, “424320”, “424340”, “424410”, “424420”, “424430”, “424440”, “424450”, “424470”, “424490”, “424510”, “424610”, “424690”, “424710”, “424720”, “424810”, “424820”, “424910”, “424920”, “424940”, “424950”, and “454310” to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *		*	*
423110	Automobile and Other Motor Vehicle Merchant Wholesalers		250
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers		200
423130	Tire and Tube Merchant Wholesalers		200
* * * * *		*	*
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		150
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers		150
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers		200
* * * * *		*	*
423410	Photographic Equipment and Supplies Merchant Wholesalers		200
423420	Office Equipment Merchant Wholesalers		200
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers		250
* * * * *		*	*
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers		200
423460	Ophthalmic Goods Merchant Wholesalers		150
423490	Other Professional Equipment and Supplies Merchant Wholesalers		150
423510	Metal Service Centers and Other Metal Merchant Wholesalers		200
* * * * *		*	*
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers		200
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers		200
423690	Other Electronic Parts and Equipment Merchant Wholesalers		250
423710	Hardware Merchant Wholesalers		150
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers		200
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers		150
* * * * *		*	*
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers		250
* * * * *		*	*
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		150
* * * * *		*	*
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers		150
* * * * *		*	*
424110	Printing and Writing Paper Merchant Wholesalers		200
424120	Stationery and Office Supplies Merchant Wholesalers		150
424130	Industrial and Personal Service Paper Merchant Wholesalers		150
424210	Drugs and Druggists' Sundries Merchant Wholesalers		250
* * * * *		*	*
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers		150
* * * * *		*	*
424340	Footwear Merchant Wholesalers		200
424410	General Line Grocery Merchant Wholesalers		250
424420	Packaged Frozen Food Merchant Wholesalers		200
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers		200
424440	Poultry and Poultry Product Merchant Wholesalers		150
424450	Confectionery Merchant Wholesalers		200
* * * * *		*	*
424470	Meat and Meat Product Merchant Wholesalers		150
* * * * *		*	*
424490	Other Grocery and Related Products Merchant Wholesalers		250
424510	Grain and Field Bean Merchant Wholesalers		200
* * * * *		*	*
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers		150
424690	Other Chemical and Allied Products Merchant Wholesalers		150
424710	Petroleum Bulk Stations and Terminals		200



SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	NAICS U.S. Industry title	Size standards in millions of dollars	Size standards in number of employees
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).		200
424810	Beer and Ale Merchant Wholesalers		200
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers		250
424910	Farm Supplies Merchant Wholesalers		200
424920	Book, Periodical, and Newspaper Merchant Wholesalers		200
*	*	*	*
424940	Tobacco and Tobacco Product Merchant Wholesalers		250
424950	Paint, Varnish, and Supplies Merchant Wholesalers		150
*	*	*	*
454310	Fuel Dealers		100
*	*	*	*

\* \* \* \* \*

Dated: January 15, 2016.

**Maria Contreras-Sweet,**  
Administrator.

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**RIN 3245-AG60**

**Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes, without change, the U.S. Small Business Administration’s (SBA or Agency) June 12, 2014 interim final rule that adjusted monetary small business size standards (*i.e.*, receipts, assets, net worth, and net income) for inflation that has occurred since the last inflation adjustment in 2008. Specifically, the interim final rule increased by 8.73 percent all industry specific monetary small business size standards (except the \$750,000 receipts based size standard for agricultural enterprises established by the Small Business Act). The interim final rule also increased by the same rate the tangible net worth and net income based alternative size standard for the Small Business Investment Company (SBIC) Program and receipts based size standards for Sales of Government Property (Other Than Manufacturing) and Stockpile Purchases. This final rule adopts those increases, without change.

**DATES:** This rule is effective on January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**Inflation Adjustment**

SBA’s small business size regulations require that the Agency examine the impact of inflation on monetary size standards (*e.g.*, receipts, tangible net worth, net income, and assets) and make necessary adjustments at least once every five years. (13 CFR 121.102(c)). Accordingly, on June 12, 2014, SBA published an interim final rule (IFR) that increased by 8.73 percent all industry specific monetary small business size standards (except the \$750,000 receipts based size standard for agricultural enterprises established by the Small Business Act) (79 FR 33647). Previous to the June 12, 2014 interim final rule, SBA had last updated size standards for inflation on August 18, 2008 (see 73 FR 41237 (July 18, 2008)).

In addition, the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240, sec. 1344, Sep. 27, 2010, requires SBA to review all size standards every five years and make necessary adjustments to reflect current industry and Federal market conditions.

In accordance with the Jobs Act, SBA has completed a review of all industry specific monetary based size standards using the latest industry and Federal contracting data available. As part of that review, SBA did not take into consideration inflation that had occurred since 2008. In the IFR, SBA provided reasons for not considering inflation as part of the comprehensive review. Specifically, SBA could not combine static industry data with the fluctuating inflation during the course of the review that produced a series of

rules for different sectors at different times. Trying to do so would have resulted in different inflation factors for different industries, thereby making size standards inconsistent among industries.

**Summary and Discussion of Public Comments on the June 12, 2014 IFR**

On June 12, 2014, SBA issued an IFR (79 FR 33647), increasing by 8.73 percent all industry specific monetary small business size standards (except the \$750,000 receipts based size standard for agricultural enterprises established by the Small Business Act). The adjustment represented inflation, as measured by the Gross Domestic Product (GDP) price index, since the previous inflation adjustment published in July 2008. The 8.73 percent increase was applied to 492 industry specific size standards (487 receipts based and five assets based) and three program specific size standards, namely: (1) Tangible net worth and net income based alternative size standards for the SBIC Program (13 CFR 121.301(c)); (2) Sales of Government Property Other Than Manufacturing (13 CFR 121.502); and (3) Stockpile Purchases (13 CFR 121.512). For the reasons SBA provided in the June 12, 2014 IFR, SBA did not increase the tangible net worth and net income based alternative size standards for SBA’s 504 and 7(a) Loan Programs (13 CFR 121.301(b)). Increases became effective July 14, 2014.

The IFR requested comments from the public on SBA’s methodology of using the GDP price index for adjusting size standards and suggestions for alternative measures of inflation, on whether SBA should adjust employee based size standards for labor productivity growth and technical changes similar to adjusting monetary

based size standards for inflation, and on changes to program specific size standards. SBA received 13 comments, eight of which supported the increases. All comments are available at the Federal Rulemaking Portal, [www.regulations.gov](http://www.regulations.gov). Below is a discussion of those comments and SBA's responses.

#### Comment on the Inflation Index

A construction company commented in favor of increasing size standards for inflation. The commenter recommended, however, that SBA use the Consumer Price Index (CPI), rather than the GDP price index that the Agency used.

*SBA response:* In the IFR, SBA reviewed various measures of inflation and provided an explanation why the Agency selected the GDP price index, rather than other indices such as the CPI, as the most appropriate measure for adjusting size standards. Moreover, the commenter did not provide a convincing justification as to why the CPI is a better measure of inflation than the GDP price index. For these reasons, SBA is not adopting the commenter's recommendation in this final rule, but will consider it in future adjustments.

#### Comment on Rounding

While supporting increases to size standards for inflation and using the GDP price index, another commenter recommended that SBA round the results in increments of \$100,000 rather than \$500,000. It seemed “. . . arbitrary and too generous for some and harmful to others,” the commenter noted. The rounding reduced some size standards by \$200,000—for example, \$27.7 million to \$27.5 million—and this will have an impact on a lot of companies, the commenter maintained.

*SBA's response:* As in the previous inflation adjustments, SBA rounded the results to the nearest \$500,000 to avoid having too many size standards, in light of public criticism that the Agency's size standards are overly complicated. Having too many size standards, especially with minor differences, can lead to confusion and unnecessary complexity in their application. Among the 16 receipts based size standards adjusted for inflation, only three (\$15 million, \$20.5 million, and \$27.5 million) were reduced by \$200,000 due to rounding. This is minuscule relative to the adjusted size standards, which SBA believes would not cause much harm to businesses. Thus, in this final rule, SBA is not readjusting the size standards for inflation by rounding them to \$200,000. However, SBA will consider applying alternative rounding

amounts in future adjustments to size standards for inflation.

#### Comment on the SBIC Alternative Size Standard

Fully supporting size standards increases for inflation, one commenter stated that the increase to the Small Business Investment Company (SBIC) size standard allows SBICs to effectively deploy capital to growing small businesses. The commenter recommended that SBA allow automatic, formulaic updates to the size standards based on the GDP price index without prior public participation.

Another commenter supported a greater increase to the tangible net worth and net income based alternative size standard that applies to the SBIC Program. The commenter argued that the increase should be greater because SBA has not increased the alternative size standard for the SBIC Program since the 1994 inflation adjustment. For the increase in the June 12, 2014 IFR SBA used the GDP price index, which resulted in an increase to the SBIC alternative size standard to \$19.5 million in tangible net worth and \$6.5 million in average net income after federal income tax, the commenter explained. Furthermore, the commenter pointed out that had SBA used the increase in the GDP price index since the 1994 adjustment, the resulting size standard would be \$26.5 million in tangible net worth and \$8.8 million in average net income after federal income tax. The commenter further contended that Producer Price Index (PPI) could be a better index to use for the SBIC Program because most of the SBIC investment goes to small manufacturers. PPI, in the commenter's opinion, would raise the size standard to \$31.3 million in tangible net worth and \$10.4 million in average net income after federal income tax. Finally, the commenter suggested adopting \$20 million in tangible net worth and \$7.0 million in average net income after federal income tax. The commenter also raised concerns about the definition of “tangible net worth.” Specifically, the commenter pointed out that for the SBIC Program the only intangible element SBA deducts from net worth to determine tangible net worth is “goodwill.” The commenter recommended that the Agency should allow the deduction of all intangibles, not just goodwill, in accordance with U.S. generally accepted accounting principles (GAAP).

*SBA's response:* In any given measurement period, inflation may be insignificant or even negative. Given the 8.73 percent rate of inflation for the

period covered by this rule, SBA believes that a 5-year review for size standards for inflation is adequate. More frequent, smaller increases (or decreases) would lead to confusion in applying size standards, particularly in Federal contracting. Furthermore, to change size standards SBA must comply with Federal rulemaking and the Regulatory Flexibility Act (RFA), which require SBA to seek public comment on contemplated changes, as well as comply with other laws and Executive Orders to address the impact of regulatory changes on small businesses. If inflation is really large, SBA may adjust the size standards more frequently than the 5-year interval.

It should be noted that the subject rule was an IFR, seeking public comments, rather than a proposed rule. Therefore, the revised size standards in the IFR were effective July 14, 2014. The IFR applied the 8.73 percent increase for inflation to all size standards across the board. Any significant deviation from that would require a separate rulemaking action for the SBIC Program. SBA can consider modifying the size standard for the SBIC Program in the future, provided that relevant data and program needs would support a size standard that is different from the one adopted in this rule. The “tangible net worth” measure of business size applies to the alternative size standards for SBA's financial programs. Accordingly, any concerns or issues regarding the definition of “tangible net worth” are better addressed to SBA's Office of Investment and Innovation.

SBA recognizes that inflation may not impact every industry or program equally. SBA's small business size standards apply to a wide variety of Federal Government programs, including the SBIC Program, and to businesses engaged in multiple industries. Although SBICs may support firms in many manufacturing industries, it is not limited to the manufacturing sector. For these reasons, SBA uses a broad measure of inflation for the entire U.S. economy to determine the most appropriate rate of inflation by which to adjust all of its monetary size standards. In the IFR, SBA explains in detail why the GDP price index, rather than other measures such as the PPI, is the most appropriate measure of inflation for adjusting size standards. SBA's decisions not to adjust the SBIC alternative size standard from 1994 to the 2008 inflation adjustment were dictated by SBIC's programmatic considerations. Because the \$20 million tangible net worth and \$7 million net income size standards recommended by the commenter are very close to SBA's

inflation adjusted levels of \$19.5 million tangible net worth and \$6.5 million net income published in the IFR, SBA is not making any change in this final rule.

### Comments on the Dredging Size Standard

SBA received six comments on the size standard for the Dredging and Cleanup Services exception under NAICS 237990, Other Heavy and Civil Engineering Construction. The June 12, 2014 IFR increased the size standard for Dredging and Cleanup Services from \$25.5 million to \$27.5 million in average annual receipts. Four of the six commenters strongly supported the increase, while two opposed it. The four commenters supporting the increase maintained that the increase is vital to account for the escalating costs of labor, equipment, and equipment maintenance. They also stated that it will allow firms that grew because of the costs of inflation to remain small and eligible for Federal procurement opportunities for small businesses.

One of the commenters supporting the increase to the dredging size standard for inflation suggested that SBA take the four largest costs on dredging projects (*i.e.*, fuel, labor, insurance and equipment costs) into account to calculate the inflation index for the dredging size standard. Arguing that dredging costs have increased more than the GDP price index, the commenter requested that the size standard for dredging be raised to \$30 million.

Two dredging contractors, on the other hand, stated that the increase is unjustified, and strongly oppose it. They argued that the recent increase to the dredging size standard accounted for inflationary factors and was sufficiently substantial to offset any need for an adjustment for inflation. One opined that a reasonable amount of time should lapse prior to increasing the size standard again. Representing a large marine construction and dredging contractor, another commenter argued that the increase to the dredging size standard reduces his company's (and presumably other similar businesses) potential bid market while enhancing the market power of the "big smalls," allowing them to dominate the "small smalls" further. The commenter maintained that fuel prices are actually down while newer engines burn less fuel. Advances in automation, reduced plastic pipe prices, and improved engine metallurgy are a few examples of improved cost efficiencies a firm must adopt to stay competitive, the commenter added.

*SBA's response:* On July 18, 2012, as part of SBA's comprehensive review of

size standards under the Jobs Act, SBA had proposed to increase the size standard for the Dredging and Surface Cleanup Activities exception under NAICS 237990 from \$20 million to \$30 million in average annual receipts (77 FR 42197). SBA received several comments against the proposed increase. After reviewing comments and reevaluating the relevant industry data, the Agency adopted a \$25.5 million size standard in the final rule (78 FR 77334 (December 23, 2013)). In the June 12, 2014 IFR, it was increased to \$27.5 million for inflation. Adjustments in the IFR are in addition to revisions that were part of SBA's ongoing comprehensive size standards review. SBA's comprehensive size standards review primarily focused on industry structure (*i.e.*, average firm size, startup costs and entry barriers, industry concentration, and distribution of firms by business size) and Federal contracting trends. It did not consider the impacts of inflation on size standards.

For the comprehensive review, SBA reviewed size standards on a Sector by Sector basis over a period of several years. Including inflation in the analysis would have meant applying different inflation rates to different sectors. Specifically, the amount of inflation adjustment would be lower for sectors reviewed earlier in the cycle and higher for those reviewed later, resulting in inconsistent size standards across sectors and industries. To avoid this, SBA decided to review all monetary based size standards for inflation separately at one time upon completion of the review of all monetary based industry size standards.

In the IFR, SBA increased all monetary based industry size standards by 8.73 percent across the board for inflation, including those that were increased more substantially than the dredging size standard under the comprehensive review. SBA's regulations require that the Agency examine the impact of inflation on size standards at least once every five years and adjust them as needed. Five years had passed between the current inflation adjustment and the previous adjustment issued in July 2008. A majority of the commenters argued that the increase in the dredging size standard is warranted given the increases in fuel, labor, insurance and equipment costs. Moreover, based on the Federal procurement data for fiscal years 2012–2014, no additional dredging firms would gain small business status under the adjusted size standard, suggesting that there would be very minimal impact, if any, on firms

below the previous \$25.5 million size standard. For these reasons, SBA is adopting \$27.5 million in average annual receipts as the size standard for Dredging and Surface Cleanup Activities exception under NAICS 237990, as published in the IFR.

### Comment on the Size Standard for Architectural Services

An association representing architects expressed concerns that the increase in size standard for Architectural Services (NAICS 541310) from \$7.0 million to \$7.5 million will pose additional burdens on small architecture firms and does not reflect the current business environment in the profession.

The association stated that the SBA's February 10, 2012 final rule on Sector 54 (Professional, Technical and Scientific Services) notes that "the Administration's goal is to increase the size standard participation to 42 percent of each applicable industry." The association stated that under the current \$7 million size standard for architecture, over 95.5 percent of firms qualify as small businesses, more than double the goal, and raising it to \$7.5 million will increase that to 96 percent. The association maintained that there have been significant deflationary pressures on the cost of design and construction projects due to the economic crisis, fewer projects, and increased competition. There has not been sufficient inflation in the sector to justify increasing the size standard, the association added. The association further maintained that the size standard does not reflect the way architects conduct business. For example, an architect may have to hire engineers to complete building projects, and in some cases, similar to travel agencies, an architectural firm can pass through up to 50 percent of its fees to subcontractors, the association added.

The association concluded that additional increase to the size standard will hurt small businesses by allowing larger firms with greater resources and marketing dollars to push out smaller firms without those resources.

*SBA's response:* To account for inflation that occurred since the previous inflation adjustment of July 2008, in the June 12, 2014 IFR, SBA increased the size standard for NAICS 541310 (Architectural Services) from \$7 million to \$7.5 million in average annual receipts. As part of SBA's comprehensive size standards review, on March 16, 2011, SBA had issued a proposed rule to increase the size standard for NAICS 541310 and other industries under NAICS Industry Group 5413 (Architectural, Engineering, and

Related Services) from \$4.5 million to \$19 million in average annual receipts (76 FR 14323). SBA received significant adverse comments to the proposed increase. After weighing the comments and reevaluating the relevant industry and Federal contracting data, SBA adopted \$7 million as the size standard for NAICS 541310 (77 FR 7490 (February 10, 2012)). As stated elsewhere in this final rule and explained in the IFR, for the comprehensive review, size standards were evaluated against the latest industry and contracting factors, but not against the inflation that occurred since the previous inflation adjustment in July 2008.

The association's statement that in the February 10, 2012 final rule SBA noted that the Administration's goal is to increase the size standard participation to 42 percent of each applicable industry is not correct. SBA has not established such a goal. For the majority of industries the current size standards include 90–95 percent of firms as small, and in some industries more. Thus, the size standard for architects including 95–96 percent of firms as small is not inconsistent with most other industries. Moreover, although the \$7.5 million size standard for architectural services includes 95–96 percent of firms, it includes less than 50 percent of total industry receipts and less than 30 percent of Federal contracting dollars.

SBA does not agree with the argument that, because architectural firms subcontract up to 50 percent of their work to other disciplines, the receipts based size standard does not reflect the industry. In response to the comments on the March 16, 2011 proposed rule that SBA should allow architectural firms to exclude subcontracting costs when calculating the receipts, SBA provided in the February 10, 2012 final rule (see page 7502) an extensive explanation of how the Agency calculates receipts and what a company can and cannot exclude from the revenue computation.

More importantly, it should be noted that the business model of architectural firms is not comparable with that of travel agencies. A travel agency may collect the full value of a cruise, flight, *etc.*, from its customers, but must remit most of those funds to the provider of the services sold. It retains only a small commission or fee and never has any rights to the balance of the funds it collects. Those funds do not increase the travel agency's asset base and are not available to reduce its liabilities. On the other hand, receipts an architectural firm collects can be used to replenish inventory, pay employees and other

subcontracting costs, reduce payables and debt, pay bonuses, and for other business purposes. They add to the business' asset base and net worth, and reduce liabilities. Further, the Economic Census data that SBA uses in determining size standards include these various costs as part of a company's gross receipts. Accordingly, SBA's small business size regulations (13 CFR 121.104) continue to state, “. . . subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.”

SBA also does not agree with the association's argument that an additional increase to the size standard will hurt small businesses by allowing larger firms with greater resources to push out smaller firms without those resources. First, it did not provide any data or analysis to support the argument. Second, the data from the Federal Procurement Data System—Next Generation (FPDS—NG) do not suggest that the increase in the size standard for architectural services from \$4.5 million to \$7 million in 2012 has hurt firms below the prior \$4.5 million size standard. For example, during fiscal years 2010–2011 (*i.e.*, prior to the size standard increase), firms below \$4.5 million received about 25 percent of total Federal contract dollars awarded under NAICS 541310. Firms under \$4.5 million still accounted for 25 percent of total contract dollars during fiscal years 2013–2014 (*i.e.*, after the size standard increase), despite a 33 percent decline in total Federal dollars in that NAICS code as compared to fiscal years 2010–2011. Moreover, during fiscal years 2013–2014 (*i.e.*, under the \$7 million size standard) firms below \$4.5 million accounted for 85 percent of total dollars awarded to small businesses, as compared to only about 4 percent going to firms from \$4.5 million to \$7 million. Based on these trends, SBA does not expect an increase to the size standard by \$500,000 to cause much harm to and burden on firms below \$4.5 million.

#### **Comment on the Size Standards for NAICS Subsector 562**

An elected official also commented on the interim final rule with questions on the rate of increase in the size standards for NAICS Subsector 562, Waste Management and Remediation Services. First, the commenter asked whether the rate of increase in the size standards for waste management service businesses reflects a similar increase in the GDP inflation rate and if not, what factors have been used to justify a larger

increase. Second, the commenter asked, if there is a discrepancy, whether the amount of the increase comported with SBA's own protocol used in other business increases. Third, the commenter asked whether there was a large discrepancy in size of businesses in this category or rates of inflation between regions of the country, and if so whether these discrepancies are significant enough to warrant region-specific NAICS size rules.

*SBA's response:* The rate of increase that SBA applied to adjust size standards in NAICS Subsector 562 reflects the same GDP price index rate that the Agency applied to all monetary based small business size standards. Inflation based on the GDP price index increased 8.73 percent from the first quarter of 2008 to the fourth quarter of 2013. As in the previous inflation adjustments, SBA also used the GDP price index in the latest inflation adjustment, because, as explained in the interim final rule, for purposes of small business size standards it is the most comprehensive measure of movement in the general price level in the economy. As part of the comprehensive size standards review under the Jobs Act, on December 6, 2012, SBA published a final rule increasing several size standards in NAICS Subsector 562 (77 FR 72691). The increases in size standards in NAICS Subsector 562 for inflation are in addition to the increases SBA adopted under the comprehensive review.

SBA establishes small business size standards only on a nationwide basis. SBA believes it would be unmanageable to establish and use size standards if they were established on a regional basis. First, the data SBA uses to review or update size standards are generally limited to the national level. Second, size standards are used to determine eligibility for various Federal programs, including Federal Government contracting, and SBA loan programs. If the size standards were to vary by geographic region, it would be very difficult to use them. For example, it would be difficult to determine what size standards to apply when businesses located in one region bid for Federal work to be performed in another region. Similarly, it would be difficult to determine eligibility for an SBA loan when a firm has operations in more than one region.

#### **General Comment on Size Standards Increases**

Another commenter stated that 98 percent of businesses (including non-employer firms) are “truly small” having only 1–19 employees. The

commenter noted, correctly, that SBA leaves non-employer firms out of its statistics. The commenter claimed that the average size of SBA's loan increased from \$182,000 in 2008 to \$547,000 in 2013, while the share of loans under \$100,000, which he claims generally go to truly small businesses, decreased from 24 percent to 9 percent. The commenter used these statistics to argue that the expansion of small business size definitions has allowed large corporations to qualify as small, resulting in significantly larger loans to a few, elite larger corporations. The commenter cited the European Union and Australian small business definitions and other definitions used by the U.S. Congress (e.g., 25 and 50 employees), and stated that SBA's size standards now include 99 percent of employer firms and 99.4 percent of all firms.

*SBA's response:* SBA acknowledges that some of its size standards could include as much as 97 percent to 99 percent of firms in a given industry. However, it is very important to point out that while it may appear to be a large segment of an industry in terms of the percentage of firms, small firms in those industries represent only about a third of total industry receipts and less than 25 percent of Federal contracting dollars.

What constitutes a small business in other countries does not apply and has no relevance to SBA's small business definitions and U.S. Government programs that use them. Depending on their economic and political realities, other countries have their own programs and priorities that can be very different from those in the U.S. Accordingly, small business definitions other countries use for their Government programs can be vastly different from those established by SBA for U.S. Government programs. From time to time, the U.S. Congress has used different thresholds, sometimes below the SBA's thresholds, to define small firms under certain laws or programs, but those thresholds apply only to those laws and programs and generally are of no relevance to SBA's size standards. SBA establishes size standards, in accordance with the Small Business Act, for purposes of establishing eligibility for Federal small business procurement and financial assistance programs. The primary statutory definition of a small business is that the firm is not dominant in its field of operation. Accordingly, rather than representing the smallest size within an industry, SBA's size standards generally designate the largest size that a business concern can be relative to other

businesses in the industry and still qualify as small for Federal Government programs that provide benefits to small businesses.

SBA does not agree that increases in average loan amounts and decreases in smaller loans are solely due to the increases in size standards for two reasons. First, with the passage of the Jobs Act in 2010, Congress increased the limits for SBA's 7(a) loans from \$2 million to \$5 million, for CDC/504 loans from \$1.5 million to \$5.5 million, and for 7(a) express loans from \$300,000 to \$1 million. Second, at the same time, Congress also increased the tangible net worth and net income limits of the alternative size standard from \$8.5 million and \$3 million to \$15 million and \$5 million, respectively. Under the alternative size standard, businesses that are above their industry size standards can qualify for SBA's loans. These statutory changes may be important factors for the purported changes in SBA's lending. However, such changes do not necessarily mean that truly small businesses are getting fewer loans now than in 2008. In fact, businesses with less than 10 employees received a total of \$12.1 billion in loans through SBA's 7(a) and 504 Loan Programs in 2014, as compared to \$10.6 billion in 2008. That was an increase of more than 14 percent.

### Conclusion

With due consideration of all public comments as discussed above, in this final rule, SBA is adopting the increases in all industry specific monetary size standards for inflation, as published in the IFR. SBA is also adopting the increases in three program specific size standards, namely the SBIC Program, Sales of Government Property (Other Than Manufacturing), and Stockpile Purchases. Similarly, SBA is also deleting references to the Surety Bond Guarantee size standards for contracts awarded in 2005 in the Presidentially declared disaster areas following Hurricanes Katrina, Rita, and Wilma, and the determination date for eligibility under the Agency's Economic Injury Disaster Loan (EIDL) Program in connection with the same 2005 hurricanes, as published in the IFR.

Accordingly, SBA is issuing this final rule to adopt, without change, the interim final rule published on June 12, 2014.

## Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a "significant regulatory action" for purposes of Executive Order 12866. To help explain the need for this rule and the rule's potential benefits and costs, SBA provided a Cost Benefit Analysis in the June 14, 2014 interim final rule. This is also not a "major rule" under the Congressional Review Act (5 U.S.C. 800).

#### 1. Is there a need for the regulatory action?

SBA's statutory mission is to aid and assist small businesses through various financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(3)(a)) (Act) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to this final rule explains the approach SBA follows when adjusting size standards for inflation. Based on the rise in the general level of prices, SBA believes that an inflation adjustment to size standards is necessary to reflect small businesses in industries with monetary size standards.

#### 2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses of this final rule is to enable those that have exceeded size standards simply due to inflation to regain eligibility for Federal small business assistance programs. This will also help businesses to retain small business eligibility for Federal programs for a longer period. These programs include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal agencies use SBA's 8(a) Business Development Program, Historically Underutilized Business Zones (HUBZone), Women-owned Small Businesses (WOSB), Economically Disadvantaged Women-owned Small Businesses (EDWOSB), and Service-disabled Veteran-owned Small Businesses (SDVOSB) Programs

to provide contracting opportunities for qualified small businesses. Federal agencies also use SBA's size standards for other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that this rule will enable approximately 8,500 firms in industries with receipts based size standards and about 170 firms in industries with assets based size standards, currently above SBA's size standards, to gain small business status and become eligible for these programs. This will increase the small business share of total receipts in industries with receipts based size standards from 31.2 percent to 31.8 percent and the small business share of total assets in industries with assets based size standards from 8.8 percent to 9.4 percent.

Three groups will benefit from the revisions of size standards in this rule: (1) Some businesses that are above the current size standards may gain small business status under the higher, inflation-adjusted size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies that will have a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the FPDS-NG data for fiscal years 2012-2014, SBA estimates that firms gaining small business status under the inflation adjusted size standards could receive Federal contracts totaling \$150 million to \$175 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, EDWOSB, and SDVOSB Programs, and unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Based on the fiscal years 2012-2014 data, SBA estimates about 70 additional loans totaling about \$30 million could be made to these newly defined small businesses under SBA's 7(a) and 504 Loan Programs under the adjusted size standards. Increasing the size standards will likely result in more guaranteed loans to small businesses in these industries, but it is impractical to try to estimate the exact number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can

now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established an alternative size standard (\$15 million in tangible net worth and \$5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these inflation adjusted size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

In addition, newly defined small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government.

To the extent that those nearly 8,700 additional small firms could become active in Federal procurement programs, the adjusted size standards in this final rule may entail some additional administrative costs to the Government as a result of more businesses being eligible for Federal small business programs. For example, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the System of Award Management (SAM) database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

In some cases, Federal Government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses, rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses, or set aside for competition among 8(a), HUBZone, WOSB,

EDWOSB, or SDVOSB Program participants only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The size standards adjustments in this final rule may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, some businesses defined as small under the current size standards may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the proposed size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the current monetary based industry size standards for 481 industries and 11 "exceptions" and to the monetary based size standards for other specific programs are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, including periodic inflation adjustments, ensure that intended beneficiaries have access to small business programs designed to assist them.

#### **Executive Order 13563**

A description of the need for this regulatory action and benefits and costs

associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this final rule.

The review of size standards in industries and financial assistance programs covered in this final rule is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last inflationary adjustment of monetary based size standards occurred in July 2008.

In addition to the inflationary adjustment of monetary based size standards published in the June 12, 2014 interim final rule, as part of the comprehensive size standards review, SBA reviewed all the receipts and assets based industry size standards and made necessary adjustments to ensure that they reflect current industry and market conditions.

#### **Executive Order 12988**

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### **Executive Order 13132**

For purposes of Executive Order 13132, SBA has determined that this final 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, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

#### **Paperwork Reduction Act**

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or recordkeeping requirements.

#### **Final Regulatory Flexibility Analysis**

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small businesses in the industries covered by the rule. As described above, this rule

may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

#### *1. What are the need for and objective of the rule?*

As discussed in the supplemental information, the revision to the monetary based size standards for inflation more appropriately defines small businesses. This final rule restores small business eligibility in real terms to businesses that have grown above the size standard due to inflation rather than due to increased business activity. A review of the latest inflation indexes indicates that inflation has increased sufficiently to warrant an increase to the current monetary based size standards.

Section 3(a) of the Small Business Act (15 U.S.C. 632(3)(a)) gives SBA the authority to establish and change size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. As discussed in the supplementary information, inflation has increased at a sufficient level since the time of the 2008 final rule to warrant a further adjustment to size standards at this time.

#### *2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?*

SBA estimates that about 8,500 additional firms will become small because of increased receipts based size standards of 476 industries and 11 "exceptions." That represents 0.2 percent of total firms that are small under current monetary based size standards. This will result in an increase in the small business share of total industry receipts in those industries from 31.2 percent under the current size standards to 31.8 percent

under the inflation-adjusted size standards. Due to the adjustment of assets based size standards in five industries, about 170 additional firms will gain small business status in those industries. This will increase the small business share of total assets in those industries from 8.8 percent to 9.4 percent. The size standards adopted in this final rule will enable businesses that have exceeded the size standards for their industries to regain small business status. It will also help currently small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; entities that are not small are "other than small."

#### *3. What are the projected reporting, recordkeeping and other compliance requirements of the rule?*

The inflation adjustment to size standards imposes no additional reporting or recordkeeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the SAM database and certify in SAM that they are small at least once annually. Therefore, newly eligible small businesses opting to participate in those programs must comply with SAM requirements. Businesses whose status changes in SAM from other than small to small must update their SAM profiles and complete the "representations and certifications" sections of SAM. However, there are no costs associated with SAM registration or certification. Changing size standards alters access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

#### *4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?*

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(3)(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that



identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The SBA's regulations (13 CFR 121.903(c)) authorize an agency to establish an alternative small business definition for the sole purpose of performing a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601(3)), after consultation with the Office of Advocacy of the U.S. Small Business Administration.

*5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?*

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

SBA's only other consideration was whether to adopt the size standards presented in the interim final rule with no further increase for the inflation. However, SBA believes that the inflation that has occurred since the publication of the June 12, 2014 interim final rule is not sufficient to warrant an additional increase at this time.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ For the reasons set forth in the preamble, the interim rule amending 13 CFR part 121, which was published at 79 FR 33647 on June 12, 2014, is adopted as a final rule without change.

Dated: January 12, 2016.

**Maria Contreras-Sweet,**  
Administrator.

[FR Doc. 2016-01410 Filed 1-22-16; 8:45 am]

**BILLING CODE 8025-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 1, 11, 16, 106, 110, 114, 117, 120, 123, 129, 179, and 211**

[Docket No. FDA-2011-N-0920]

**RIN 0910-AG36**

**Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA or we) is correcting a final rule that published in the *Federal Register* of September 17, 2015. That final rule amended our regulation for current good manufacturing practice in manufacturing, packing, or holding human food to modernize it, and to add requirements for domestic and foreign facilities that are required to register under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish and implement hazard analysis and risk-based preventive controls for human food. That final rule also revised certain definitions in our current regulation for registration of food facilities to clarify the scope of the exemption from registration requirements provided by the FD&C Act for "farms." The final rule published with some editorial and inadvertent errors. This document corrects those errors.

**DATES:** *Effective:* January 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jenny Scott, Center for Food Safety and Applied Nutrition (HFS-300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2166.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of Thursday, September 17, 2015 (80 FR 55908), FDA published the final rule "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food" with some editorial and inadvertent errors. This action is being taken to correct inadvertent errors in the preamble and codified.

In FR Doc. 2015-21920, appearing on page 55908 in the *Federal Register* of Thursday, September 17, 2015, the following corrections are made:

1. On page 55908, in the first column, the headings section of the document,

under the line containing "[Docket No. FDA-2011-N-0920]," is corrected by adding "RIN 0910-AG36".

2. On page 55938, in the second column, in the first paragraph under "VII. Comments on Proposed General Revisions to Current Part 110 (Final Part 117)," "revising provisions directed to preventing contamination of food and food-contact substances" is corrected to read "revising provisions directed to preventing contamination of food and food-contact surfaces."

■ 3. On page 56151, beginning in the second column, revise § 117.8 to read as follows:

**"§ 117.8 Applicability of subpart B of this part to the off-farm packing and holding of raw agricultural commodities.**

Except as provided by § 117.5(k)(1), subpart B of this part applies to the off-farm packaging, packing, and holding of raw agricultural commodities. Compliance with this requirement for raw agricultural commodities that are produce as defined in part 112 of this chapter may be achieved by complying with subpart B of this part or with the applicable requirements for packing and holding in part 112 of this chapter."

**§ 117.405 [Corrected]**

■ 4. On page 56164, in the first column, in § 117.405 *Requirements to establish and implement a supply chain program*, paragraph (c) introductory text is corrected to read as follows:

"(c) When a supply-chain-applied control is applied by an entity other than the receiving facility's supplier (e.g., when a non-supplier applies controls to certain produce (i.e., produce covered by part 112 of this chapter), because growing, harvesting, and packing activities are under different management), the receiving facility must:"

Dated: January 14, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-01092 Filed 1-22-16; 8:45 am]

**BILLING CODE 4164-01-P**



**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1314**

[Docket No. DEA-347]

RIN 1117-AB30

**Self-Certification and Employee Training of Mail-Order Distributors of Scheduled Listed Chemical Products****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Final rule.

**SUMMARY:** This document finalizes the Drug Enforcement Administration's rule implementing the requirements of the Combat Methamphetamine Enhancement Act of 2010 establishing self-certification and training requirements for mail-order distributors of scheduled listed chemical products. This action finalizes without change the interim final rule with request for comment published on April 13, 2011.

**DATES:** This rule takes effect January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22512; Telephone: (202) 598-6812.

**SUPPLEMENTARY INFORMATION:****Legal Authority**

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801-971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, but they are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purposes of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

The CSA grants the Attorney General authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances and listed

chemicals, 21 U.S.C. 821, and the efficient execution of his statutory functions. 21 U.S.C. 871(b). The Attorney General has delegated this authority to the Administrator of the DEA, 28 CFR 0.100(b), who in turn has redelegated certain authorities to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator"), 28 CFR part 0, appendix to subpart R.

By this document, the DEA finalizes the interim final rule, "Self-Certification and Employee Training of Mail-Order Distributors of Scheduled Listed Chemical Products" published on April 13, 2011, at 76 FR 20518. This rule became effective on April 13, 2011. The interim final rule solicited public comments for which the comment period closed on June 13, 2011. No comments were received in response to the publication. No changes are being made to the rule.

**Background**

The preamble to the interim final rule explained that section 2 of the Combat Methamphetamine Enhancement Act of 2010 (MEA) (Pub. L. 111-268, 124 Stat. 2847) amended 21 U.S.C. 830(e)(2) to establish new requirements for mail-order distributors to self-certify with the DEA in order to sell scheduled listed chemical products at retail. Sales "at retail" are those intended for personal use. 21 U.S.C. 802(48); 21 CFR 1300.02(b). As Congress directed in the MEA, the DEA has established through this rule criteria for certifications of mail-order distributors consistent with the criteria previously established for certifications of other regulated sellers.<sup>1</sup> The self-certification must include a statement that the mail-order distributor understands the requirements applicable under 21 CFR part 1314 and agrees to comply with those requirements. Prior to certification, mail-order distributors of scheduled listed chemical products are required to provide the DEA-developed training (available at the DEA's Web site) to their employees.

The MEA is the most recent in a series of legislative actions aimed at preventing illicit drug manufacturers' access to methamphetamine precursor chemicals and enhancing penalties for

methamphetamine production and trafficking. Methamphetamine is a highly addictive stimulant drug in schedule II of the CSA. As recognized through the acts of Congress, the clandestine manufacture and distribution of methamphetamine have been and continue to be serious national public health problems.<sup>2</sup>

**Who are "mail-order distributors" subject to the training and self-certification requirements?**

The MEA refers to "mail-order distributors" but does not define the term. As stated in the interim final rule, the idea of mail-order distributor is developed in 21 CFR part 1314, which discusses regulated persons who make a sale at retail of a scheduled listed chemical product and are required under § 1310.03(c) to submit a report of the sales transaction to the Administration. 21 CFR 1314.100(a). The CSA and its implementing regulations impose recordkeeping and reporting requirements on regulated persons who engage in transactions with a nonregulated person or who engage in an export transaction involving ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid, including drug products containing these chemicals, and who use or attempt to use the Postal Service or any private or commercial carrier. 21 CFR 1310.03(c). Of those subject to the recordkeeping and reporting requirements, only those distributors who engage in mail-order sales at retail of scheduled listed chemical products are subject to the training and self-certification requirements. 21 CFR 1314.101 and 1314.102. A "mail-order sale," for purposes of part 1314, is defined by DEA regulations as a retail sale of scheduled listed chemical products for personal use where a regulated person uses or attempts to use the U.S. Postal Service or any private or commercial carrier to deliver the product to the customer. 21 CFR 1314.03. Mail-order sales include purchase orders submitted by phone, mail, fax, Internet, or any method other than a face-to-face transaction. *Id.* The terms "regulated person," "scheduled listed chemical product," and "at retail" are defined in 21 U.S.C. 802.

The DEA is taking this opportunity in publishing this final rule to provide in this supplementary information a clearer discussion of the development of

<sup>1</sup> The DEA initially established criteria for certifications for regulated sellers pursuant to the Combat Methamphetamine Epidemic Act of 2005 (CMEA), Public Law 109-177, 120 Stat. 256. The DEA implemented the retail sales provisions of the CMEA through Interim Final Rule, "Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products," published Sept. 26, 2006 at 71 FR 56008; corrected at 71 FR 60609, Oct. 13, 2006.

<sup>2</sup> *E.g.*, H.R.Rep. No. 109-299, pt. 2 (2005); For a summary of effects of methamphetamine abuse and addiction see NIDA InfoFacts: Methamphetamine (available at <http://www.drugabuse.gov/publications/drugfacts/methamphetamine>).

the statutory and regulatory requirements relating to “mail-order distributors” than was included in the preamble of the interim final rule. Before 1996 persons now labeled as “mail-order distributors” were not subject to specific regulation as a distinct group. Beginning in 1996, Congress has imposed a number of requirements on these distributors, specifically, in such laws as the Comprehensive Methamphetamine Control Act of 1996 (CMCA), Public Law 104–237, 110 Stat. 3099; the Methamphetamine Anti-Proliferation Act of 2000 (MAPA), Public Law 106–310, 114 Stat. 1227; the Combat Methamphetamine Epidemic Act of 2005 (CMEA), Public Law 109–177, 120 Stat. 256; and the MEA.

The CMCA established monthly reporting requirements applicable to regulated persons who engage in transactions with nonregulated persons involving ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and use or attempt to use the Postal Service or any private or commercial carrier. 21 U.S.C. 830(b)(3)(B). The DEA implemented the monthly reporting requirement at 21 CFR 1310.03(c). The MAPA amended 21 U.S.C. 830(b)(3)(B) to require regulated persons also to report mail-order export transactions involving ephedrine, pseudoephedrine, and phenylpropanolamine.

The MAPA also established exemptions from the mail-order reporting requirements, including an exemption relating to non-“face-to-face” transactions. 21 U.S.C. 830(b)(3)(D)(ii). That exemption stipulates that retail distributors generally are not required to report non-face-to-face sales of U.S. Food and Drug Administration-approved (FDA-approved) drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine to ultimate users if the seller’s activities related to those products are almost exclusively confined to sales for personal use, both in terms of number and volume of sales. *Id.*; 21 U.S.C. 802(49). Subsequently, the CMEA specified, however, that this clause is not applicable to sales of scheduled listed chemical products at retail. 21 U.S.C. 830(b)(3)(D)(ii). The DEA interprets this to mean that “retail stores that deliver these products to customers by mail or delivery services will need to comply with the provisions for mail order sales reporting for these transaction[s].” 71 FR 56008, 56011, Sept. 26, 2006.

Certain additional requirements apply to mail-order distributors. For instance,

under the CMEA, mail-order distributors making retail sales of scheduled listed chemical products must confirm the purchaser’s identity and may not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in scheduled listed chemical products per customer during a 30-day period. 21 U.S.C. 830(e)(2)(A)–(B). Most recently, the MEA added the requirement that mail-order distributors self-certify in order to sell scheduled listed chemical products at retail, and makes it unlawful for any person to negligently fail to self-certify as required under section 830. 21 U.S.C. 830(e)(2)(C) and 842(a)(10).

#### **Which locations are subject to the self-certification requirement?**

Section 2 of the MEA, codified at 21 U.S.C. 830(e)(2)(c), requires the Attorney General to establish by regulation “criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers” under the CMEA. The CMEA specifies that a separate certification is required for each place of business at which scheduled listed chemical products are sold at retail. 21 U.S.C. 830(e)(1)(B)(ii)(II); 21 CFR 1314.40(c). The DEA analyzed the plain language and purpose of the statute to interpret the meaning of “each place of business” where retail sales are made.<sup>3</sup> As described in the interim final rule, DEA concludes that mail-order distributors are required to certify at: (1) Every location that prepares or packages product for distribution to customers, and (2) every location where employees accept payment for such sales. This interpretation is consistent with the intent of the MEA to ensure that mail-order distributors of scheduled listed chemical products are aware of their recordkeeping, reporting, customer identification, and sales limit requirements.

#### **Regulatory Analyses**

##### *Executive Order 12866 (Regulatory Planning and Review)*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation. It has been determined that this is not “a significant regulatory action.” As discussed above, and in the

<sup>3</sup> The DEA notes that this statutory language is materially different than the language requiring entities that manufacture, distribute, or dispense controlled substances or list I chemicals to register at “each principal place of business or professional practice.” 21 U.S.C. 822(e). The intent and rationale for the two requirements are different, as well.

interim final rule, this action is codifying statutory provisions and involves no agency discretion as to regulatory alternatives. As analyzed in the interim final rule at 76 FR 20158, the DEA has determined that the MEA’s requirements will not impose an annual cost on the economy of \$100 million or more, the standard for an economically significant rule under Executive Order 12866. The DEA received no public comments with respect to the interim final rule.

##### *Paperwork Reduction Act of 1995*

To address the new mandates of the MEA, the DEA has revised its existing information collection “Self-Certification, Training and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products,” Information Collection 1117–0046. The MEA requires mail-order distributors to train any employee who will be involved in selling scheduled listed chemical products and to document the training. Mail-order distributors must also self-certify to the DEA that all affected employees have been trained and that the mail-order distributor is in compliance with all provisions of the CMEA. No comments were received by the DEA regarding the information collection.

##### *Regulatory Flexibility Analysis*

The Deputy Assistant Administrator, in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. As noted in the interim final rule, the RFA applies to rules that are subject to notice and comment. The DEA determined, as explained in the interim final rule, that public notice and comment were impracticable and contrary to the public interest. Consequently, the RFA does not apply.

Although the RFA does not apply to this rulemaking, the DEA has reviewed the potential impacts in the interim final rule, in which the DEA certified that the rule will not have a significant economic impact on small entities. As published in the interim final rule, based on reports filed, DEA expects that the rule will affect only 9 firms, two of which are not small based on the Small Business Administration’s size standards. For the seven small firms, the only costs are the \$21 annual fee, the time required to complete the certification (0.5 hours or about \$20 for a new self-certification application), and

cost of training (0.5 hours or about \$10). The cost of compliance for these firms, which appear to have between 5 and 25 employees, not all of whom would need to be trained, is less than \$200 and in most cases, less than \$100. The smallest mail order pharmacies (those with fewer than five employees) have average annual sales of \$1 million. The cost of compliance is, therefore, less than 0.1 percent of sales and would not impose a significant economic burden on any small entity.

The DEA received no public comments with respect to the interim final rule and the DEA has not received any other information that would materially change the impact of this rule on small entities. Therefore, the DEA concludes this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). 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.

#### *E.O. 12988 (Civil Justice Reform)*

This regulation meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

#### *Executive Order 13132 (Federalism)*

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DEA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. The requirements of this rule are mandated under the MEA, and the DEA has no authority to alter them or change the preemption. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

#### *Executive Order 13175 (Tribal Consultation)*

The DEA has analyzed this action under Executive Order 13175 and this rule will not have substantial direct

effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *Congressional Review Act*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100 million or more. It will not cause a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects in 21 CFR Part 1314**

Drug traffic control, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 21 CFR part 1314 which was published at 76 FR 20518 on April 13, 2011, is adopted as a final rule without change.

Dated: January 19, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 2016-01377 Filed 1-22-16; 8:45 am]

**BILLING CODE 4410-09-P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 252**

[Docket ID: DOD-2012-OS-0170]

RIN 0790-AI98

#### **Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas**

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule updates policy and outlines fiscal and logistical support the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas based on Executive Order 12715, Support of Overseas Scouting Activities for Military Dependents, and pertinent statutes as discussed below. It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and

services, within available resources, at locations outside the United States to support DoD personnel and their families.

**DATES:** This rule is effective February 24, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Wright, 703-588-0172.

**SUPPLEMENTARY INFORMATION:** The Department of Defense published a proposed rule on November 24, 2014 (79 FR 69777-69781), with a request for public comments. The 60-day public comment period ended on January 23, 2015. One public comment was received. This comment is addressed as follows:

*Comment:* It is my opinion that this unchecked support of the scouting organizations violates the Establishment Clause of Amendment I to the United States Constitution. The Boy Scouts have acted as a religious organization by using religion as a reason to exclude gay scout leaders. Providing facilities and equipment free of charge effectively supports this effort and therefore violates the Establishment Clause. I wholeheartedly do not support this rule change.

*Response:* During litigation, the Department of Defense (DoD), along with the Department of Justice, has consistently defended the legality of the statutorily authorized support to the Boy Scouts of America (BSA) and other organizations. In briefs, the Government has argued that: (1) The BSA is a civic organization, which focuses on citizenship training, community service and outdoor activities and physical fitness; (2) DoD support to the BSA has advanced several compelling military purposes; and (3) DoD support to the BSA does not result in Government indoctrination or endorsement of religion.

#### **Executive Summary**

##### *I. Purpose of the Regulatory Action*

This rule provides that support provided by DoD is documented in written agreements and signed by the appropriate regional combatant commander. Also, it would require installation-specific support and services to be based on a written agreement and signed by the installation commander or designee. These agreements will replace the need for these organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the installation. In addition to Executive Order 12715, Title 10 of the United

States Code specifies the DoD's authority to issue rules in this area.

Title 10, U.S.C., section 2606 provides that: The Secretary may collaborate with qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States. Qualified scouting organizations may be furnished support such as some transportation support, available office space, warehousing, utilities, supplies and a means of communication, without charge. The Secretary may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services, however any such reimbursement may not be made from appropriated funds. Employees of a qualified scouting organization will not be considered to be employees of the United States, and the term "qualified scouting organization" means the Girl Scouts of the United States of America and the Boy Scouts of America.

Title 10, U.S.C., section 2554 provides that: The Secretary of Defense is authorized to lend to the Boy Scouts of America without reimbursement, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, items such as cots, blankets, commissary equipment, flags, refrigerators, and other equipment. Additionally, expendable medical supplies and services, as may be necessary or useful to the extent that items are in stock and items or services are available, can be provided at no expense to the United States Government for the delivery, return, rehabilitation, or replacement of such items. Before delivering such property, the Secretary of Defense will take good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States. The Secretary of Defense is also authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree to the extent that such transportation will not interfere with the requirements of military operations. The Secretary of Defense shall take from the

Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States, of the actual costs of transportation. If a Boy Scout Jamboree is held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support previously stated. Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America equipment and other services under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense. The Secretary of Defense shall provide at least the same level of support for a national or world Boy Scout Jamboree as was provided for the preceding national or world Boy Scout Jamboree. The Secretary of Defense may waive all support if it determines that providing the support would be detrimental to the national security of the United States.

Title 10, U.S.C., section 2555 provides: The Secretary of Defense is authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Girl Scouts and officials certified by the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States. Support is also authorized for United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and for the equipment and property of Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations. Before furnishing any transportation, the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished. Amounts paid to the United States to reimburse it for the actual costs of transportation furnished will be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

Executive Order 12715, May 3, 1990, 55 FR 19051, discusses the cooperation and assistance authorized by section 2606(a) of title 10, and requires the Secretary of Defense to issue regulations concerning support.

## II. Summary of the Major Provisions of the Regulatory Action in Question

This rule discusses the types of support DoD installation commanders are authorized to provide, ensures appropriated fund (APF) and non-appropriated fund (NAF) assets are used correctly, and requires the cost of the support provided to be shared by each of the Military Services in proportion to benefits derived by their members from overseas scouting programs.

## III. Costs and Benefits

Program costs are less than \$700,000 per year, consisting primarily of salaries, transportation costs, and supplies to support scouting programs that directly complement and improve quality of life programming for military families overseas.

## Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail; dct=FR+PR+N+O+SR;rpp=10;po=0; D=DOD-2011-OS-0036>.

## Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a nonsignificant regulatory action and not economically significant under section 3(f) of Executive Order 12866. The rule has been reviewed by the Office of Management and Budget (OMB).

## Sec. 202, Pub. L. 104-4, "Unfunded Mandates Reform Act"

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)

(Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This interim final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

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

This rule 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.

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

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

DoD has determined this final rule would not have federalism implications under Executive Order 13132. It does 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.

**List of Subjects in 32 CFR Part 252**

Military installations, Military personnel, Scout organizations.

Accordingly 32 CFR part 252 is added to read as follows:

**PART 252—PROFESSIONAL U.S. SCOUTING ORGANIZATION OPERATIONS AT U.S. MILITARY INSTALLATIONS OVERSEAS**

- Sec.  
252.1 Purpose.  
252.2 Applicability.  
252.3 Definitions.  
252.4 Policy.  
252.5 Responsibilities.  
252.6 Procedures.

**Authority:** E.O. 12715, May 3, 1990, 55 FR 19051; 10 U.S.C. 2606, 2554, and 2555.

**§ 252.1 Purpose.**

This part updates policy and outlines fiscal and logistical support that the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas.

**§ 252.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint

Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as “the DoD Components”).

**§ 252.3 Definitions.**

These terms and their definitions are for the purposes of this part.

*DoD personnel and their families.* Members of the Military Services and their family members and DoD civilian employees and their family members.

*Military Services.* The Army, Navy, Air Force, and Marine Corps.

*Qualified scouting organization.* The Girl Scouts of the United States of America (GSUSA) and the Boy Scouts of America (BSA).

*Sponsored organization or sponsored council.* Scouting organizations or councils authorized to operate as scouting affiliates on military installations.

**§ 252.4 Policy.**

It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States to support DoD personnel and their families in accordance with 10 U.S.C. 2606, 2554, and 2555 and Executive Order 12715, “Support of Overseas Scouting Activities for Military Dependents”.

**§ 252.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) oversees development and implementation of this part.

(b) The DoD Component heads implement this part and comply with its provisions.

(c) In addition to the responsibilities in paragraph (b) of this section and acting as the DoD Executive Agent for DoD support to the BSA and GSUSA local councils and organizations in areas outside of the United States in accordance with 32 CFR part 212, the Secretary of the Army:

(1) Makes policy determinations in coordination with the other Military Department Secretaries regarding topics including, but not limited to, support that:

(i) DoD installation commanders are authorized to provide to the scouting program and personnel.

(ii) The scouting organization provides to DoD.

(2) Ensures accountability for appropriated fund (APF) and non-appropriated fund (NAF) assets used in

the support of qualified scouting organizations.

(3) Provides input for and works with the scouting organizations in establishing the extent and scope of the annual scouting programs in support of DoD personnel and their families within the parameters established in this part and available resources.

(4) Ensures that the cost of the support provided is shared by each of the Military Services in proportion to benefits derived by their members from scouting programs overseas.

**§ 252.6 Procedures.**

(a) *General guidance.* (1) Support provided by DoD and services provided by qualified scouting organizations is documented in a written agreement and signed by the appropriate regional combatant commander or designee. Installation-specific support and services are documented in a written agreement and signed by the installation commander or designee. This agreement replaces the need for qualified scouting organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the installation as required by 32 CFR part 212.

(2) Overseas installation commanders may authorize DoD support for qualified scouting organizations outside the United States when:

(i) Support is permitted under international agreements with the host nation, if applicable.

(ii) Support is permitted pursuant to law and DoD issuances.

(iii) Such support is within the capabilities of their respective installations.

(iv) Providing such support will not impede fulfillment of the military mission.

(3) Committees composed of representatives of the Military Services will be formed to review annual qualified scouting organization budget requirements.

(4) Overseas scouting committees will provide the overseas scouting organizations with information on the scouting requirements of DoD personnel and will monitor and evaluate the scouting organizations’ efforts to satisfy those requirements.

(5) Funds raised by the scouting organizations, as a non-Federal entity, cannot be commingled with NAF funds and will be made available for annual audits.

(6) Employees of a qualified scouting organization are not considered to be U.S. Government employees, or

employees of an instrumentality of the United States for the purpose of benefits or entitlements.

(i) APF and NAFs are not used to reimburse their salaries and benefits.

(ii) They are not entitled to participate in the NAF retirement fund.

(iii) Serving in those positions does not constitute NAF employment credit or produce rehire priority.

(7) These organizations generally are not covered under the terms of United States' Status of Forces or other relevant agreements with host nations.

(i) Questions regarding whether they are covered under such agreements should be referred to the legal office servicing the applicable command. Applicability of any relevant agreements would be addressed with the host nation only by the applicable command, and not the organization.

(ii) To the extent the organization is not covered under any relevant agreement, host nation laws apply. In all cases, the host nation will determine the scope and extent of the applicability of host nation laws to these employees.

(b) *Funding guidance.* (1) Any APF and NAF support provided will be programmed and approved on an annual basis by the DoD Components. NAF support is authorized for youth activities programs in accordance with DoD Instruction 1015.15, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101515p.pdf>) and for qualified scouting organizations in accordance with paragraph (b)(5) of this section.

(2) APF may be used in conjunction with overseas scouting organizations. The following services may be provided on a non-reimbursable basis:

(i) Transportation of executive personnel (to include household goods and baggage) of qualified scouting organizations:

(A) When on invitational travel orders.

(B) To and from overseas assignments.

(C) While providing scouting support to DoD personnel and their families. Transportation of supplies of qualified scouting organizations necessary to provide such support may also be provided.

(ii) Office space where regular meetings can be conducted, and space for recreational activities.

(iii) Warehousing.

(iv) Utilities.

(v) Means of communication.

(3) DoD may provide the following additional support to scouting executives assigned overseas:

(i) Pursuant to section API 3.18 of DoD 4525.6-M, "Department of Defense Postal Manual" (available at <http://www.dtic.mil/whs/directives/corres/pdf/452506m.pdf>), access to use Military Services postal services is authorized.

(ii) Pursuant to section 4.3.2.2.2 of Department of Defense Education Activity Regulation 1342.13, "Eligibility Requirements for Education of Elementary and Secondary School-age Dependents in Overseas Areas" (available at <http://www.dodea.edu/Offices/Regulations/index.cfm>), access to DoD Dependents Schools (overseas) may be provided on a space-available, tuition-paying basis.

(iii) Pursuant to 32 CFR part 230, use of military banking facilities operated under DoD contracts is authorized.

(iv) Pursuant to DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101510p.pdf>), the use of morale, welfare, and recreation programs may be provided.

(v) Pursuant to 32 CFR part 161, medical care in uniformed services facilities on a space-available basis at rates specified in uniformed services instructions, with charges collected locally, is authorized.

(vi) Pursuant to Office of Management and Budget Circular A-45, "Rental and Construction of Government Quarters" (available at <http://www.whitehouse.gov/omb/circulars/a045>) and subparagraph 2.c(1)(e) of DoD 4165.63-M, "DoD Housing Management" (available at <http://www.dtic.mil/whs/directives/corres/pdf/416563m.pdf>), when DoD-sponsored civilian personnel serving DoD military installations at foreign locations cannot obtain suitable housing in the vicinity of an installation, they and their families may occupy DoD housing on a rental basis. The Military Service determines the priority of such leasing actions. These civilians are required to pay the established rental rate in accordance with DoD 4165.63-M and Military Service guidance.

(vii) Pursuant to DoD Instruction 1330.17, "DoD Commissary Program" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>), overseas installation commanders or Secretaries of the Military Departments may extend commissary access through official support agreements.

(viii) Pursuant to DoD Instruction 1330.21, "Armed Services Exchange Regulations" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf>), the Secretaries of the Military Departments may grant Armed Forces Exchange deviations with regard

to authorized patron privileges for individuals or classes and groups of persons at specific installations when based on alleviating individual hardships.

(4) NAF may be used in conjunction with qualified scouting organizations to:

(i) Reimburse for salaries and benefits of employees of those organizations for periods during which their professional scouting employees perform services in overseas areas in direct support of DoD personnel and their families.

(ii) Reimburse travel to and from official meetings of the overseas scouting committee upon approval from the appropriate combatant commander.

(5) The total amount of NAF support for the scouting program must not exceed 70 percent of the total cost of the scouting program.

Dated: January 20, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016-01346 Filed 1-22-16; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2015-1103]

#### Special Local Regulations; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce the Hanohano Ocean Challenge special local regulations on Saturday, January 23, 2016. This event occurs in Mission Bay in San Diego, CA. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor safety vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

**DATES:** The regulations in 33 CFR 100.1101 will be enforced for the location listed in item 16 in Table 1 to 33 CFR 100.1101 from 6 a.m. until 2 p.m. on January 23, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of

enforcement, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7656, email [D11MarineEventsSD@uscg.mil](mailto:D11MarineEventsSD@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 in support of the Hanohano Ocean Challenge (Item 16 on Table 1 of 33 CFR 100.1101) in Mission Bay in San Diego, CA from 6 a.m. to 2 p.m. on Saturday, January 23, 2016.

Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in patrol and notification of this regulation.

This document is issued under authority of 33 CFR 100.1101 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: January 4, 2016.

**J.S. Spaner,**

*Captain, U.S. Coast Guard, Captain of the Port, San Diego.*

[FR Doc. 2016-01382 Filed 1-22-16; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2015-0493; FRL-9941-46-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Common Provisions and Regulation Number 3; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on March 31, 2010, May 16, 2012 and May 13, 2013. The revisions are to Colorado Air Quality Control Commission (Commission) Regulation Number 3, Parts A, B and D and Common Provisions Regulation. The revisions include administrative changes to permitting requirements for stationary sources, updates to the fine particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) implementation rule related to the federal New Source Review (NSR) Program, changes to address previous revisions to Air Pollutant Emission Notice (APEN) regulations that EPA disapproved or provided comments on, revisions to definitions, and minor editorial changes. Also in this action, EPA is correcting a final rule pertaining to Colorado's SIP published on April 24, 2014. In our April 24, 2014 action, regulatory text and corresponding "incorporation by reference" (IBR) materials were inadvertently excluded for greenhouse gas permitting revisions to the Common Provisions Regulation and minor editorial changes to the Common Provisions Regulation and Parts A, B and D of Regulation Number 3 (adopted October 10, 2010). This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on February 24, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2015-0493. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jaslyn Dobrahner, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, [dobrahner.jaslyn@epa.gov](mailto:dobrahner.jaslyn@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

In our notice of proposed rulemaking published on September 14, 2015 (80 FR 55055), EPA proposed to either approve or take no action on revisions to Common Provisions Regulation and Regulation Number 3, Parts A, B and D submitted by the State of Colorado on March 31, 2010, May 16, 2012 and May 13, 2013. In this rulemaking, we are taking final action on revisions to Common Provisions Regulation which include adding compounds to the definition of "negligibly reactive volatile compounds" (NRVOC), clarifying NRVOC and volatile organic compound (VOC) testing methodologies within the definition of "volatile organic compound," and revising the definition of "incinerator" along with minor editorial changes. We are also taking final action on revisions to Regulation Number 3, Parts A, B and D which include revisions to State permitting requirements for stationary sources to incorporate changes to the federal NSR Program related to PM<sub>2.5</sub>, revisions to address past rule revisions that were disapproved or commented on by EPA, administrative revisions to permitting requirements for stationary sources in Colorado, and deferral of the permitting requirements for biogenic sources of carbon dioxide emissions to ensure consistency with federal greenhouse gas permitting requirements. The revisions also make several miscellaneous changes along with minor editorial changes. The reasons for our approval and taking no action are provided in detail in the proposed rule (80 FR 55055, September 14, 2015).

In this action, EPA is also taking final action to correct a final rule published in the **Federal Register** on April 24, 2014 (79 FR 22772). In this rule, we



inadvertently did not include regulatory text and corresponding IBR materials for our approvals to (1) greenhouse gas permitting revisions to Common Provisions Regulation, and (2) minor editorial changes to the Common Provisions Regulation and Parts A, B and D of Regulation Number 3 (adopted October 10, 2010).

**II. Response to Comments**

We received one comment on our proposed rule.

*Comment:* The State of Colorado requested EPA approve provisions that we proposed to exclude from the IBR material related to tertiary butyl acetate within the State’s Common Provisions Regulation. The State concludes that these provisions are consistent with federal requirements when read in conjunction with Regulation Number 3, Part A, Appendix B, which has been approved by EPA.

*Response:* Under a final rule promulgated on November 29, 2004 (69

FR 69298), tertiary butyl acetate is excluded from the definition of VOC for purposes of VOC emissions limitations and VOC content requirements, but continues to be defined as a VOC for purposes of all recordkeeping, emissions reporting and inventory requirements which apply to VOCs. We agree with the State that the federal reporting requirements for tertiary butyl acetate are met through the State’s inclusion of tertiary butyl acetate in Appendix B of the Commission’s Regulation Number 3, Part A which ensures that this compound would be reported to the State as a distinct class, separate from other VOCs. Therefore, we are approving within Common Provisions Regulation the words “Tertiary Butyl Acetate (2-Butanone)” in the definition “NRVOCs” and the last sentence in the definition of “VOC” stating the photochemical dispersion modeling requirement for tertiary butyl acetate.

**III. Final Action**

For the reasons expressed in the proposed rule, EPA is approving revisions to sections I.A., I.B., I.C., I.D., I.E., I.F., I.G., II.B., II.C., II.E.2. and II.H of the State’s Common Provisions Regulation from the March 31, 2010 submittal as shown in Table 1 below. We are also approving revisions to Parts A, B and D of the State’s Regulation Number 3 from the May 16, 2012 and May 13, 2013 submittals (Table 1), except for those revisions we are not taking action on as represented in Table 2 below. Finally, EPA is correcting regulatory text and IBR published in the **Federal Register** on April 24, 2014 (79 FR 22772).

A comprehensive summary of the revisions in Colorado’s Common Provisions Regulation and Regulation Number 3 Parts A, B and D organized by EPA’s action, reason for “no action” and submittal date are provided in Table 1 and Table 2 below.

TABLE 1—LIST OF COLORADO REVISIONS THAT EPA IS APPROVING

Revised sections in March 31, 2010; May 16, 2012; and May 13, 2013 submissions that EPA is approving	
<i>March 31, 2010 submittal</i> —Common Provisions Regulation:	I.A., I.B., I.C., I.D., I.E., I.F., I.G., II.B., II.C., II.E.2., II.H.
<i>May 16, 2012 submittal</i> —Regulation Number 3, Part A:	I.B.17., I.B.28.c., I.B.44.b.(i), I.B.44.e.(ii)(B), II.C.2.b.(ii), II.D.1.q., II.D.1.ppp., II.D.1.uuu., II.D.1.dddd.
<i>May 13, 2013 submittal</i> —Regulation Number 3, Part A:	I.A., I.B.7., I.B.28., I.B.43., II.D.1., II.D.1.dddd., V.I.2., VI.B.5., Appendix B.
<i>May 16, 2012 submittal</i> —Regulation Number 3, Part B:	II.D.1.c., II.D.1.m., III.G.1.
<i>May 13, 2013 submittal</i> —Regulation Number 3, Part B:	III.C.1.a.
<i>May 16, 2012 submittal</i> —Regulation Number 3, Part D:	II.A.24.f., II.A.26.c., II.A.26.e.–II.A.26.k. (re-numbering), II.A.42., III.B., V.A., V.A.3., V.A.4., VI.A.2.a., VI.A.4., VI.B.3.a.(ii) and (iv)–(ix), VI.B.3.a.(iii) in reference to removal of total suspended particulate matter monitoring exemption, VI.B.3.c., VI.B.3.e., VI.D.2., X.A.1., X.A.2., XIII.B., XIII.D.
<i>May 13, 2013 submittal</i> —Regulation Number 3, Part D:	I.B.2., I.B.4., I.C., II.A.4.c., II.A.17., II.A.22.d.(ix)(B), II.A.40.5.(b), V.A.3.b., V.A.6., VI.B.3.d., VI.B.3.e.

TABLE 2—LIST OF COLORADO REVISIONS THAT EPA IS TAKING NO ACTION ON

[Revised sections in March 31, 2010; May 16, 2012; and May 13, 2013 submissions that EPA is taking no action on]

Revised section	Reason for “No Action”				
	Revision in state-only section of SIP	Revision in current section of SIP	Revision in disapproved section of SIP	Revision superseded by revision in February 20, 2015 state submittal (will be reconciled in future rule-making)	Revision to be made in future state submittal
<i>March 31, 2010 submittal</i> —Common Provisions Regulation:					
II.J. ....		X	X		
<i>May 16, 2012 submittal</i> —Regulation Number 3, Part A:					
I.B.31.c .....	X				
I.B.31.d .....	X				
II.D.1.sss .....			X		
II.D.1.ttt .....			X		
II.D.1.xxx .....			X		
II.D.1.fff .....			X		



TABLE 2—LIST OF COLORADO REVISIONS THAT EPA IS TAKING NO ACTION ON—Continued  
 [Revised sections in March 31, 2010; May 16, 2012; and May 13, 2013 submissions that EPA is taking no action on]

Revised section	Reason for “No Action”				
	Revision in state-only section of SIP	Revision in current section of SIP	Revision in disapproved section of SIP	Revision superseded by revision in February 20, 2015 state submittal (will be reconciled in future rule-making)	Revision to be made in future state submittal
May 13, 2013 submittal—Regulation Number 3, Part A: I.B.31.d .....	X	.....	.....	.....	.....
May 16, 2012 submittal—Regulation Number 3, Part D: II.A.5.a .....	.....	X	.....	.....	.....
II.A.5.b .....	.....	X	.....	.....	.....
II.A.23 .....	.....	X	.....	.....	.....
II.A.25 .....	.....	X	.....	.....	.....
II.A.26.d. revision to PM <sub>2.5</sub> net emission increase .....	.....	.....	.....	.....	X
II.A.38 .....	.....	X	.....	.....	.....
VI.A.2. introductory paragraph .....	.....	.....	.....	.....	X
VI.A.2.c .....	.....	.....	.....	X	.....
VI.B.3.a.(iii) in reference to PM <sub>2.5</sub> monitoring exemption .....	.....	.....	.....	X	.....
VI.B.3.d .....	.....	.....	.....	X	.....
May 13, 2013 submittal—Regulation Number 3, Part D: II.A.1.a .....	.....	.....	X	.....	.....
II.A.1.c .....	.....	.....	X	.....	.....
II.A.1.e .....	.....	.....	X	.....	.....
II.A.20.b .....	.....	.....	X	.....	.....
II.A.22 .....	.....	.....	X	.....	.....
II.A.23.c .....	.....	X	.....	.....	.....
II.A.26.a.(i) .....	.....	.....	X	.....	.....
II.A.26.f.iii .....	.....	.....	X	.....	.....
II.A.38.g .....	.....	.....	X	.....	.....
II.A.40.5. introductory paragraph .....	.....	.....	X	.....	.....
II.A.40.5.(a) .....	.....	.....	X	.....	.....
VI.A.1.c .....	.....	.....	X	.....	.....

**IV. Incorporation by Reference**

In this rule, the EPA is including regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Colorado Air Quality Control Commission regulations discussed in section III, *Final Action* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

**V. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action

merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 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, Aug. 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).
- The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does

it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 21, 2015.

**Shaun L. McGrath,**  
*Regional Administrator, Region 8.*

40 CFR part 52 is amended to read as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart G—Colorado**

■ 2. Section 52.320(c), the Table is amended:

- a. Under “5 CCR 1001–02 Common Provision Regulation” by revising entries “I” and “II”;
- b. Under “5 CCR 1001–05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting” by revising entries “I”, “II”, “V”, “VI”, “VIII”, and “Appendix B”;
- c. Under “5 CCR 1001–05, Regulation Number 3, Part B, Concerning Construction Permits” by revising entries “II” and “III”; and
- d. Under “5 CCR 1001–05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration” by revising entries “I”, “II”, “III”, “V”, “VI”, “X”, “XIII”, “XIV”, and “XV”

The revisions read as follows:

**§ 52.320 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

Title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*
<b>5 CCR 1001–02, Common Provisions Regulation</b>				
I. Definitions, Statement of Intent, and General Provisions Applicable to all Emission Control Regulations adopted by the Colorado Air Quality Control Commission.	1/30/10 12/15/10	1/25/16	[Insert <b>Federal Register</b> citation], 1/25/16.	Except I.G. Definitions, “Construction” and “Day”
II. General .....	1/30/10	1/25/16	[Insert <b>Federal Register</b> citation], 1/25/16.	Except II.I; II.J.5.
*	*	*	*	*
<b>5 CCR 1001–05, Regulation Number 3, Part A, Concerning General Provisions Applicable to Reporting and Permitting</b>				
I. Applicability .....	12/15/2010 12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/16.	Except I.B.31.c. and I.B.31.d.
II. Air Pollutant Emission Notice (APEN) Requirements.	12/15/2010 12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
*	*	*	*	*
V. Certification and Trading of Emission Reduction Credits Offset and Netting Transactions.	12/15/2010 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
VI. Fees .....	12/15/2010 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
*	*	*	*	*
VIII. Technical Modeling and Monitoring Requirements.	12/15/2010	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
*	*	*	*	*
Appendix B, Non-criteria Reportable Pollutants (Sorted by BIN).	12/15/2010 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	

Title	State effective date	EPA effective date	Final rule citation/date	Comments
<b>5 CCR 1001–05, Regulation Number 3, Part B, Concerning Construction Permits</b>				
II. General Requirements for Construction Permits ...	12/15/2010 12/15/2011	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
III. Construction Permit Review Procedures .....	12/15/2010 12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
<b>5 CCR 1001–05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration</b>				
I. Applicability .....	12/15/2010 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
II. Definitions .....	12/15/2010 12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	Except II.A.26.d., the phrase “and only PM <sub>2.5</sub> emissions can be used to evaluate the net emissions increase for PM <sub>2.5</sub> ”
III. Permit Review Procedures .....	12/15/2011	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
V. Requirements Applicable to Nonattainment Areas	12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program).	12/15/2010 12/15/2011 2/15/2013	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	Except for VI.A.1.c., the phrase “for phases that commence construction more than 18 months after the initial granting of the permit”; VI.A.2., the phrase “either Section VI.A.2.a. or b., as clarified for any relevant air pollutant, in Section VI.A.2.c.”; VI.A.2.c.; VI.B.3.a.(iii) in reference to PM <sub>2.5</sub> monitoring exemption; and VI.B.3.d.
X. Air Quality Limitations .....	12/15/2011	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
XIII. Federal Class I Areas .....	12/15/2011	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
XIV. Visibility .....	12/15/2010	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	
XV. Actuals PALs .....	12/15/2010	1/25/2016	[Insert <b>Federal Register</b> citation], 1/25/2016.	

\* \* \* \* \*  
 [FR Doc. 2016–01319 Filed 1–22–16; 8:45 am]  
 BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**  
**47 CFR Part 8**  
**[GN Docket No. 14–28; DA 15–1425]**  
**Protecting and Promoting the Open Internet**  
**AGENCY:** Federal Communications Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Commission, via the Consumer and Governmental Affairs Bureau (CGB or Bureau) temporarily extends an exemption for smaller broadband Internet access service providers from compliance with certain enhancements to the exiting transparency rule that governs the content and format of disclosures made by providers. The exemption is available to providers with 100,000 or fewer broadband connections as per the provider’s most recent Form 477,

aggregated over all of the providers' affiliates. These actions are necessary to enable consideration of whether to make the exemption permanent after the Commission completes its burden analysis.

**DATES:** Effective February 24, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jerusha Burnett, Consumer Policy Division, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0526.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Document DA 15-1425, released December 15, 2015 in GN Docket No. 14-28, temporarily extending the exemption for smaller providers from enhanced transparency requirements established in the *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order (2015 *Open Internet Order*), published at 80 FR 19738, April 13, 2015. The full text of document DA 15-1425 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Document DA 15-1425 can also be downloaded in Word or Portable Document Format (PDF) at: <https://www.fcc.gov/document/open-internet-small-business-exemption-extension-order>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### Final Paperwork Reduction Act of 1995 Analysis

The Commission currently has an Office and Management and Budget (OMB) collection 3060-1158 pending OMB's review and approval of a revision containing modified information collection requirements adopted in the Commission's 2015 *Open Internet Order*, published at 80 FR 19736, April 18, 2015. This collection contains information collection requirements for a temporary exemption for smaller broadband Internet access service providers imposed by the transparency rule, which are subject to the Paperwork Reduction Act (PRA) of 1995. Public Law 104-13. However, document DA 15-1425 does not modify the existing information collection requirements contained in OMB

collection 3060-1158, and it does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002. Public Law 107-198. *See also* 44 U.S.C. 3506(c)(4).

### Synopsis

#### Introduction

1. In document DA 15-1425, CGB finds that at this time it cannot fully evaluate the impact of removing the temporary exemption for smaller broadband Internet access service providers from the enhancements to the Open Internet transparency rule previously adopted by the Commission in the 2015 *Open Internet Order*. The information collection and disclosure requirements imposed by the transparency rule are subject to the PRA. The Commission is proceeding through the PRA process, which involves estimating the burden of complying with the transparency rule enhancements for providers of all sizes and obtaining approval from OMB. To avoid acting prematurely in advance of that approval, CGB therefore extends the temporary exemption for smaller providers until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best to extend the temporary exemption from the enhanced transparency requirements with the benefit of more complete information.

#### Background

2. In the 2015 *Open Internet Order*, the Commission adopted certain enhancements to the existing transparency rule that governs the content and format of disclosures made by providers of broadband Internet access service. These enhanced transparency requirements built upon the original transparency rule the Commission adopted in 2010 to provide critical information to end-user consumers, edge providers, and the Internet community regarding commercial terms, performance characteristics, and network practices. In the 2015 *Open Internet Order*, the Commission concluded that the enhanced requirements adopted were modest in nature, yet critical to consumers, and, indeed, that some may have already been required by the 2010 rule.

3. The Commission temporarily exempted from the enhanced transparency requirements those providers with 100,000 or fewer broadband subscribers, as per their most recent Form 477, aggregated over all of the providers' affiliates. At the same time, the Commission directed CGB to seek comment on both the appropriateness of the exemption as well as the threshold, and to adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015.

4. On June 22, 2015, the Bureau released a Public Notice, published at 80 FR 38424, July 15, 2015, seeking comment on whether to maintain the temporary exemption and, if so, the appropriate threshold for whether a provider qualified for such an exemption. The Public Notice also clarified that the threshold should be measured in terms of broadband connections, rather than in terms of subscribers or subscriber lines. For this reason, the Public Notice made clear that the current exemption from the enhanced transparency requirements applied to providers with 100,000 or fewer broadband connections.

#### Smaller Provider Exemption

5. CGB hereby extends the temporary exemption for smaller providers from the enhanced transparency requirements until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best to address the exemption from the enhanced transparency requirements for small providers with the benefit of more complete information.

6. The Bureau cannot agree with those commenters that claim that the enhanced transparency requirements offer no tangible benefit to customers of smaller providers. As the Commission stated in the 2015 *Open Internet Order*, the enhanced transparency requirements, while modest, are critical to enable end-user consumers to make informed choices about broadband Internet access services by providing them with timely information tailored to their needs. Similarly, the Commission stated that such requirements provide edge providers with the information necessary to develop new content, applications, services, and devices that promote the virtuous cycle of investment and innovation. The Commission noted in the 2015 *Open Internet Order* that it received numerous complaints from consumers after the 2010 rules took effect, suggesting that

broadband providers were not providing the information that end users and edge providers need to receive and the Commission continues to receive such complaints. Commenters critical of the enhanced transparency requirements offer no evidence that Internet customers do not have the same complaints today that they raised in the period following the 2010 rules, nor do they present evidence that customers of smaller providers are less in need of these essential informational disclosures than are customers of larger providers. It is a matter of historical record that Open Internet issues do not necessarily concern the actions of only large broadband providers. Furthermore, the Bureau agrees with the commenter who noted that rural subscribers deserve the same benefits as all other subscribers.

7. In determining whether and, if so, how best to address the exemption, the Bureau must balance the benefit of the transparency rule enhancements to consumers against the impact on small providers of removing the exemption. Until the PRA process is complete, however, the Bureau finds that we cannot fully evaluate this impact. Despite the Commission's finding that the enhancements adopted in the *2015 Open Internet Order* are modest, a few commenters cite specific requirements as being particularly burdensome for smaller providers. The Commission is currently evaluating comments in response to the initial burden estimates and is preparing final burden estimates. In addition, in response to requests for additional clarity regarding the enhanced compliance obligations, the Bureau anticipates that the Commission may release a public notice in the near future, similar to the guidance provided in 2011 on interpreting the transparency requirements. Such guidance may provide greater certainty as to the enhanced disclosure obligations and alleviate commenter concerns regarding potential liability for inadvertent non-compliance.

8. The *2015 Open Internet Order* directed the Bureau to seek comment on the smaller provider exemption and to adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015. To avoid making a premature determination prior to PRA approval, the Bureau therefore extends the exemption until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best, to address the exemption from the enhanced transparency requirements for

small providers with the benefit of more complete information.

#### *Smaller Provider Threshold*

9. The Commission set the exemption threshold at 100,000 or fewer broadband connections as per providers' most recent Form 477, aggregated over all of the providers' affiliates. The Bureau agrees with those commenters who support the use of this threshold. As the Commission noted, this threshold is analogous to that which was used in the *2013 Rural Call Completion Order*, published at 78 FR 76218, December 17, 2013, and advocated for by parties who sought such an exemption in this proceeding. Although some parties advocate that the Bureau should broaden this exemption to include entities that serve 500,000 or fewer broadband connections, the Bureau is concerned from our internal review of the relevant Form 477 data that this change would substantially increase the number of consumers who would be temporarily excluded from receiving the information that the Commission has deemed essential for them to make informed choices about broadband services. Absent a more compelling reason than a desire to protect such providers from burdens that the Commission has concluded are modest in nature, the Bureau believes the Commission's threshold of 100,000 or fewer broadband connections as measured by their most recent Form 477, aggregated over all affiliates remains a reasonable basis to delineate which providers are likely to be most affected by the burden of complying with the enhanced disclosure requirements. Furthermore, the Bureau notes that providers with between 100,000 and 500,000 connections were not covered by the exemption established by the Commission in the *2015 Open Internet Order* and, presumably, have already begun the process of coming into compliance. The Bureau does not agree with the Small Business Administration's (SBA) Office of Advocacy and CTIA that the Commission has adopted a size standard that differs from the SBA's size standard and thus requires SBA approval for regulatory enforcement purposes. The 100,000 connection threshold is not a business size. Rather it exempts businesses (both larger and smaller) based on an analysis of the relative costs of requiring compliance. By CGB's action here, the Bureau extends the exemption already set by the Commission in the *2015 Open Internet Order*, using a threshold which itself is analogous to a threshold the Commission has used in the past.

#### *Form 477*

10. In the Public Notice, the Bureau sought comment on whether smaller providers that fail to file a Form 477 should be ineligible for the exemption. One commenter notes that not all providers are required to submit Form 477 and suggests that these providers be allowed to offer an alternative reporting mechanism to avail themselves of the exemption. The Bureau agrees, in this limited circumstance, that providers that are not required to file a Form 477 can avail themselves of the exemption by demonstrating that they served 100,000 or fewer broadband connections aggregated over all the providers' affiliates at the relevant time should any complaint arise. In all other instances, however, the exemption will be tied to the information provided on Form 477. In the *2015 Open Internet Order*, the Commission expressly linked the exemption to the number of connections reported via the Form 477. The Bureau finds no basis in the record to revisit that decision herein. As a result, providers obligated to file Form 477 that do not fulfill their obligation to file such information in a timely manner will be ineligible for the exemption, even if they serve 100,000 or fewer broadband connections aggregated over all of the providers' affiliates.

#### **Congressional Review Act**

The Commission will not send a copy of DA 15-1425 pursuant to the Congressional Review Act, because the Commission adopted no rules therein. See 5 U.S.C. 801(a)(1)(A). Rather than adopting rules, the Commission exercised its statutory authority to extend an exemption for smaller broadband Internet access service providers from compliance with certain enhancements to the exiting transparency rule that governs the content and format of disclosures made by providers by Order until December 15, 2016.

#### **Ordering Clause**

Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and § 8.3 of the Commission's rules, 47 CFR 8.3, and the authority delegated in §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361, and in *2015 Open Internet Order*, that document DA 15-1425 is adopted.

Federal Communications Commission.

**Mark Stone,**

*Deputy Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2016-00485 Filed 1-22-16; 8:45 am]

**BILLING CODE 6712-01-P**

# Proposed Rules

Federal Register

Vol. 81, No. 15

Monday, January 25, 2016

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

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 800

RIN 0580-AB13

#### Reauthorization of the United States Grain Standards Act

**AGENCY:** Grain Inspection Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise existing regulations and add new regulations under the United States Grain Standards Act (USGSA), as amended, in order to comply with amendments to the USGSA made by the Agriculture Reauthorizations Act of 2015.

Specifically, this rulemaking proposes to eliminate mandatory barge weighing, remove the discretion for emergency waivers of inspection and weighing, revise GIPSA's fee structure, revise exceptions to official agency geographic boundaries, extend the length of licenses and designations, and impose new requirements for delegated States.

**DATES:** Comments must be received on or before February 24, 2016.

**ADDRESSES:** We invite you to submit comments on this rule. In your comments, please include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

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

- Mail, hand deliver, or courier to Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2526-S, Washington, DC 20250-3642.

Comments will be available online at [www.regulations.gov](http://www.regulations.gov). Comments may

also be inspected at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. A copy of this proposed rule is available through the GIPSA homepage at <http://www.gipsa.usda.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Barry Gomoll, 202-720-8286.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Overview

On September 30, 2015, President Obama signed into law the Agriculture Reauthorizations Act of 2015, Public Law 114-54, (The Reauthorization Act). In addition to extending certain provisions of the USGSA (7 U.S.C. 71-87k) to 2020, the Reauthorization Act also made several changes to the existing law. Therefore, this proposed rule would amend 7 CFR part 800 to comply with the amendments made by the Reauthorization Act. Specifically, this proposed rule would:

- Remove the requirement to officially weigh inbound barge shipments at export port locations (§§ 800.15 and 800.216);
- require GIPSA to approve all requests for waivers of official inspection and weighing requirements for export grain in "emergencies or other circumstances which would not impair the objectives of the [USGSA]" (§ 800.18);
- base the portion of fees assessed on tonnage on the 5-year rolling average of export tonnage volume (§ 800.71);
- adjust fees annually to maintain a 3 to 6 month operating reserve for inspection and supervision services (§ 800.71);
- remove the provision that allows applicants to request service from an official agency outside an assigned geographic region after 90 days of nonuse of service (§ 800.117);
- waive the geographic boundaries established for official agencies between two adjacent official agencies if both official agencies agree in writing to the waiver. (§ 800.117);
- without changing current termination dates, terminate inspection licenses every 5 years instead of every 3 years (§ 800.175);

- require delegated States to notify GIPSA of any intent to temporarily discontinue official inspection or weighing services at least 72 hours in advance, except in the case of a major disaster (§ 800.195);

- require delegated States to submit to a GIPSA review of their delegation by every 5 years in order to certify that they comply with the requirements for delegation under the USGSA (§ 800.195);

- require designated official agencies to respond to concerns identified during GIPSA's consultations with customers as part of the renewal of a designation (§ 800.196); and

- extend the minimum length of designation for official agencies from 3 years to 5 years (§ 800.196).

#### Fees

GIPSA last made changes to its fee schedule on May 1, 2013 (78 FR 22151-66). At that time, GIPSA determined that the existing fee schedule for inspection and weighing services would not generate enough revenue to adequately cover program costs through fiscal year 2017. To correct this problem and to build an operating reserve, GIPSA increased fees by 5 percent in fiscal year 2013 and an additional 2 percent for each successive year through fiscal year 2017.

In addition, GIPSA restructured its tonnage fees to more accurately reflect the administrative and supervisory costs at the national and local level. In order to establish an equitable tonnage fee for all export tonnage utilizing the official system, GIPSA began assessing the national tonnage fee for all export grain inspected and/or weighed (excluding land carrier shipments to Canada and Mexico) by delegated States and designated agencies. GIPSA also shifted workers compensation costs from the national to the local level to fully reflect where those workers compensation costs originated.

Before the Reauthorization Act, GIPSA used projected future tonnage volumes as a basis for tonnage fees. However, the Reauthorization Act amended the USGSA to require that tonnage fees be based on the five-year rolling average of export tonnage volumes. In order to comply with this new tonnage fee requirement, under this proposed rule, GIPSA would adjust both the national and local tonnage fees on a yearly basis. Under this proposed rule,

the national tonnage fee would be the national program administrative costs (the costs of management and support of official inspection and weighing) for the previous fiscal year divided by the average export tonnage for the previous 5 fiscal years. Also, the local tonnage fees would be the Field Office administrative costs (the costs of management, support, and maintenance of each Field Office) for the previous fiscal year divided by the average tonnage serviced by that Field Office for the previous 5 fiscal years.

The Reauthorization Act further requires adjustment of all of GIPSA's fees for the performance, supervision, and administration of official inspection and weighing services at least annually to maintain a 3 to 6 month operating reserve. Given that the number of requests for official inspection and weighing services varies with the amount of grain produced and exported, an operating reserve allows funding of operations in periods with lower than usual revenue. In order to maintain an operating reserve, this proposed rule would increase or decrease inspection and weighing fees when the operating reserve is less than 3 times or more than 6 times monthly operating expenses. For every \$1 million that the operating reserve is below 3 months or above 6 months of operating expenses, GIPSA would increase or decrease fees by 2 percent respectively. This proposed rule would also set a 5 percent limit on changes to fees for service per calendar year. GIPSA's annual user fee revenue for performance, supervision, and administration of official inspection and weighing is approximately \$40 million. Therefore, an increase or decrease of 2 to 5 percent would approximately equal between \$0.8 and \$2 million annually.

In addition to annual reviews of fees, GIPSA would continue to evaluate the financial status of the official inspection and weighing services to ensure that the revenue for each service covers the cost to GIPSA of providing that service. Also, GIPSA would continue to seek out cost saving measures and implement appropriate changes to reduce costs and minimize the need for fee increases.

This action is authorized under the USGSA (7 U.S.C. 79(j)), which provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered, including associated administrative and supervisory costs. The tonnage fees cover the GIPSA administrative and supervisory costs for the performance of GIPSA's official inspection and weighing services; including personnel compensation and benefits, travel, rent, communications,

utilities, contractual services, supplies, and equipment.

#### Exceptions to Geographic Boundaries

The Reauthorization Act requires changes to GIPSA's exception program for official agencies to operate outside of their geographically assigned areas. Before the Reauthorization Act, the regulations provided for three types of exceptions: Timely service, nonuse of service for 90 consecutive days, and barge probe inspections. The Reauthorization Act amended the USGSA to eliminate the nonuse of service exception and add a provision for geographically adjacent agencies to provide service in each other's assigned geographic territories if they both agree in writing at the request of an applicant. This proposed rule would revise the current regulations to comply with the changes to the USGSA by the Reauthorization Act.

GIPSA currently has 104 agreements for agencies operating outside of their assigned territory and GIPSA would continue to honor those agreements. Under this proposed rule, an agency would be permitted to provide service at a location in another adjacent agency's territory, provided that both agencies and the applicant for service submit an agreement in writing to GIPSA.

#### Delegations

As required by the Reauthorization Act, this proposed rule would impose new requirements on State agencies that GIPSA delegates to perform export inspection and weighing services at export port locations under the USGSA. The Reauthorization Act requires the Secretary to certify that State agencies are meeting statutory requirements. Accordingly, every 5 years, a delegated State agency must submit to a review as to whether it meets the criteria for delegation set forth in the USGSA. This proposed rule would implement a process mirroring the existing process that GIPSA uses to renew the designations of official agencies. The Reauthorization Act also requires that a delegated State must notify GIPSA in writing of any intent to discontinue providing official service at least 72 hours before any discontinuation. This proposed rule would add this requirement to the section of the regulations concerning responsibilities of delegated States (7 CFR 800.195(f)).

#### Emergency Waivers

The Reauthorization Act amended the USGSA to require GIPSA to waive the mandatory official inspection and weighing of export grain "in emergency or other circumstances that would not

impair the objectives of this Act whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment." To clarify what constitutes an emergency regarding this provision, this proposed rule would define the term "emergency" in the regulations.

The final product of all official inspection and weighing services is the official certificate. This certificate is used to represent the grain shipment in trade and may be presented as *prima facie* evidence in court. Part of GIPSA's mission is to facilitate the marketing of cereals and oilseeds. The inability to issue a certificate does not achieve this mission. In the single historical instance that an emergency was declared, events outside of the control of the State and GIPSA prevented inspectors from safely inspecting grain and accordingly prevented prompt issuance of certificates. Therefore, this rule would define "emergency" to be a situation outside the control of GIPSA or a delegated State that prevents prompt issuance of certificates. This would allow grain shipments to continue in the event that the official system is not able to fully perform all of its duties.

#### Executive Orders 12866 and 13563 and the Regulatory Flexibility Act

The Office of Management and Budget has designated this proposed rule as not significant under Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulation Review." Since grain export volume can vary significantly from year to year, estimating the impact in any future fee changes can be difficult. GIPSA recognizes the need to provide predictability to the industry for inspection and weighing fees. While not required by the Reauthorization Act, this proposed rule would limit the impact of a large annual change in fees by setting an annual cap of 5 percent for increases or decreases in inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 and 6 months of operating expenses ensures that GIPSA can adequately cover its costs without imposing an undue burden on its customers.

Currently, GIPSA regularly reviews its user-fee financed programs to determine if the fees charged for performing official inspection and weighing services adequately cover the cost of providing those services. This policy remains unchanged in this proposed regulation. GIPSA will continue to seek

out cost saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This proposed rule is unlikely to have an annual effect of \$100 million or adversely affect the economy. The changes to the regulation in this proposed rule are a direct response to Congressional action. Also, under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–12), GIPSA has considered the economic impact of this proposed rule on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions. This ensures that small businesses will not be unduly or disproportionately burdened. GIPSA is proposing this rule solely because the Reauthorization Act amended the USGSA, which requires that the regulations be updated to reflect the changes made to the USGSA by the Reauthorization Act.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This proposed rule would affect customers of GIPSA's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114). Fees for that program are in Schedules A (Tables 1–3) and B of § 800.71 of GIPSA's regulations (7 CFR 800.71).

Under the USGSA, all grain exported from the United States must be officially inspected and weighed. GIPSA provides mandatory inspection and weighing services at 45 export facilities in the United States and 7 facilities for U.S. grain transhipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multinational corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the provisions of this proposed rule would apply equally to all entities. The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. The regulations found at 7 CFR 800.30 define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 108 registrants registered to export grain, most of which are not small businesses.

Most users of the official inspection and weighing services do not meet the SBA requirements for small entities. Further, GIPSA is required by statute to make services available to all applicants and to recover the costs of providing such services as nearly as practicable, while maintaining a 3 to 6 month operating reserve. There would be no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. GIPSA has not identified any other federal rules which may duplicate, overlap, or conflict with this proposed rule. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not provided.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This proposed rule would not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this proposed rule. This proposed rule would not have retroactive effect.

#### Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, "Federalism." The policies in this proposed rule would not have any substantial direct effect on States, on the relationship between federal government and the States, or on the distribution of power and responsibilities among various levels of government, except as required by law. This proposed rule does not impose substantial direct compliance costs on State and local governments. Because States already retain records for their ordinary operations, the proposed § 800.195(g)(4) should not have a significant impact on State governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

This proposed rule has been reviewed under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." To our knowledge, this rule would not have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, GIPSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the Reauthorization Act.

#### Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements included in this proposed rule has been approved by the OMB under control number 0580–0013, which expires on January 31, 2018.

GIPSA is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to maximum extent possible.

#### E-Government Compliance

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

#### List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, GIPSA proposes to amend 7 CFR part 800 as follows:

#### PART 800—GENERAL REGULATIONS

- 1. The authority citation for part 800 continues to read as follows:

**Authority:** 7 U.S.C. 71–87k.

- 2. In § 800.0, add in alphabetical order definitions for "Emergency", "Field Office administrative costs", "National program administrative costs", "Operating expenses", and "Operating reserve" to read as follows:

#### § 800.0 Meaning of terms.

\* \* \* \* \*

(b) \* \* \*

*Emergency.* A situation outside the control of the Service or a delegated State that prevents prompt issuance of certificates in accordance with § 800.160(c).

\* \* \* \* \*

*Field Office administrative costs.* The costs of management, support, and maintenance of a Field Office, including, but not limited to, the management and administrative support personnel, rent, and utilities. This does not include any costs directly related to providing original or review inspection or weighing services.

\* \* \* \* \*

*National program administrative costs.* The costs of national management



and support of official grain inspection and/or weighing. This does not include the Field Office administrative costs and any costs directly related to providing service.

\* \* \* \* \*

*Operating expenses.* The total costs to the Service to provide official grain inspection and/or weighing services.

*Operating reserve.* The amount of funds the Service has available to provide official grain inspection and/or weighing services.

\* \* \* \* \*

**§ 800.15 [Amended]**

■ 3. Amend § 800.15 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) and (b)(4) as (b)(2) and (b)(3), respectively.

■ 4. Revise § 800.18(b)(7) to read as follows:

**§ 800.18 Waivers of the official inspection and Class X weighing requirements.**

\* \* \* \* \*

(b) \* \* \*

(7) *Emergency waiver.* (i) Upon request, the requirements for official inspection or Class X weighing must be waived whenever the Service determines:

(A) That an emergency exists that precludes official inspection or Class X weighing;

(B) That granting an emergency waiver will not impair the objectives of the Act; and

(C) The buyer and seller mutually agree to the waiver.

(ii) To qualify for an emergency waiver, the exporter or elevator operator must submit a timely written request to the Service for the emergency waiver and also comply with all conditions that the Service may require.

\* \* \* \* \*

■ 5. Revise § 800.71 to read as follows:

**§ 800.71 Fees assessed by the Service.**

(a) *Official inspection and weighing services.* The fees shown in Schedule A apply to official inspection and weighing services performed by FGIS in the U.S. and Canada. The fees shown in

Schedule B apply to official domestic inspection and weighing services performed by delegated States and designated agencies, including land carrier shipments to Canada and Mexico. The fees charged to delegated States by the Service are set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay the appropriate fees to the Service within 30 days after becoming due will result in an automatic termination of the delegation or designation. The delegation or designation may be reinstated by the Service if fees that are due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days of the termination.

(1) *Schedule A—Fees for official inspection and weighing services performed in the United States and Canada, effective October 1, 2015.* Canada fees include the noncontract hourly rate, the Toledo Field Office tonnage fee, and the actual cost of travel.

TABLE 1 OF SCHEDULE A—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY <sup>1</sup>

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime <sup>2</sup>	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative):				
1-year contract (\$ per hour) .....	\$40.20 .....	\$42.10	\$48.20	\$71.40
Noncontract (\$ per hour) .....	71.40 .....	71.40	71.40	71.40
(2) Additional Tests (cost per test, assessed in addition to the hourly rate): <sup>3</sup>				
(i) Aflatoxin (rapid test kit method) .....				11.40
(ii) Aflatoxin (rapid test kit method—applicant provides kit) <sup>4</sup> .....				9.40
(iii) All other Mycotoxins (rapid test kit method) .....				20.80
(iv) All other Mycotoxins (rapid test kit method—applicant provides kit) <sup>4</sup> .....				18.80
(v) NIR or NMR Analysis (protein, oil, starch, etc.) .....				2.70
(vi) Waxy corn (per test) .....				2.70
(vii) Fees for other tests not listed above will be based on the lowest noncontract hourly rate				
(viii) Other services				
(a) Class Y Weighing (per carrier):				
(1) Truck/container .....				0.70
(2) Railcar .....				1.70
(3) Barge .....				3.00
(3) Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier):				
(i) All outbound carriers serviced by the specific Field Office (per-metric ton):				
(a) League City .....				0.192
(b) New Orleans .....				0.094
(c) Portland .....				0.191
(d) Toledo .....				0.306
(e) Delegated States <sup>5</sup> .....				0.061
(f) Designated Agencies <sup>5</sup> .....				0.061

<sup>1</sup> Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup> Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

<sup>3</sup> Appeal and re-inspection services will be assessed the same fee as the original inspection service.

<sup>4</sup> Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>5</sup> Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

TABLE 2 OF SCHEDULE A—SERVICES PERFORMED AT OTHER THAN AN APPLICANT’S FACILITY IN AN FGIS LABORATORY <sup>1 2</sup>

(1) Original Inspection and Weighing (Class X) Services:	
(i) Sampling only (use hourly rates from Table 1 of this section).	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier) .....	\$22.50
(b) Railcar (per carrier) .....	33.30
(c) Barge (per carrier) .....	209.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) .....	0.08
(iii) Lots sampled online during loading (sampling charge under (1)(i) of this table, plus):	
(a) Truck/trailer container (per carrier) .....	13.50
(b) Railcar (per carrier) .....	28.10
(c) Barge (per carrier) .....	143.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT) .....	0.08
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor) .....	13.50
(b) Warehouseman inspection (per sample) .....	23.60
(c) Factor only (per factor—maximum 2 factors) .....	6.60
(d) Checkloading/condition examination (use hourly rates from Table 1 of this section, plus an administrative fee per hundredweight if not previously assessed) (CWT) .....	0.08
(e) Re-inspection (grade and factor only. Sampling service additional, item (1)(i) of this table) .....	14.60
(f) Class X Weighing (per hour per service representative) .....	71.40
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method) .....	33.60
(b) Aflatoxin (rapid test kit method-applicant provides kit) <sup>3</sup> .....	31.60
(c) All other Mycotoxins (rapid test kit method) .....	43.20
(d) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>3</sup> .....	41.20
(e) NIR or NMR Analysis (protein, oil, starch, etc.) .....	11.40
(f) Waxy corn (per test) .....	11.40
(g) Canola (per test-00 dip test) .....	11.40
(h) Pesticide Residue Testing: <sup>4</sup>	
(1) Routine Compounds (per sample) .....	240.90
(2) Special Compounds (Subject to availability) .....	128.40
(i) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section..	
(2) Appeal inspection and review of weighing service. <sup>5</sup>	
(i) Board Appeals and Appeals (grade and factor) .....	91.50
(a) Factor only (per factor—max 2 factors) .....	48.20
(b) Sampling service for Appeals additional (hourly rates from Table 1 of this section).	
(ii) Additional tests (assessed in addition to all other applicable tests):	
(a) Aflatoxin (rapid test kit method) .....	33.60
(b) Aflatoxin (rapid test kit method-applicant provides kit) <sup>3</sup> .....	31.60
(c) All other Mycotoxins (rapid test kit method) .....	52.60
(d) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>3</sup> .....	50.60
(e) NIR or NMR Analysis (protein, oil, starch, etc.) .....	19.80
(f) Sunflower oil (per test) .....	19.80
(g) Mycotoxin (per test-HPLC) .....	157.30
(h) Pesticide Residue Testing: <sup>4</sup>	
(1) Routine Compounds (per sample) .....	240.90
(2) Special Compounds (Subject to availability) .....	128.40
(i) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section..	
(iii) Review of weighing (per hour per service representative) .....	92.30
(3) Stowage examination (service-on-request): <sup>4</sup>	
(i) Ship (per stowage space) (minimum \$285.00 per ship) .....	57.00
(ii) Subsequent ship examinations (same as original) (minimum \$171.00 per ship) .....	57.00
(iii) Barge (per examination) .....	45.80
(iv) All other carriers (per examination) .....	18.00

<sup>1</sup> Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee’s assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup> An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

<sup>3</sup> Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>4</sup> If performed outside of normal business, 1 1/2 times the applicable unit fee will be charged.

<sup>5</sup> If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of \$3.50 per sample by the Service.

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES <sup>1</sup>

(1) Grain grading seminars (per hour per service representative) <sup>2</sup> .....	\$71.40.
(2) Certification of diverter-type mechanical samplers (per hour per service representative) <sup>2</sup> .....	71.40.
(3) Special weighing services (per hour per service representative): <sup>2</sup>	
(i) Scale testing and certification .....	92.90.
(ii) Scale testing and certification of railroad track scales .....	92.90.
(iii) Evaluation of weighing and material handling systems .....	92.90.

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES <sup>1</sup>—Continued

(iv) NTEP Prototype evaluation (other than Railroad Track Scales) .....	92.90.
(v) NTEP Prototype evaluation of Railroad Track Scale .....	92.90.
(vi) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.) .....	557.30.
(vii) Mass standards calibration and re-verification .....	92.90.
(viii) Special projects .....	92.90.
(4) Foreign travel (hourly fee) <sup>3</sup> .....	92.90.
(5) Online customized data service:	
(i) One data file per week for 1 year .....	557.30.
(ii) One data file per month for 1 year .....	334.40.
(6) Samples provided to interested parties (per sample) .....	3.50.
(7) Divided-lot certificates (per certificate) .....	2.20.
(8) Extra copies of certificates (per certificate) .....	2.20.
(9) Faxing (per page) .....	2.20.
(10) Special mailing .....	Actual Cost.
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1 of this section).	

<sup>1</sup> Any requested service that is not listed will be performed at \$71.40 per hour.

<sup>2</sup> Regular business hours—Monday through Friday—service provided at other than regular business hours will be charged at 1 1/2 times the applicable hourly rate. (See the definition of “business day” in § 800.0(b))

<sup>3</sup> Foreign travel charged hourly fee of \$92.90 plus travel, per diem, and related expenditures.

(2) *Schedule B—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States.* The supervision fee charged by the Service is \$0.011 per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico.

(b) *Annual review of fees.* For each calendar year, starting with 2017, the Service will review the fees in Schedule A and publish fees effective January 1 of each year according to the following:

(1) *Tonnage fees.* Tonnage fees will consist of the national tonnage fee and local tonnage fees and will be calculated and rounded to the nearest \$0.001 per metric ton. All outbound grain officially inspected and/or weighed by the Field Offices in New Orleans, League City, Portland, and Toledo will be assessed the national tonnage fee plus the appropriate local tonnage fee. Export grain officially inspected and/or weighed by delegated States and official agencies, excluding land carrier shipments to Canada and Mexico, will be assessed the national tonnage fee only. The fees will be set according to the following:

(i) *National tonnage fee.* The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by the Service during the previous 5 fiscal years.

(ii) *Local tonnage fee.* The local tonnage fee is the Field Office administrative costs for the previous

fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the Field Office during the previous 5 fiscal years. The local tonnage fee is calculated individually for each Field Office.

(2) *Operating reserve.* In order to maintain an operating reserve not less than 3 and not more than 6 months, the Service will review the value of the operating reserve at the end of each fiscal year and adjust fees according to the following:

(i) *Between 3 months and 6 months.* If the operating reserve is greater than or equal to 3 times the monthly operating expenses and less than or equal to 6 times the monthly operating expenses, the Service will not make any fee adjustments other than provided for in paragraphs (b)(1) and (c) of this section.

(ii) *Less than 3 months.* If the operating reserve is less than 3 times the monthly operating expenses, the Service will increase all fees in Schedule A by 2 percent for each \$1,000,000, rounded down, that the operating reserve is less than 3 times the monthly operating expense, with a maximum increase of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest \$0.10.

(iii) *Greater than 6 months.* If the operating reserve is greater than 6 times the monthly operating expenses, the Service will decrease all fees in Schedule A by 2 percent for each \$1,000,000, rounded down, that the operating reserve is greater than 6 times the monthly operating expense, with a maximum decrease of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest \$0.10.

(c) *Periodic review.* The Service will periodically review and adjust all fees in Schedules A and B as necessary to

ensure they reflect the true cost of providing and supervising official service. This process will incorporate any fee adjustments from paragraph (b) of this section.

(d) *Miscellaneous fees for other services—(1) Registration certificates and renewals.* (i) The nature of your business will determine the fees that your business must pay for registration certificates and renewals:

(A) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce, you must pay \$135.00.

(B) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce and you are also in a control relationship (see definition in section 17A(b)(2) of the Act) with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce, you must pay \$270.00.

(ii) If you request extra copies of registration certificates, you must pay \$2.20 for each copy.

(2) *Designation amendments.* If you submit an application to amend a designation, you must pay \$75.00.

(3) *Scale testing organization.* If you submit an application to operate as a scale testing organization, you must pay \$250.00.

■ 7. Amend § 800.117 by removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2), and adding a new paragraph (b)(3) to read as follows:

**§ 800.117 Who shall perform original services.**

\* \* \* \* \*  
 (b) \* \* \*  
 \* \* \* \* \*

(3) *Written agreement.* If the assigned official agency agrees in writing with the adjacent official agency to waive the

current geographic area restriction at the request of the applicant for service, the adjacent official agency may provide service at a particular location upon approval by the Service.

\* \* \* \* \*

■ 8. Revise paragraph (a) of § 800.175 to read as follows:

§ 800.175 Termination of licenses.

(a) Term of license. Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 5 years or more than 6 years after the issuance date for the initial license; thereafter, every 5 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

\* \* \* \* \*

■ 9. Amend § 800.195 by adding paragraphs (f)(11) and (g)(4) to read as follows:

§ 800.195 Delegations.

\* \* \* \* \*

(f) \* \* \*

(11) Notification to Secretary. A delegated State shall notify the Secretary of its intention to temporarily discontinue official inspection and/or weighing services for any reason, except in the case of a major disaster. The delegated State must provide written notification to the Service no less than 72 hours in advance of the discontinuation date.

\* \* \* \* \*

(g) \* \* \*

(4) Review. At least once every 5 years, a delegated State shall submit to a review of its delegation by the Service in accordance with the criteria and procedures for delegation prescribed in section 7(e) of the Act, this section of the regulations, and the instructions. The Administrator may revoke the delegation of a State according to this subsection if the State fails to meet or comply with any of the criteria for delegation set forth in the Act, regulations, and instructions.

\* \* \* \* \*

■ 10. Amend § 800.196 by revising paragraphs (e)(2)(ii) and (iii), adding paragraph (e)(2)(iv), and revising paragraph (h)(1)(i) to read as follows:

§ 800.196 Designations.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) The applicant meets the conditions and criteria specified in the Act and regulations;

(iii) The applicant is better able than any other applicant to provide official services; and

(iv) The applicant addresses concerns identified during consultations that the Service conducts with applicants for service to the satisfaction of the Service.

\* \* \* \* \*

(h) Termination and renewal—(1) Every 5 years—(i) Termination. A designation shall terminate at a time specified by the Administrator, but not later than 5 years after the effective date of the designation. A notice of termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

\* \* \* \* \*

■ 11. Amend § 800.216 by revising paragraph (c) to read as follows:

§ 800.216 Activities that shall be monitored.

\* \* \* \* \*

(c) Grain handling activities. Grain handling activities subject to monitoring for compliance with the Act include, but are not limited to:

(1) Shipping export grain without inspection or weighing;

(2) Violating any Federal law with respect to the handling, weighing, or inspection of grain;

(3) Deceptively loading, handling, weighing, or sampling grain; and

(4) Exporting grain without a certificate of registration.

\* \* \* \* \*

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards.

[FR Doc. 2016-01083 Filed 1-22-16; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2015-1039]

RIN 1625-AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is amending and updating its special local regulations relating to recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This document informs the public of regularly scheduled events that require additional safety measures through establishing a special local regulation. Through this document the current list of recurring special local regulations is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas. Additionally, this one proposed rulemaking project reduces administrative costs involved in producing separate proposed rules for each individual recurring special local regulation and serves to provide notice of the known recurring special local regulations throughout the year.

DATES: Comments and related material must be received by the Coast Guard on or before April 25, 2016.

ADDRESSES: You may submit comments identified by docket number USCG-2015-1039 using the Federal eRulemaking Portal at http://www.regulations.gov. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779-5347, email James.C.Robinson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

- CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port (COTP) Ohio Valley is proposing to establish, amend, and update its current list of recurring special local regulations.

These special local regulations are proposed to be added, amended, and updated to the list of annually recurring special local regulations under 33 CFR

100.801 in Table 1 for annual special local regulations in the COTP Ohio Valley zone. The Coast Guard will address all comments accordingly, whether through response, additional revision to the regulation, or otherwise. Additionally, these recurring events are provided to the public through local avenues and planned by the local communities.

The current list of annual and recurring special local regulations occurring in Sector Ohio Valley's AOR is published under 33 CFR 100.801. That most recent list was created August 19, 2015 through the rulemaking 80 FR 50196, which finalized the interim rule published April 22, 2014, 79 FR 22381, which received no adverse comments. The August 19, 2015 rulemaking established under 33 CFR 100.801 created the current comprehensive list of recurring safety zones.

The Coast Guard's authority for establishing a special local regulation is contained at 33 U.S.C. 1233. The Coast Guard is amending and updating the special local regulations under 33 CFR part 100 to include the most up to date

list of recurring special local regulations for events held on or around navigable waters within Sector Ohio Valley's AOR. These events include marine parades, boat races, swim events, and other marine related events. The current list under 33 CFR 100.801 requires amending to provide new information on existing special local regulations, updating to include new special local regulations expected to recur annually or biannually, and to remove special local regulations that are no longer required. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring special local regulations.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes

can be identified and implemented in a timely and efficient manner.

**III. Discussion of Proposed Rule**

33 CFR part 100 contains regulations to provide effective control over regattas and marine parades conducted on U.S. navigable waters in order to ensure the safety of life in the regattas or marine parade area. Section 100.801 provides the regulations applicable to events taking place in the Eighth Coast Guard District and also provides a table listing each event and special local regulation. This section requires amendment from time to time to properly reflect the recurring special local regulations in Sector Ohio Valley's AOR. This proposed rule amends and updates § 100.801 replacing the current Table 1 for Sector Ohio Valley.

Additionally, this proposed rule adds 16 new recurring special local regulations and removes 8 special local regulations.

Sixteen new recurring special local regulations are added under the new Table 1 of § 100.801 for Sector Ohio Valley:

Date	Event/sponsor	Ohio Valley location	Regulated area
2 days—last weekend in September ....	Captain Quarters Regatta .....	Louisville, KY .....	Ohio River, Mile 595.0–597.0 (Kentucky).
1 day—One of the last three weekends in June.	Louisville Race the Bridge Triathlon .....	Louisville, KY .....	Ohio River, Mile 601.5–603.0 (Kentucky).
2 days—Second or third weekend in September.	Louisville Dragon Boat Festival .....	Louisville, KY .....	Ohio River, Mile 603.0–603.5 (Kentucky).
1 day—One of the last two weekends in September.	Ohio River Open Water Swim .....	Prospect, KY .....	Ohio River, Mile 588.0–590.0 (Kentucky).
1 day—Third weekend in May .....	World Triathlon Corporation/IRONMAN 70.3.	Chattanooga, TN ...	Tennessee River, Mile 463.0–466.0 (Tennessee).
1 day—Second weekend in July .....	Bradley Dean/Renaissance Man Triathlon.	Florence, AL .....	Tennessee River, Mile 255.0–257.0 (Alabama).
1 day—Last weekend in August .....	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN .....	Tennessee River, Mile 647.0–649.0 (Tennessee).
1 day—Last weekend in September .....	World Triathlon Corporation/IRONMAN Chattanooga.	Chattanooga, TN ...	Tennessee River, Mile 463.0–467.0 (Tennessee).
1 day—Third weekend in November ....	TREC–RACE/Pangorge .....	Chattanooga, TN ...	Tennessee River, Mile 444.0–455.0 (Tennessee).
2 days—weekend before Labor Day ....	SUP3Rivers The Southside Outside ....	Pittsburgh, PA .....	Monongahela River, Mile 0.0–3.09 Allegheny River, Mile 0.0–0.25 (Pennsylvania).
1 day—Saturday before Labor Day .....	Wheeling Dragon Boat Race .....	Wheeling, WV .....	Ohio River, Mile 90.4–91.5 (West Virginia).
1 day—Third Saturday in July .....	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA .....	Ohio River, Miles 7.0–9.0, back channel (Pennsylvania).
Second Sunday in September .....	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH .....	Ohio River, Mile 170.5–172.5 (Ohio).
Second Saturday in September .....	Parkesburg Paddle Fest .....	Parkersburg, WV ...	Ohio River, Mile 184.3–188 (West Virginia).
Three days during the fourth weekend in September.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV.	Ohio River, Mile 128–129 (West Virginia)
3 days—1st week of August .....	EQT Pittsburgh Three Rivers Regatta	Pittsburgh, PA .....	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.6, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).

This proposed rule removes the following 8 special local regulations from the existing Table 1 of § 100.801:

Date	Event/sponsor	Ohio Valley location	Regulated area
1 day—Third weekend in July .....	Headfirst Performance/Cardinal Harbor Triathlon.	Finchville, KY .....	Ohio River, Mile 595 (Kentucky).
1 day—First or second weekend in August.	Evansville Goodwill Industries/Ducks on the Ohio.	Evansville, IN .....	Ohio River, Mile 792.0–796.0 (Indiana).
1 day—First or second weekend in June.	Southern Indiana Triathlon Inc./Southern Indiana Triathlon.	Louisville, KY .....	Ohio River, Mile 600.0–603.0 (Kentucky).
1 day—Last weekend in June .....	SOS Triathlon .....	Louisville, KY .....	Ohio River, Mile 602.0–603.5 (Kentucky).
1 day—First or second weekend in July	City of Livermore Canoe Race .....	Livermore, KY .....	Green River, Mile 71.0–71.5 (Kentucky).
1 day—First or second weekend in July	Jam Brand Sports, LLC/Buckhead Border Challenge Triathlon.	Louisville, KY .....	Ohio River, Mile 602.0–604.0 (Kentucky).
1 day—First weekend in August .....	Kentucky Derby Festival/Venetian Boat Parade Festival.	New Albany, IN .....	Ohio River, Mile 596.0–604.3 (Indiana).
1 day—Second weekend in August .....	North Oldham High School/North Oldham Ohio River Swim.	LaGrange, KY .....	Ohio River, Mile 595 (Kentucky).

The effect of this proposed rule will be to restrict general navigation during these events. Vessels intending to transit the designated waterway through the special local regulations will only be allowed to transit the area when the COTP Ohio Valley, or designated representative, has deemed it safe to do so or at the completion of the event.

**IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this proposed rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This proposed rule establishes special local regulations limiting access to certain areas under 33 CFR part 100 within Sector Ohio Valley’s AOR. The effect of this proposed rulemaking will

not be significant because these special local regulations are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan operations around the special local regulations in advance. Deviation from the special local regulations established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these special local regulations so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit

the special local regulation areas during periods of enforcement. The special local regulations will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the special local regulations established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule or any policy or action of the Coast Guard.

**C. Collection of Information**

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**D. Federalism and Indian Tribal Governments**

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

Also, this proposed rule does not have tribal implications under E.O. 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

**E. 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 proposed rule would not result in such an expenditure, we do discuss the

effects of this proposed rule elsewhere in this preamble.

**F. Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(h) of the Instruction because it involves establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**G. Protest Activities**

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**List of Subjects in 33 CFR Part 100**

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

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

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS**

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

**Authority:** 33 U.S.C. 1233.

■ 2. Amend § 100.801 by revising table 1 of § 100.801 to read as follows:

**§ 100.801 Annual Marine Events in the Eighth Coast Guard District.**

\* \* \* \* \*

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS

Date	Event/sponsor	Ohio Valley location	Regulated area
1. The first Saturday in April .....	University of Charleston Rowing/West Virginia Governor’s Cup Regatta.	Charleston, WV .....	Kanawha River, Mile 59.9–61.4 (West Virginia).
2. 1 day—Saturday before Memorial Day weekend.	Venture Outdoors/Venture Outdoors Festival.	Pittsburgh, PA .....	Allegheny River, Mile 0.0–0.25 Monongahela River 0.0–0.25 (Pennsylvania).
3. 1 day—During the last week of April or first week of May.	Kentucky Derby Festival/Belle of Louisville Operating Board/Great Steamboat Race.	Louisville, KY .....	Ohio River, Mile 596.0–604.3 (Kentucky).
4. 1 day—First or second weekend in May.	REV3/REV3 Triathlon .....	Knoxville, TN .....	Tennessee River, Mile 646.0–649.0 (Tennessee).

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—  
Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
5. 1 day—Third weekend in May .....	World Triathlon Corporation/IRONMAN 70.3.	Chattanooga, TN ...	Tennessee River, Mile 463.0–466.0 (Tennessee).
6. 1 day—Second weekend in June .....	Chattanooga Parks and Rec/Chattanooga River Rats Open Water Swim.	Chattanooga, TN ...	Tennessee River, Mile 464.0–469.0 (Tennessee).
7. 1 day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV ..	Monongahela River, Mile 101.0–102.0 (West Virginia).
8. 2 days—First weekend of June .....	Kentucky Drag Boat Association .....	Pisgah Bay, KY .....	Tennessee River, Mile 30.0 (Kentucky).
9. Fourth Sunday in June .....	Green Umbrella/Ohio River Paddlefest	Cincinnati, OH .....	Ohio River, Mile 459.5–470.2 (Ohio and Kentucky).
10. 1 day—Fourth or fifth Sunday in September.	Green Umbrella/Great Ohio River Swim.	Cincinnati, OH .....	Ohio River, Mile 469.8–470.2 (Ohio and Kentucky).
11. 1 day—One of the last two weekends in September.	Ohio River Open Water Swim .....	Prospect, KY .....	Ohio River, Mile 588.0–590.0 (Kentucky).
12. 2 days—Second or third weekend in September.	Louisville Dragon Boat Festival .....	Louisville, KY .....	Ohio River, Mile 603.0–603.5 (Kentucky).
13. 1 day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon .....	Cincinnati, OH .....	Ohio River, Mile 469.3–470.2 (Ohio).
14. 2 days—First weekend of July .....	Kentucky Drag Boat Association .....	Pisgah Bay, KY .....	Tennessee River, Mile 30.0 (Kentucky).
15. 1 day—Second weekend in July .....	Bradley Dean/Renaissance Man Triathlon.	Florence, AL .....	Tennessee River, Mile 255.0–257.0 (Alabama).
16. 3 days—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN .....	Ohio River, Mile 555.0–560.0 (Indiana).
17. 1 day—Third Saturday in July .....	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA .....	Miles 7–9, Ohio River back channel (Pennsylvania).
18. 1 day—One of the last three weekends in June.	Louisville Race the Bridge Triathlon .....	Louisville, KY .....	Ohio River, Mile 601.5–603.0 (Kentucky).
19. 1 day—Fourth weekend in June .....	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN ...	Tennessee River, Mile 463.0–465.0 (Tennessee).
20. 1 day—Fourth weekend in July .....	Team Magic/Music City Triathlon .....	Nashville, TN .....	Cumberland River, Mile 190.0–192.0 (Tennessee).
21. 2 days—Last two weekends in July or first week of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA .....	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
22. 3 days—First week of August .....	EQT Pittsburgh Three Rivers Regatta	Pittsburgh, PA .....	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.6, and Monongahela River, Mile 0.0–0.5 (Pennsylvania)
23. 2 days—First weekend of August ...	Kentucky Drag Boat Association .....	Pisgah Bay, KY .....	Tennessee River, Mile 30.0 (Kentucky).
24. 2 days—last weekend in September.	Captain Quarters Regatta .....	Louisville, KY .....	Ohio River, Mile 595.0–597.0 (Kentucky).
25. 2 days—Second or third weekend in October.	Norton Healthcare/Ironman Triathlon ...	Louisville, KY .....	Ohio River, Mile 601.5–604.5 (Kentucky).
26. 2 days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN .....	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).
27. 1 day—Last weekend in August .....	Tennessee Clean Water Network/Downtown Dragon Boat Races.	Knoxville, TN .....	Tennessee River, Mile 647.0–649.0 (Tennessee)
28. 3 days—Third weekend in August ..	Governors' Cup/UWP—IJSBA National Championships.	Charleston, WV .....	Kanawha River, Mile 56.7–57.6 (West Virginia).
29. 2 days—Fourth weekend in July .....	Herd Racing LLC/Huntington Classic ...	Huntington, WV .....	Ohio River, Mile 307.3–309.3 (West Virginia).
30. 2 days—Last weekend in September.	Fall Records Challenge Committee/Fall Records Challenge.	New Martinsville, WV.	Ohio River, Mile 128.5–129.5 (West Virginia).
31. 2 days—Labor Day weekend .....	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV .....	Ohio River, Mile 090.4–091.5 (West Virginia).
32. 2 days—Weekend before Labor Day.	SUP3Rivers The Southside Outside .....	Pittsburgh, PA .....	Monongahela River, Mile 0.0–3.09 Allegheny River Mile 0.0–0.25 (Pennsylvania)
33. 1 day—Saturday before Labor Day	Wheeling Dragon Boat Race .....	Wheeling, WV .....	Ohio River, Mile 90.4–91.5 (West Virginia).
34. 1 day—First or second weekend in September.	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN .....	Cumberland River, Mile 190.0–192.0 (Tennessee).
35. 2 days—First or second weekend in September.	State Dock/Cumberland Poker Run .....	Jamestown, KY .....	Lake Cumberland (Kentucky).
36. 3 days—First or second weekend in September.	Sailing for a Cure Foundation/SFAC Fleur de Lis Regatta.	Louisville, KY .....	Ohio River, Mile 601.0–604.0 (Kentucky).



TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—  
Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
37. 1 day—One weekend, last half of September.	Harbor House of Louisville/Ken“Ducky” Derby.	Louisville, KY .....	Ohio River, Mile 602.0–604.0 (Kentucky).
38. 1 day—Last weekend in September	World Triathlon Corporation/IRONMAN Chattanooga.	Chattanooga, TN ...	Tennessee River, Mile 463.0–467.0 (Tennessee).
39. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN .....	Cumberland River, Mile 125.0–126.0 (Tennessee).
40. 2 days—First weekend of October	Three Rivers Rowing Association/Head of the Ohio Regatta.	Pittsburgh, PA .....	Allegheny River, Mile 0.0–4.0 (Pennsylvania).
41. 1 day—First or second weekend in October.	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN ...	Tennessee River, Mile 464.0–467.0 (Tennessee).
42. 1 day—Third weekend in November.	TREC–RACE/Pangorge .....	Chattanooga, TN ...	Tennessee River, Mile 444.0–455.0 (Tennessee).
43. 3 days—First weekend in November.	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN ...	Tennessee River, Mile 464.0–467.0 (Tennessee).
44. One Saturday in June or July .....	Paducah Summer Festival/Cross River Swim.	Paducah, KY .....	Ohio River, Mile 934–936 (Kentucky).
45. 1 day—During the last weekend in May.	Louisville Metro Government/Mayor’s Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY .....	Ohio River, Mile 602.0–603.5 (Kentucky).
46. 4 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN .....	Ohio River, Mile 791.0–795.0 (Indiana).
47. 1 day—Second or third Saturday in July.	Allegheny Mountain LMSC/Search for Monongy.	Pittsburgh, PA .....	Allegheny River, Mile 0.0–0.6 (Pennsylvania).
48. 1 day—July 4th .....	Wellsburg 4th of July Committee/Wellsburg 4th of July Fireworks.	Wellsburg, WV .....	Ohio River, Mile 73.5–74.5 (West Virginia).
49. 1 day—During the first week of July	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN .....	Ohio River, Mile 791.0–796.0 (Indiana).
50. 1 day—First weekend in September	Louisville Metro Government/Mayor’s Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY .....	Ohio River, Mile 602.0–603.5 (Kentucky).
51. 2 days—Third or fourth weekend in July.	Dare to Care/KFC Mayor’s Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY .....	Ohio River, Mile 601.0–604.0 (Kentucky).
52. 3 days—Fourth weekend in August	Kentucky Drag Boat Association/Thunder on the Green.	Livermore, KY .....	Green River, Mile 70.0–71.5 (Kentucky).
53. 1 day—Fourth weekend in August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL .....	Tennessee River, Mile 333.0–334.5 (Alabama).
54. 3 days—First or second weekend in September.	Hadi Shrine/Owensboro Air Show .....	Owensboro, KY .....	Ohio River, Mile 755.0–759.0 (Kentucky).
55. 1 day—First Sunday in August .....	HealthyHuntington.org/St. Marys Tristate Triathlon.	Huntington, WV .....	Ohio River, Mile 307.3–308.3 (West Virginia).
56. 2 days—First Weekend in August ..	Buckeye Outboard Association/Portsmouth Challenge.	Portsmouth, OH ...	Ohio River, Mile 355.3–356.7 (Ohio).
57. 1 day—Sunday before Labor Day ..	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH .....	Ohio River, Mile 464.0–476.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
58. 2 days—First or second weekend in September.	State Dock/Cumberland Poker Run .....	Jamestown, KY .....	Lake Cumberland (Kentucky).
59. 1 day—One weekend, last half of September.	Harbor House of Louisville/Ken“Ducky” Derby.	Louisville, KY .....	Ohio River, Mile 602.0–604.0 (Kentucky).
60. Second Sunday in September .....	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH .....	Ohio River, Mile 170.5–172.5 (Ohio)
61. Second Saturday in September .....	Parkesburg Paddle Fest .....	Parkersburg, WV ...	Ohio River, Mile 184.3–188 (West Virginia)
62. Three days during the fourth weekend in September.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV.	Ohio River, Mile 128–129 (West Virginia)
63. First weekend in July .....	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY .....	Cumberland River Mile 46.0–47.0 (Kentucky).
64. First or second weekend of July .....	Prizer Point Marina/4th of July Celebration.	Cadiz, KY .....	Cumberland River, Mile 54.0–55.09 (Kentucky).
65. 2 days, last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN .....	Tennessee River, Mile 647.0–648.0 (Tennessee).
66. 1 day—Second weekend in September.	Start 2 Finish/Nashvegas Triathlon .....	Ashland City, TN ...	Cumberland River, Mile 157.0–159.0 (Tennessee).

\* \* \* \* \*

Dated: January 5, 2016.

**R. V. Timme,**

*Captain, U. S. Coast Guard, Captain of the Port Ohio Valley.*

[FR Doc. 2016-01375 Filed 1-22-16; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-2014-0050; FRL-9940-20-OLEM]

RIN 2050-AG78

**National Oil and Hazardous Substances Pollution Contingency Plan Revisions To Align With the National Response Framework**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan. These proposed revisions align the National Oil and Hazardous Substances Pollution Contingency Plan with the Department of Homeland Security’s National Response Framework and National Incident Management System. The revisions also update the descriptions of federal agency organizational structures and capabilities and how they operate, and recognize the establishment of the Department of Homeland Security.

**DATES:** Comments must be received on or before March 25, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2014-0050, to the Federal

eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jean Schumann, Office of Land and Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, (202) 564-1977, [schumann.jean@epa.gov](mailto:schumann.jean@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

The revisions primarily would affect the federal departments and agencies that participate in responding to incidents under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which primarily consist of the departments and agencies on the NCP National Response Team (NRT). The descriptions

and capabilities of these agencies have been updated, and some NCP terminology used by these agencies has been changed to be more consistent with the National Response Framework (NRF) and National Incident Management System (NIMS) issued by the Department of Homeland Security (DHS). Information has been added in notes to the regulation to explain that federal agencies follow the NRF and NIMS when appropriate.

Additionally, this rulemaking proposes a clarification to § 300.405(d) that affects persons who notify the National Response Center (NRC)<sup>1</sup> of an incident, including representatives of industry and federal, state, tribal, and local governments. Paragraph (d) of § 300.405 currently states that the NRC will generally need information that will help to characterize the release when people call to report an incident. Paragraph (d) of § 300.405 goes on to say that this information “will include, but is not limited to . . .” and provides a list of examples of the types of information the NRC will need. The current list of examples includes the “possible source of the release.” These revisions would clarify paragraph (d) to state “possible source and cause of the release.” The NRC already collects information regarding the cause of the release, so this is not a new requirement. Adding “cause” to paragraph (d) will better prepare people who notify the NRC that they will be asked for this information. This change is also addressed in section IV of this preamble, under the discussion for § 300.405.

Impacts on potentially affected entities, direct and indirect, are summarized in section V of this preamble. A summary of potentially affected entities is provided in the table below.

Type of entity	Affected entities
Industry .....	Industries that report to the NRC.
State, Local or Tribal Governments .....	State, local, or tribal governments that report to the NRC.
Federal Government .....	Federal departments and agencies that report to the NRC, and federal departments and agencies that are members of the National Response Team.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Others types of entities not

listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What is the agency’s authority for taking this action?*

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and

<sup>1</sup> Reference is made in this preamble and in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid

confusion, the preamble and the NCP spell out the Nuclear Regulatory Commission and use the

abbreviation “NRC” only with respect to the National Response Center.

Reauthorization Act of 1986 (SARA), Public Law 99–499 (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Public Law 101–380. In Executive Order 12777 (56 FR 54757, October 22, 1991), the President delegated to the EPA the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the NCP NRT prior to publication for notice and comment. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

## II. Background

The DHS issued the NRF and NIMS under the authority of the Homeland Security Act of 2002 (HSA), the Post-Katrina Emergency Management Reform Act (PKEMRA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and Homeland Security Presidential Directive-5, *Management of Domestic Incidents* (February 28, 2003) (HSPD–5). The purpose of the NRF is to establish a comprehensive, national, all-hazards approach to domestic incident management. The purpose of the NIMS is to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. The NRF is built on the incident management concepts in NIMS. DHS issued the most recent version of the NRF in May 2013, and the most recent version of the NIMS in December, 2008, and may continue to update both documents periodically.

Federal agencies are to follow the NRF and NIMS pursuant to those authorities. HSPD–5 also directed federal agencies to modify existing interagency plans to align with the National Response Plan, which was the predecessor to the NRF. EPA is proposing this rule to align the NCP with the NRF and NIMS.

Other changes are being proposed to the NCP to update descriptions of federal department and agency organizations and capabilities and how they operate, and to recognize the establishment of the DHS, which was authorized by the HSA.

## III. Summary of This Action

### A. What is the scope of this proposed rule?

This rulemaking proposes changes to the NCP in two general areas: (1)

Changes that align the NCP with the NRF and NIMS; and (2) changes that update the descriptions and capabilities of the NRT federal agencies and how they operate, including the establishment of the DHS. EPA is not opening the NCP for comment on other types of changes, and the final rule will not address any comments received outside the scope of the proposed changes. Further, we are not taking comments on the substance of the NRF or the NIMS themselves, only on the changes made to the NCP to align with those documents.

EPA is not including any proposed changes to the NCP's "Appendix E to Part 300—Oil Spill Response" in this proposed rule. EPA proposed to remove appendix E from the NCP as part of a separate proposed rule on January 22, 2015 (80 FR 3380). If EPA decides not to remove appendix E from the NCP after considering the comments received on that January 22, 2015, rulemaking, EPA will engage in a rulemaking to revise appendix E in accordance with its final decisions on this rulemaking.

### IV. What are the proposed revisions to the NCP?

This section of the preamble explains the proposed revisions to the NCP by part and section number.

#### A. Part 300 Table of Contents and Authority

The proposed revisions would change the table of contents for part 300, subpart B, by changing the title of § 300.165 from "OSC reports" to "OSC after action reports." ("OSC" is the abbreviation for On-Scene Coordinator.) This change would make the title of these reports more consistent with the terminology commonly used in incident management systems for such post-incidents reports. The change would support the objectives of the NRF and NIMS for more consistency in national incident management systems. This change in terminology would also be carried forth into the proposed revision to § 300.165, as explained in this preamble under subpart B, § 300.165.

We are proposing to update the "Authority" citation for 40 CFR part 300 by revising the scope of the CWA citation from "33 U.S.C. 1321(d)" to "33 U.S.C. 1321" to make it parallel with the scope of the existing CERCLA citation. The existing CERCLA citation refers to all of the CERCLA authorities underlying the NCP, not just the specific CERCLA provision that authorizes the issuance of the NCP. The existing CWA citation (33 U.S.C. 1321(d)), however, refers only to the specific CWA provision that authorizes the issuance of

the NCP. This change would broaden the CWA citation to refer to all the CWA authorities that underlie the NCP, not just the specific CWA provision that authorizes the issuance of the NCP, by deleting "(d)" and referring only to "33 U.S.C. 1321."

#### B. Authority and Applicability (Section 300.2)

The existing § 300.2 states that amendments to the NCP are coordinated with members of the NRT prior to public notice and comment, and further explains that this includes the Federal Emergency Management Agency (FEMA) and Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of these agencies. The specific reference to FEMA and the Nuclear Regulatory Commission was based on language from Executive Order 12580, January 23, 1987. Executive Order 12580 was amended by Executive Order 12777, October 18, 1991. Executive Order 12777 kept the reference to consultation with the NRT on NCP amendments, but deleted the specific reference to FEMA and the Nuclear Regulatory Commission. The proposed revision to § 300.2 would therefore delete the sentence that refers to FEMA and the Nuclear Regulatory Commission to be consistent with Executive Order 12777. However, both FEMA and the Nuclear Regulatory Commission are members of the NRT, so EPA would continue to coordinate with both agencies on NCP amendments in their role as NRT members under the revised § 300.2.

#### C. Scope (Section 300.3)

The existing § 300.3(d) states that the NCP is in effect when the Federal Response Plan (FRP) is activated. The FRP is no longer in effect because it has been replaced by the NRF. The proposed changes would delete existing § 300.3(d), therefore, and add a note to § 300.3(a) that refers to the NRF instead of the Federal Response Plan. The note explains that the NRF was issued by DHS and is followed by federal departments and agencies. The NRF is a guide to how the Nation responds to domestic incidents under a variety of authorities at all levels, including response actions taken by federal, state, tribal, and local governments, communities, individuals, private sector organizations, and non-governmental organizations such as American Red Cross. The NRF addresses "all-hazards" incidents, such as natural disasters, terrorist attacks and other deliberate incidents, and accidents. The NCP

serves as an operational supplement to the NRF. The NRF is a guide to how the Nation responds to disasters and emergencies. While federal departments and agencies follow the NRF, it is not intended to alter or impede existing federal authorities, such as the CERCLA and CWA section 311 authorities that are the basis for the NCP. The NRF is publicly available on FEMA's Web site. (See this preamble under § 300.5 below for the Web site address.)

For some NCP responses, additional procedures under the NRF and supporting documents (*e.g.*, annexes) may apply. For example, the NRF explains that the Secretary of DHS may coordinate federal responses pursuant to presidential directive, or may activate specific NRF response mechanisms to support other federal departments and agencies without assuming coordination of the overall federal response. When additional NRF procedures are activated for an NCP response, the NCP response will follow the appropriate procedures of both the NCP and NRF. The NRF and supporting documents also include information on how the federal government responds under the Stafford Act. Additional information on how the NCP applies during responses under the Stafford Act in particular is provided in this preamble under subpart B, § 300.130. In cases where additional NRF procedures apply to NCP responses, those procedures are most likely to apply to NCP emergency removal actions rather than to NCP remedial actions because the NRF focuses on emergency and disaster types of incidents.

#### D. Abbreviations (Section 300.4)

The abbreviations in paragraphs (a) and (b) would be updated to include new department and agency title and operational abbreviations used in this rule and to delete abbreviations that are no longer used in this rule or no longer apply. The following abbreviations would be deleted: RSPA, ESF, FCO, FRERP, FRP, and RRC. The following abbreviations would be added to paragraph (a): DHS and PHMSA. The following abbreviations would be added to paragraph (b): AMS, CBRN CMAT, CMHT, CMRT, FRMAC, JIC, NARAC, NCERT, NIMS, NRF, RAP, REAC/TS, REOC, and SERT. The existing abbreviation for the U.S. Fish and Wildlife Service (USFWS) in paragraph (b) would be moved to paragraph (a). Since the USFWS is a distinct and significant component of the Department of the Interior (DOI), it is more appropriately listed in paragraph (a), which already includes some other

distinct components of federal departments.

#### E. Definitions (Section 300.5)

EPA is proposing to update the definitions section to include new definitions and delete definitions that no longer apply. New definitions would be added to § 300.5 for the terms "National Incident Management System" and "National Response Framework." A note would be added to § 300.5 with new definitions for the terms "Emergency Support Function #10—Oil and Hazardous Materials Response Annex" and "Emergency Support Function #15—External Affairs Annex." All of these definitions are derived from the NRF and NIMS, and readers are referred to the NRF and NIMS for additional information regarding these definitions. The NRF may be found at the DHS/FEMA Web site at [www.fema.gov/national-response-framework](http://www.fema.gov/national-response-framework) and NIMS may be found at [www.fema.gov/national-incident-management-system](http://www.fema.gov/national-incident-management-system).

The following definitions would be deleted: "Federal Radiological Emergency Response Plan" and "Federal Response Plan." These two plans have been replaced by the NRF and supporting documents, including supporting annexes.

In addition, a minor change is being proposed to the definition of a "Spill of National Significance" (SONS) to clarify that, under the NCP, this type of incident is so classified by the EPA for discharges occurring in the inland zone or by the United States Coast Guard (USCG) for discharges occurring in the coastal zone, so readers do not confuse a SONS determination with any type of declaration or determination that may be made by other federal officials or federal departments or agencies under the NRF. This proposed change is discussed in more detail in this preamble under subpart D, § 300.323.

Finally, the existing definition of "national response system" would be modified to correct a capitalization error.

#### F. General Organizational Concepts (Section 300.105)

A note would be added to § 300.105(d) to reflect that NIMS is issued by DHS, and that federal agencies follow the NIMS and have adopted it for appropriate use in NCP emergency removal actions. The existing § 300.105(d) explains that the NCP response management structure is a system that brings together the functions of the federal government, state government, and responsible party(ies) to achieve an effective and efficient

response, where the federal OSC retains his/her authority. The addition of the proposed note would provide further clarification that NIMS is the emergency preparedness and response management system adopted by federal departments and agencies for appropriate use in NCP emergency removal actions.

The Secretary of DHS required federal departments and agencies to submit their plans for adopting NIMS to DHS in December, 2004. Under HSPD-5, federal departments and agencies also were directed to make adoption of the NIMS a requirement, to the extent permitted by law, for providing federal preparedness assistance through grants, contracts, or other activities. HSPD-5 directed the Secretary of DHS to develop standards and guidelines for determining whether a state or local entity has adopted the NIMS. The DHS is responsible for developing standards and guidelines for determining whether federal, state, local, and tribal entities have adopted the NIMS.

The NIMS represents a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management. It includes both preparedness and response components. Preparedness elements include establishing emergency operations plans and procedures; identifying response resources and establishing procedures for their use; training and credentialing response personnel; conducting exercises, evaluations, and corrective action programs; establishing and maintaining agreements for assistance; and planning for scientific support.

For managing the response to an incident, the NIMS uses the Incident Command System (ICS), which provides a flexible core mechanism for coordinated and collaborative incident management. The ICS integrates the facilities, equipment, personnel, procedures, and communications involved in a response within a common organizational structure. The ICS follows a number of key principles and concepts, including, but not limited to, the following:

- Field command and management functions are performed in accordance with a standard set of ICS organizations, doctrines, and procedures. Incident commanders, however, retain the flexibility to modify procedures or structures as needed to ensure a successful response to a specific incident.
- ICS is modular and scalable. It has a scalable organizational structure that is based on the size and complexity of the incident. Smaller incidents may be

handled by relatively few individuals who would perform all the necessary response functions and fulfill all of the ICS roles. Larger incidents may require many individuals, each fulfilling a specific position within the ICS. ICS can be used for incidents occurring within a single jurisdiction or being managed by a single agency, or for incidents occurring across multiple jurisdictions or involving many agencies.

- ICS establishes common terms, standards, and procedures that enable diverse organizations to work together more effectively. ICS includes a standard set of predesignated organizational elements and functions, common names for resources used to support incident operations, and common identifiers for facilities and operational locations used to support incident operations.

- ICS uses measurable objectives. Incidents are managed by establishing overarching objectives for the response and more specific measurable objectives for various response activities; directing efforts to obtain those objectives; and documenting the results of those efforts to measure performance and support corrective action. Incident objectives are communicated throughout the on-scene level command structure through the development of incident action plans.

Under NIMS, an Incident Command Post (ICP) is established at the on-scene tactical level. This is the location from which tactical response operations are directed. The ICP organization has five major functions: Command, operations, planning, logistics, and finance/administration (with a potential sixth function to cover intelligence/investigations, when needed). The ICP is led by the Incident Commander, the individual with the authority to direct the response. (For smaller incidents, the ICP may be as simple as the response vehicle from which the Incident Commander directs the on-scene response.)

Where multiple Incident Commanders have jurisdiction over the response, the incident is led by a Unified Command. Unified Command enables agencies and organizations with different legal, geographic, and functional responsibilities to coordinate, plan, and interact effectively. Under Unified Command, Incident Commanders work together to establish the common objectives and carry out tactical response activities, with each Incident Commander retaining his/her regulatory authority. The exact composition of the Unified Command structure depends on the location and type of incident. If only one agency has jurisdiction or regulatory authority, Unified Command

may not be necessary. In that case, other assisting agencies and organizations can still provide input to incident objectives and raise questions or concerns by providing a Liaison Officer on the Command Staff or a technical specialist(s) in an appropriate ICS section.

An Area Command also may be established if needed, depending on the complexity of the incident and span-of-control needs. An Area Command may be needed to oversee the management of multiple incidents that are being handled by separate ICS organizations or to oversee the management of a very large incident that involves multiple ICS organizations. Area Command may be used when there are a number of incidents in the same area and of the same type (e.g., two or more hazardous substance releases), which may compete for the same resources. If the incidents being managed by the Area Command are multi-jurisdictional, a Unified Area Command may be established.

The NIMS also describes multi-agency coordination groups and centers, such as emergency operations centers, that may be established to support the ICP and coordinate incident-related response activities. The NRF is built on the incident management concepts in NIMS and describes additional federal multi-agency coordination groups and centers that may be activated or used during certain types of federal incident responses (e.g., the FEMA National Response Coordination Center may be used to support federal responses under the Stafford Act).

Readers are referred to the NIMS for additional details on the incident management system. As noted earlier in this preamble, EPA is not taking comments on the substance of the NIMS, only on the NCP changes to align with the NIMS.

The existing preparedness and response management structure for removal actions under the NCP national response system—which brings together the functions of the federal government, state government, and the responsible party to prepare for and achieve an effective and efficient response, where the OSC maintains his or her authority—is consistent with the NIMS. Appropriate preparedness elements of NIMS are used by the federal departments and agencies on the NRT to prepare for NCP responses.

Under the NCP national response system for removal actions, the federal Incident Commander—the individual with the authority to direct and coordinate a removal action at the on-scene level—is the federal OSC. Federal OSCs evaluate a potential or actual

release of hazardous substances, pollutants or contaminants or discharge of oil to determine whether a federal removal action is needed, in accordance with existing delegations of authority to OSCs. If a federal response is needed, the removal action may range from overseeing a response by another party, to providing technical assistance, to assuming direction of the response. The extent of the federal response may increase or decrease during the course of the response as needed. If a federal OSC works in a Unified Command with state, tribal, or local governments and/or the responsible party, the OSC maintains his/her NCP authorities.

As explained above, an ICP organization typically has five major functions: Command, operations, planning, logistics, and finance/administration. For NCP removal actions, the management of environmental data is often a crucial element of the response. This key function may be managed through the establishment of an Environmental Unit within the Planning Section of the ICP.

For federally-led NCP removal actions, the responsible party for a discharge or release (if identified) may be part of a Unified Command, if established, and provide the response assets necessary for an effective and efficient response. The responsible party may, however, be directed or re-positioned by the OSC if determined necessary for an effective and efficient response. Responsible party participation in the Unified Command is determined on an incident-specific basis by the OSC.

Multi-agency coordination centers and groups may also be used to support NCP removal actions. For example, the EPA and U.S. Coast Guard (USCG) have emergency operations centers in their headquarters and in EPA regional and USCG district offices that may be activated to support the on-scene response. The Regional Response Teams (RRTs) and the NRT described in the NCP are multi-agency coordination groups that also may be activated if needed to provide support to the on-scene response of the federal OSC and to coordinate interagency activities.

EPA developed a robust NIMS implementation plan, established training and certification requirements, and has used the ICS system for emergency responses. EPA has found NIMS ICS to be particularly beneficial in organizing large, complex, multi-jurisdictional emergency responses. Some removal actions have longer planning times before on-site removal activity must begin, while others require a quicker response. The detailed NIMS

ICS structure and process is used as appropriate for removal actions that are emergencies; these were the types of incidents for which the system was developed. OSCs typically use other on-site project management structures to conduct removal actions with longer planning times. (See preamble discussions in 53 FR 51396 and 51409, December 21, 1988, for a discussion about the types of removal actions, including emergencies and removal actions with longer planning times.) USCG and other NRT agencies have also adopted NIMS ICS for appropriate use in NCP emergency removal actions.

In developing the NIMS document, DHS drew upon the traditional ICS used by fire-fighting organizations, but revised it to form a system that is more appropriate for all-hazard emergency response and more flexible for integrating the range of government and private sector assets and authorities that might be included in a federal response. While EPA had not previously adopted the traditional type of ICS for removal actions under the NCP, EPA did have the opportunity to provide input into the modification and implementation of the DHS version of ICS to help ensure it can provide an effective structure for federal NCP emergency removal actions. The DHS NIMS document emphasizes that federal agencies maintain their authorities within the incident command structure, and provides for flexibility, which has addressed EPA's previous concerns about the traditional ICS (59 FR 47387, September 15, 1994). EPA has found that the DHS NIMS ICS can be tailored to provide appropriate coordination across multiple agencies and organizations leading and supporting NCP emergency removal actions.

In § 300.105(e)(1), the term "national response system" would be capitalized.

Several changes are being proposed to Figure 1a in § 300.105(e)(1). The term "Special Forces" would be changed to "Special Teams" to be consistent with the use of "special teams" elsewhere in the NCP. The list of "Special Forces" in Figure 1a would be revised to include the following additional special teams and assets:

- USCG Incident Management Assistance Team (CG-IMAT), which now includes the Public Information Assist Team (PIAT)
- USCG Salvage Engineering Response Team (SERT)
- EPA Chemical, Biological, Radiological, Nuclear Consequence Management Advisory Team (CBRN CMAT)
- EPA National Criminal Enforcement Response Team (NCERT)

- Occupational Safety and Health Administration (OSHA) Response Team
- Department of Energy (DOE) Aerial Measuring System (AMS)
- DOE Consequence Management Home Team (CMHT)
- DOE Consequence Management Response Team (CMRT)
- DOE National Atmospheric Release Advisory Center (NARAC)
- DOE Radiological Assistance Program (RAP)
- DOE Radiation Emergency Assistance Center/Training Site (REAC/TS)

The functions and capabilities of these teams are described in the proposed language in § 300.145. These are only some of the federal teams that may provide support for NCP responses. Additional teams may be described in other guidance and reference documents for use by OSCs and Remedial Project Managers (RPMs). Therefore, Figure 1a would also be revised to add a box that says "Others" in this list to be clearer that these are not the only teams available. The order of the teams in Figure 1a would be changed to match the order in which the teams are described in § 300.145.

The diamond in Figure 1a that currently asks "Federal Assistance Required?" would be changed to "Federal Response Required?" This change does not reflect any change in existing NCP authorities. The change is being made to more accurately describe existing NCP authorities. A federal OSC's response to a release or discharge may range from providing assistance (e.g., response support and advice to state and local responders), to directing and overseeing response activities by a responsible party or other entity, to directing a federal response. Similarly, an RPM may direct and oversee a remedial action by another party or direct a federal remedial action. It may not be clear that the word "assistance" was intended to capture all of these possible types of response. This NCP Figure is often used by EPA, USCG, and other NRT agencies when explaining to others how the NCP national response system works, so EPA is proposing this change to better describe existing NCP response authorities.

A new footnote also would be added to Figure 1a. The new footnote would explain that the NRC does not notify RPMs directly of incidents involving their sites. Rather, the NRC notifies the pre-designated OSC, who, in turn, notifies the cognizant RPM.

Original footnotes 1 and 2 in Figure 1a would become footnotes 2 and 3, respectively. The newly numbered

footnote 2 which currently reads "This includes local representation as well" would be changed to "This includes local and tribal representation as well" to correct a previous oversight. Tribal governments may also participate in the command structure.

Figure 1b in § 300.105(e)(1) would be revised to add the following new special teams to the list under "Sources of Input and Guidance to Area Committees," "Government":

- CG-IMAT
- USCG SERT
- EPA CBRN CMAT
- EPA NCERT
- OSHA Response Team
- DOE AMS
- DOE CMHT
- DOE CMRT
- DOE NARAC
- DOE RAP
- DOE REAC/TS
- Others

"Others" would be added to the end of the list to indicate that additional teams not listed in this Figure may be described in other documents. While existing NCP § 300.210(c)(1) states that Area Committees prepare Area Contingency Plans in consultation with certain special teams—the District Response Groups (DRGs), the National Strike Force Coordination Center (NSFCC), and Scientific Support Coordinators (SSCs)—Area Committees may also request assistance from any special team.

The order and the way in which the special teams are listed in Figure 1b would also be revised to be consistent with the order and way in which the special teams would now be listed in Figure 1a, which would follow the order in which the teams would be listed in revised § 300.145. The current special teams lists in Figure 1a and Figure 1b are slightly different and this change in Figure 1b is intended to avoid any confusion this difference may have caused.

The RRT section of Figure 1b would also be revised. The box that currently says "State(s)" would be revised to say "State(s)/Tribe(s)" to correct a previous oversight. As stated in existing NCP §§ 300.115(d) and (h) and § 300.180, tribal governments may also participate on RRTs.

The footnote to "RRT" on Figure 1b (indicated by an asterisk) would be revised to change "Standard Federal Regions" to "EPA Regions." The wording of § 300.105(e)(2) also would be revised to change "standard federal regional boundaries" to "EPA regional boundaries." In addition, the title of Figure 2 in § 300.105(e)(2) would be

revised to change “Standard Regional Boundaries for Ten Regions” to “EPA Regional Boundaries for Ten Regions.” These three revisions reflect a change made by the Office of Management and Budget (OMB). The ten standard federal regions were originally established by OMB Circular A-105, “Standard Federal Regions,” in April, 1974, and were required for all federal agencies. In 1995, OMB determined that a strict regional structure for all federal agencies was inefficient and unnecessary and rescinded the Circular (60 FR 15171, March 22, 1995). While this regional structure is no longer “standard” for all federal agencies, EPA still uses these original boundaries for its current regional structure, and these boundaries are still used to delineate RRT boundaries.

Figure 2 in § 300.105(e)(2) also would be corrected to change the current Region “V1” designation to “VI.” In addition, a footnote would be added to Figure 2 to describe the geographic boundaries of the RRTs.

#### *G. Regional Response Teams (Section 300.115)*

The existing sentence in § 300.115(j)(4)(v) that says RRTs may submit pollution reports to the NRC would be deleted because it is an outdated federal practice that is no longer followed or needed. OSC pollution reports are the key situation reports describing the status of NCP removal actions. These OSC reports are sent or made electronically available to RRTs and the NRT as needed when those teams are activated for an incident, rather than to the NRC. The RRTs and NRTs are the appropriate organizations to receive these reports when needed.

The term “Regional Response Center” in § 300.115(j)(5) would be changed to “Regional Emergency Operations Center” to use terminology for such centers that is more common in incident management systems, again, to aid responders in communicating and working together. This change supports the objectives of the NRF and NIMS for greater consistency in national incident management systems. The last sentence in § 300.115(j)(5) would be further revised by changing the word “provided” to “identified.”

The term “pollution reports” in § 300.115(j)(8) would be changed to “situation reports” to be consistent with DHS and NRF terminology for the periodic reports that describe incident response status and activities. The term “situation report” is also a more accurate description of the contents of

these reports and is therefore a more user-friendly name for the reports.

#### *H. Notification and Communications (Section 300.125)*

Changes are being proposed to § 300.125(a) and (b) to clarify the language, and to clarify the role and operation of the NRC. Language would be added to paragraph (a) to explain that the NRC also distributes notifications to state and tribal government agencies that have established a written agreement or understanding with the NRC. This is a current practice by the NRC; the language would be modified to better reflect current practice.

Paragraph (b) would be revised to change “The Commandant, USCG” to “The agencies that provide the NRT Chair and Vice Chair.” This change better reflects that both EPA and USCG provide significant support for NRC operations.

A sentence would be added to paragraph (b) to explain that the Director of the NRC is responsible for its operation and management. This does not represent a change in who manages the NRC; it simply helps to distinguish the role of the NRT Chair and Vice Chair from that of the Director and may be helpful information for members of NRT agencies who may need to work with the NRC.

#### *I. Determination To Initiate Response and Special Conditions (Section 300.130)*

The first three sentences in paragraph (f), and all of paragraphs (h) and (i), in § 300.130 would be deleted and replaced with a note that discusses the NRF. Current paragraphs (f), (h), and (i) refer to the Federal Radiological Emergency Response Plan (FRERP) and FRP. The FRERP described how federal radiological responses were conducted, and the FRP described how federal assistance was provided under the Stafford Act. The FRERP and FRP are no longer in effect. Both plans have been replaced by the NRF and supporting documents (e.g., annexes, federal interagency operational plans). Therefore, a note would be added to § 300.130 to refer to the NRF and supporting documents. As explained earlier in this preamble, the NRF is a guide issued by DHS under the authority of the HSA, PKEMRA, the Stafford Act, and HSPD-5. It is not intended to alter or impede other existing federal authorities, such as CERCLA and the CWA.

The NRF and supporting documents describe how the NCP may be used for radiological releases and how the NCP relates to Stafford Act assistance. The

NCP serves as an operational supplement to the NRF. As explained in this preamble under Subpart A, § 300.3, for some NCP responses, additional procedures under the NRF and supporting documents may apply. When additional NRF procedures are activated for an NCP response, the NCP response will follow the appropriate procedures of both the NCP and NRF.

The existing paragraph (f) refers to the FRERP as the applicable plan for coordinating some federal radiological responses. The FRERP has been replaced with the NRF and its supporting documents, with most of its provisions located in an annex called the Nuclear/Radiological Incident Annex. Most radiological incidents that historically have been carried out under the NCP will continue to be handled under the NCP alone, but when the Nuclear/Radiological Incident Annex is activated for an NCP response, NCP lead and support agencies will conduct their NCP activities consistent with the Nuclear/Radiological Incident Annex. When the Annex is activated for a response to which the NCP also applies, the OSC continues to carry out OSC responsibilities under the NCP, but coordinates those activities with NRF activities as described in the Nuclear/Radiological Incident Annex. For example, under the Annex, the Secretary of DHS may coordinate a federal NCP response to a radiological release under presidential directive. The Annex also describes some additional specific federal response assets that are not listed in the NCP but may be requested by the OSC to assist with a federal NCP response to a radiological release, such as the Advisory Team for Environment, Food, and Health.

The existing fourth sentence in paragraph (f), which is a paraphrase of a portion of the CERCLA definition of release in 42 U.S.C. 9601(22)(C), would be deleted and replaced with the exact statutory language for additional clarity.

The federal government may also provide assistance for disasters and emergencies under the Stafford Act. Existing paragraphs (h) and (i) in § 300.130 refer to the Stafford Act and activation of the FRP to provide federal assistance under the Stafford Act. The FRP has been replaced by the NRF and supporting documents, so those paragraphs are being replaced with a note that discusses the NRF.

If an incident is of such severity and magnitude that effective response is beyond the capabilities of the state and local governments and/or federally recognized Indian tribal governments, the President may, under the Stafford Act, act upon a request by the governor



or Chief Executive of an affected Indian tribal government and declare a major disaster or emergency. In certain circumstances, the President may declare an emergency without a request from a governor or Chief Executive when the primary responsibility for response rests with the United States because the emergency involves a subject area for which the United States has exclusive or preeminent responsibility and authority under the Constitution or laws of the United States.

In the event of a declaration of a major disaster or emergency by the President under the Stafford Act, FEMA coordinates the overall federal response and the President appoints a Federal Coordinating Officer (FCO) for each affected state or territory to coordinate federal disaster assistance activities. Delivery of federal assistance for Stafford Act responses is facilitated through annexes to the NRF called Emergency Support Functions (ESFs).

EPA and/or USCG may be requested to provide support to address oil and hazardous materials releases under the ESF #10—Oil and Hazardous Materials Response Annex, which further describes how EPA and USCG OSCs and other EPA and USCG personnel would coordinate their response actions with the FCO and FEMA. In general, EPA and USCG OSCs respond at the on-site level to carry out actions to address oil and hazardous materials releases. EPA and USCG also provide ESF #10 representatives to FEMA and other coordination centers as needed, such as the FEMA Joint Field Office(s), Regional Response Coordination Center(s), and National Response Coordination Center. RRTs and the NRT may also be activated to provide support to the OSC for the ESF #10 response. EPA and USCG OSCs also maintain the authority to respond under the NCP if necessary. In this case, coordination with the FCO and FEMA would still occur as described above.

It is important to note that the NRF states that nothing in the NRF is intended to alter or impede the ability of any federal government department or agency to carry out its authorities or meet its responsibilities under applicable laws, executive orders, and directives.

Paragraph (g) in § 300.130 also would be deleted. Paragraph (g) refers to a Memorandum of Understanding (MOU) between the Department of Defense (DOD), DOE, and FEMA. While the MOU is still in effect, the signatory agencies agreed it is not necessary to reference this MOU in the NCP.

#### *J. Response Operations (Section 300.135)*

Paragraph (e) would be revised to delete “and NSFCC” because the USCG believes this is an unnecessary burden on OSCs and RPMs during a response.

The phrase “pollution reports” would be changed to “situation reports” in paragraph (m) to be more consistent with terminology used for such status reports under the NRF. This change would also be consistent with the change from “pollution reports” to “situation reports” proposed in § 300.115(j)(8).

#### *K. Special Teams and Other Assistance Available to OSCs/RPMs (Section 300.145)*

Some of the descriptions of existing special teams would be updated or clarified. In paragraph (b)(4), the title “Director, Emergency Response Division” would be changed to “Chief, Environmental Response Team” to address a reorganization in EPA headquarters. The description of EPA’s Radiological Emergency Response Team (RERT) in paragraph (f) would be divided into two separate subparagraphs and updated. EPA would make minor changes to the activation methods for all of the EPA special teams in this section, including EPA Scientific Support Coordinators (SSCs), to make the activation methods consistent across the EPA teams. Each EPA special team would be able to be contacted via: The EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or EPA manager of the team.

Several additional special teams or resources would be added to the list of assets available to assist OSCs and RPMs. Some of these are new resources, while some were existing resources that were not previously listed in the NCP. Descriptions of the following resources would be added to new paragraphs (i) through (n) of § 300.145:

- CG-IMAT
- USCG SERT
- EPA CBRN CMAT
- EPA NCERT
- OSHA Response Team
- DOE AMS
- DOE CMHT
- DOE CMRT
- DOE NARAC
- DOE RAP
- DOE REAC/TS

The proposed language in § 300.145 paragraphs (i) through (n) describes the capabilities of these teams. Additional federal teams that can support NCP responses may be described in other guidance and reference documents.

Paragraph (e) would also be modified to add the USCG SERT to the list of resources that OSCs/RPMs may contact for assistance with marine salvage operations.

#### *L. Public Information and Community Relations (Section 300.155)*

The acronym “(JIC)” would be added after “Joint Information Center” in paragraph (a).

In paragraph (b), the term “on-scene news office” would be changed to “JIC” to make it consistent with the existing reference to the JIC in paragraph (a) and with NIMS. Under NIMS, a JIC coordinates incident-related public information activities, including acting as the central point of contact for the news media near the scene of an incident. Language would also be added noting that the federal OSC/RPM consults with other appropriate response organizations in locating the JIC to reflect actual practice. “On-scene” would be replaced by “near the location of the incident” to allow flexibility to establish the JIC in a safe location with appropriate support capabilities. The word “federal” would be deleted, as well as a sentence about the facility being headed by a representative of the lead agency, to be consistent with the purpose of a JIC established under the NCP, which is to coordinate public information activities at the tactical level across multi-jurisdictional responding agencies. The JIC would be headed by a single Public Information Officer, who may appoint as many assistants (Assistant Public Information Officers or JIC Specialists) as necessary and the assistants may represent assisting agencies, jurisdictions, and/or other response partners.

A note would be added to § 300.155 that explains that additional NRF public information procedures may be activated and implemented for an NCP response. The NRF contains additional procedures for coordinating federal public information activities in the Emergency Support Function (ESF) #15—External Affairs Annex and supporting documents, which also would be followed as appropriate when ESF #15 is activated for an NCP response. For example, while a JIC may be established by the OSC and other incident commanders near the incident scene under NIMS for an NCP removal action, if the ESF #15 Annex is also activated, the federal government may also establish a national-level JIC. The national-level JIC would coordinate its activities with the local JIC and any other JICs established for the incident. Other ESF #15 communications mechanisms may also be used, such as



the State Incident Communications Conference Line (SICCL) and Private Sector Incident Communications Conference Line (PICCL). Again, it is expected that when it does occur, an ESF #15 activation would be for an NCP removal action rather than for a remedial action. Note that EPA is not taking comment on the NRF public affairs procedures, only on the NCP changes to align with those procedures.

*M. OSC After Action Reports (Section 300.165)*

The term “OSC report” would be expanded to “OSC after action report” in the title of § 300.165 and in paragraphs (a) and (b) of the section to be more consistent with terminology commonly used in incident management systems for such post-incident reports. This change supports the objectives of the NRF and NIMS for greater consistency in national incident management systems.

*N. Federal Agency Participation (Section 300.170)*

A sentence would be added to the introductory paragraph of § 300.170 to recognize that some NRT agencies also may have specific land management laws, policies, and regulations that could inform or affect NCP response actions on federal lands managed by those agencies. For example, proposed § 300.175(b)(9)(i) describes the authority of the DOI USFWS to authorize entry to, and activity on, refuge system lands. The new sentence in § 300.170 would not be a new requirement placed on NCP response actions; it is merely a clarification of roles and authorities that NRT agencies already have. In the next sentence in that paragraph, the phrase “of these agencies” would be deleted because it is repetitive and not needed.

The introductory paragraph in § 300.170 currently uses the word “duties” in each of the three sentences in that paragraph. The proposed rule would delete the word “duties” in these three sentences and replace it with the phrase “certain authorities and responsibilities.” The purpose of this change is to conform the language in the introductory paragraph of § 300.170 with the relevant language in the remainder of § 300.170 and with the title of § 300.175 and the language in § 300.175(a).

Paragraph (b)(1) would be revised to delete the phrase “the Secretary of” because it is an unnecessary level of detail and does not reflect the real intention of paragraph (b)(1), which is to make information available to NRT members, not just “the Secretary.” This is parallel to the intention in paragraph

(b)(1) of making information available to RRTs and Area Committees. (In any case, the NRT does not currently have a “Secretary”; it has an Executive Director. Federal agencies typically provide information to the NRT Executive Director for subsequent distribution to NRT members.)

*O. Federal Agencies; Additional Responsibilities and Assistance (Section 300.175)*

Like the introduction to § 300.170, paragraph (a) in § 300.175 would be modified to recognize that some NRT agencies also may have specific land management laws, policies, and regulations that could inform or affect NCP response actions on federal lands managed by those agencies. Again, this is not a new requirement being placed on NCP response actions; it is merely a clarification of roles and authorities these agencies already had.

Paragraph (b) of § 300.175 would be revised to update and clarify the current responsibilities, organizations, and capabilities of all of the federal agencies listed in paragraph (b), as described in the proposed language.

These revisions include updating the descriptions of USCG and FEMA to show that they are part of DHS. The DHS was established in November 2002 by the passage of the HSA. USCG and FEMA were integrated into the DHS at that time. DHS develops and coordinates the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks, major disasters, and other emergencies. DHS coordinates collection and analysis of threat information and domestic activities of terrorists or terrorist groups. DHS coordinates federal resources used in the prevention of, preparation for, response to, or recovery from terrorist attacks, major disasters, or other emergencies within the United States in accordance with its authorities. DHS, through FEMA, administers the NRF and NIMS. DHS and FEMA work with federal, state, tribal and local agencies and private entities in performing these functions.

In addition to USCG and FEMA, the DHS organization includes components responsible for policy, infrastructure protection, intelligence and analysis, domestic nuclear detection, science and technology, customs and border protection, immigration and customs enforcement, and transportation security.

In paragraph (b)(5), which describes DOE’s roles and capabilities, the reference to the “FRERP” would be deleted because the FRERP was

replaced by the NRF and supporting documents. However, it is not necessary to reference the NRF in this paragraph because DOE can provide support and assistance for NCP responses directly as a member of the NRT, without going through the NRF.

Federal agencies described in § 300.175 may have additional roles and responsibilities, as outlined in the NRF and supporting documents, for incidents that are managed under the NRF.

*P. Planning and Coordination Structures (Section 300.205)*

Figure 4, under paragraph (g) in § 300.205, would be revised to change the current reference to the “Federal Response Plan (FRP)” to the “National Response Framework (NRF)” because the NRF has replaced the FRP. A dotted line would be added between the NRF and the Area Contingency Plans to reflect an additional point of coordination between the two. A footnote would be added to “Facility Response Plan” and “Vessel Response Plan” that would refer readers to § 300.211 for examples of facility and vessel response plans.

*Q. OPA Facility and Vessel Response Plans (Section 300.211)*

A technical correction would be made to paragraph (f) of § 300.211. Paragraph (f) currently states that the federal regulations that implement the response plan requirements under CWA section 311(j)(5) for rolling stock are codified in “49 CFR part 106 et al.” These regulations are found in 49 CFR part 130, so paragraph (f) would be changed to refer to 49 CFR part 130.

A table would be added to the end of § 300.211 that would summarize the information on response plan regulations in paragraphs (a) through (f) of that section for easier readability. The table would also identify the federal department or agency that issues those regulations, and the names of the response plans under those regulations, to provide readers with additional useful information. The last sentence in the introductory paragraph to § 300.211 would be revised to add the phrase “and summarized in Table 1” to introduce the new table.

*R. Spills of National Significance (Section 300.323)*

Section 300.323(a) would be amended to add the word “by” before “the Commandant of the USCG” for clarity. The phrase “spill of national significance” would also be deleted from paragraph (a), and only the acronym “SONS” used, because the

acronym would now be spelled out earlier in the NCP in the new text that is proposed to be added to the USCG description in § 300.175(b)(1). Additionally, a note would be added after § 300.323(c) to clarify that the EPA Administrator and USCG Commandant have the authority to declare an oil spill as a SONS under the NCP.

The note after § 300.323(c) would be added to highlight the distinction between the EPA inland zone and USCG coastal zone authority under the NCP to declare a SONS, and any declaration or determination that may be made by other federal officials or other departments and agencies under the NRF. This would include any determinations that may be made by DHS to implement HSPD-5 authorities. For example, under HSPD-5, the Secretary of DHS has the authority to assume overall coordination responsibilities for a federal response to an incident. The Secretary may or may not assume overall federal coordination responsibilities under HSPD-5 for an incident that EPA or USCG declare as a SONS under the NCP. That decision is made by the Secretary. The EPA Administrator and USCG Commandant maintain the authority to designate an incident as a SONS under the NCP. (The USCG Commandant, subject to the Secretary's oversight, direction, and guidance, may declare a SONS and designate a National Incident Commander. See Commandant Instruction 16465.6, Spill of National Significance (SONS) Response Management, May 23, 2012.) If the Secretary assumes overall coordination responsibilities for the federal response to a SONS under HSPD-5, or activates NRF elements in response to a request for support from the EPA or USCG without assuming overall coordination responsibilities, the response is conducted concurrently under the appropriate NCP and NRF procedures.

The Secretary may make a determination that it is not necessary to assume responsibility for coordinating the federal response to a SONS under HSPD-5. Further, EPA and USCG may determine that adequate federal resources are being provided under NCP coordination mechanisms for the response and there is no need to request DHS to activate additional elements of the NRF. In that case, the SONS response may be carried out under the NCP without activating additional federal NRF elements (such as Emergency Support Functions). EPA or USCG, however, would keep DHS informed of its response activities as appropriate to support DHS situational awareness.

It is also possible that the President could make a Stafford Act declaration for a SONS, or that the President could make a Stafford Act declaration for a broader incident that contributes to causing a SONS, such as a catastrophic earthquake that results in widespread impacts, including a SONS. (See the preamble under Subpart B, § 300.130 for a more detailed explanation of the Stafford Act.) In such cases, the SONS response would be carried out under the appropriate NCP and NRF procedures.

#### *S. Discovery or Notification (Section 300.405)*

This rule proposes a clarification to § 300.405(d). Paragraph (d) currently says that when people contact the NRC to report a release, the NRC will generally need information that will help to characterize the release. Paragraph (d) says this information “will include, but is not limited to. . .” and goes on to provide a list of examples of the types of information the NRC will need. The current list of examples includes the “possible source of the release.” The proposed revisions would clarify paragraph (d) to state “possible source and cause of the release.” The NRC already collects information regarding the cause of the release, even though “cause” is not currently specifically cited as an example in § 300.405(d), so collecting “cause” information would not be a new requirement. The proposed revisions would add “cause” as another specific example in the rule language to better prepare people who notify the NRC that they will be asked for this information. As already stated in § 300.405(d), however, reporting should not be delayed due to not having complete notification information.

Paragraph (f)(3) currently states that if radiological substances are present in a release, the OSC should notify the EPA Radiological Response Coordinator for evaluation and assistance directly or via the NRC, consistent with §§ 300.130(e) and 300.145(f). Paragraph (f)(3) would be revised to: (1) Replace “EPA Radiological Response Coordinator” with “RERT”; (2) change the methods for notification from “directly or via the NRC” to “the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or on-duty EPA RERT Team Commander in the Office of Radiation and Indoor Air”; and (3) delete the reference to § 300.130(e). “EPA Radiological Response Coordinator” would be replaced with “RERT” because EPA no longer has a position called a “Radiological Response Coordinator.” The notification methods would be changed to be

consistent with the changes to notification methods being proposed to the RERT description in § 300.145(f). The reference to § 300.130(e) would be deleted because it is no longer appropriate.

The reference to § 300.130(e) is no longer appropriate because: (1) The existing NCP reference to § 300.130(e) is incorrect; it was intended to be a reference to § 300.130(f) instead; and (2) the FRERP that is cited in the existing § 300.130(f) has been replaced by the NRF, including the Nuclear/Radiological Incident Annex, and the NRF does not contain specific language about an OSC contacting the RERT for assistance with NCP removal actions involving a radioactive substance. Paragraph 300.130(e) in the existing NCP refers to discharges originating in the Outer Continental Shelf, which was not the original intention for that reference in § 300.405(f)(3). The original intention in § 300.405(f)(3) had been to refer to § 300.130(f), which refers to the old FRERP in the existing NCP. The NCP final rule issued on March 8, 1990, correctly cited § 300.130(f) in § 300.405(f)(3) (55 FR 8842, March 8, 1990). However, when other revisions to the NCP were published on September 15, 1994, the § 300.130(f) citation in § 300.405 was erroneously changed to § 300.130(e) (59 FR 47448, September 15, 1994). So, the existing NCP reference to § 300.130(e) in § 300.405(f)(3) is an inadvertent error; it should have been a reference to § 300.130(f), which references the FRERP in the existing NCP. However, as explained earlier in this preamble under the changes to § 300.130, the FRERP has been replaced by the NRF and supporting documents, including the Nuclear/Radiological Incident Annex. The NRF and Nuclear/Radiological Incident Annex do not contain specific language stating that an OSC should notify the EPA Radiological Response Coordinator (or the RERT) for assistance with NCP removal actions involving a radioactive substance, so it would not be appropriate to cite the NRF here in § 300.405(f)(3).

#### *T. Removal Action (Section 300.415)*

Paragraph (f) of § 300.415 would be revised to change “FEMA” to “EPA” and “shall” to “may.” FEMA was delegated the authority to conduct temporary relocations for CERCLA responses under Executive Order 12580, Section 2(c), but FEMA re-delegated that authority to EPA in 1990. The proposed revisions, therefore, explain that the NCP lead agency may ask EPA to conduct a temporary relocation or request that state or local officials conduct an evacuation, where necessary

to protect public health or welfare. (If another federal agency is the lead agency for a CERCLA removal action and requests EPA to conduct a temporary relocation using CERCLA funds, Section 9(j) of Executive Order 12580 provides that the CERCLA fund must be reimbursed by that agency.) The change from “shall” to “may” would provide the lead agency with more flexibility to determine the appropriate action.

## V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2050–0046. EPA is not revising the existing notification requirements that are contained in 40 CFR part 302; it is merely clarifying in § 300.405(d) that the NRC asks callers about both the source and cause of a release, if known. The NRC already collects information regarding the cause of the release, even though “cause” is not currently cited as an example in § 300.405(d), so collecting “cause” information would not be a new requirement. The proposed revisions would add “cause” as another specific example in the rule language to better prepare people who notify the NRC that they will be asked for this information.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule

adds no new burden on small entities. EPA is not revising the existing NRC notification requirements that are contained in 40 CFR part 302; it is merely clarifying in § 300.405(d) that the NRC asks callers about both the source and cause of the release, if known. The NRC already collects information regarding the cause of the release, even though “cause” is not currently cited as an example in § 300.405(d), so collecting “cause” information would not be a new requirement. The proposed revisions would add “cause” as another specific example in the rule language to better prepare people who notify the NRC that they will be asked for this information. We have therefore concluded that this action will add no new regulatory burden on all directly regulated small entities.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. That is, this action proposes changes that align the NCP with the NRF and NIMS and updates the descriptions and capabilities of the NRT federal agencies and how they operating, including the establishment of DHS.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this action. Although this action does not have impacts on tribes, it does propose to add language that would reflect existing NCP practices regarding coordination with tribes for activities occurring on tribal lands, such as adding language to NCP Figures to show that tribal governments may

participate in the incident command structure and on RRTs.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not affect the level of protection provided to human health or the environment. EPA is proposing an alignment of the NCP with the DHS’s NRF and NIMS and an update of federal department and agency organizations and capabilities. These proposed changes are primarily administrative and procedural in nature. They look to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for and respond to domestic incidents, regardless of cause, size, or complexity, and to more accurately describe federal department and agency capabilities.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund,

Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 7, 2016.

Gina McCarthy, Administrator.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. Revise the authority citation for part 300 to read as follows:

Authority: 33 U.S.C. 1321; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Revise § 300.2 to read as follows:

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Public Law 101–380. In Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

3. Amend § 300.3 by:

- a. Adding a note to paragraph (a); and
b. Removing paragraph (d).

The addition reads as follows:

§ 300.3 Scope.

\* \* \* \* \*

Note to paragraph (a): The National Response Framework (NRF) is issued by the Department of Homeland Security (DHS) and followed by federal departments and agencies. When NRF procedures are activated for an NCP response, the response is conducted concurrently under the appropriate NCP and NRF procedures.

\* \* \* \* \*

4. Amend § 300.4 by:

- a. In paragraph (a) by:
i. Revising the term “CDC”;
ii. Adding in alphabetical order the terms “DHS” and “PHMSA”;

- iii. Removing the term “RSPA”; and
iv. Adding the term “USFWS”; and
b. In paragraph (b) by:
i. Adding in alphabetical order the terms “AMS”, “CBRN CMAT”, “CG-IMAT”, “CMHT”, “CMRT”;
ii. Removing the terms “ESF”, “FCO”, “FRERP”;
iii. Adding in alphabetical order the term “FRMAC”;
iv. Removing the term “FRP”;
v. Adding in alphabetical order the terms “JIC”, “NARAC”, “NCERT”, “NIMS”, “NRF”, “RAP”, “REAC/TS”, “REOC”;
vi. Removing the term “RRC”;
vii. Adding in alphabetical order the term “SERT”; and
viii. Removing the term “USFWS”.
The additions and revisions read as follows:

§ 300.4 Abbreviations.

- (a) \* \* \*
CDC Centers for Disease Control and Prevention
DHS Department of Homeland Security
PHMSA Pipeline and Hazardous Materials Safety Administration
USFWS United States Fish and Wildlife Service
(b) \* \* \*
AMS Aerial Measuring System
CBRN CMAT Chemical, Biological, Radiological, Nuclear Consequence Management Advisory Team
CG-IMAT Coast Guard Incident Management Assistance Team
CMHT Consequence Management Home Team
CMRT Consequence Management Response Team
FRMAC Federal Radiological Monitoring and Assessment Center
JIC Joint Information Center
NARAC National Atmospheric Release Advisory Center
NCERT National Criminal Enforcement Response Team
NIMS National Incident Management System
NRF National Response Framework

RAP Radiological Assistance Program
\* \* \* \* \*

REAC/TS Radiation Emergency Assistance Center/Training Site
REOC Regional Emergency Operations Center
\* \* \* \* \*

SERT Salvage Engineering Response Team
\* \* \* \* \*

- 5. Amend § 300.5 by:
a. Removing the definitions “Federal Radiological Emergency Response Plan” and “Federal Response Plan”;
b. Adding in alphabetical order definitions for “National Incident Management System” and “National Response Framework”;
c. Revising the definitions “National response system” and “Spill of National Significance”; and
d. Adding a note to the end of § 300.5.
The additions and revisions read as follows:

§ 300.5 Definitions.

\* \* \* \* \*
National Incident Management System (NIMS) is a consistent nationwide template for the management of domestic incidents, issued by the DHS under the authority of the Homeland Security Act of 2002 (HSA), Post-Katrina Emergency Management Reform Act (PKEMRA), Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and Homeland Security Presidential Directive 5 (HSPD–5). NIMS provides a systematic, proactive approach to guide government departments and agencies at all levels, nongovernmental organizations, and the private sector to work together seamlessly to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, in order to reduce the loss of life or property and harm to the environment. To provide for interoperability and compatibility among responding organizations, the NIMS includes a core set of concepts, principles, procedures, organizational processes, and terminology. These include the incident command system; multi-agency coordination systems; training; identification and management of resources; qualification and certification; and the collection, tracking, and reporting of incident information and incident resources.
\* \* \* \* \*

National Response Framework (NRF) is a guide to how the Nation conducts all-hazards response, issued by the DHS under the authority of the HSA,

PKEMRA, Stafford Act, and HSPD-5. The NRF documents the key response principles, roles and responsibilities, and coordinating structures that organize national response. It describes how communities, all levels of government, and private-sector and nongovernmental partners apply these principles for a coordinated, effective national response.

*National Response System* (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC/RPM. The NRS is composed of the NRT, RRTs, OSC/RPM, Area Committees, and Special Teams and related support entities. The NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge or release.

\* \* \* \* \*

*Spill of National Significance* (SONS) means a spill of oil that due to its severity, size, location, actual or

potential impact on the public health and welfare or the environment, or the necessary response effort, as determined by the EPA Administrator or by the Commandant of the USCG, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge.

\* \* \* \* \*

**Note to § 300.5:**

1. *Emergency Support Function #10—Oil and Hazardous Materials Response Annex* is an annex to the NRF. It describes how federal support for environmental response to an actual or potential discharge and/or release of oil or hazardous materials is provided under the NRF when the annex is activated.

2. *Emergency Support Function #15—External Affairs Annex* is an annex to the NRF. It describes how federal support for external affairs is provided under the NRF when the annex is activated. It includes components for

public affairs, congressional affairs, intergovernmental affairs, and communications with the private sector.

■ 6. Amend § 300.105 by:

■ a. Adding a note to paragraph (d);

■ b. Revising paragraph (e)(1) and Figures 1a and 1b; and

■ c. Revising paragraph (e)(2) and Figure 2.

The additions and revisions read as follows:

**§ 300.105 General organization concepts.**

\* \* \* \* \*

(d) \* \* \*

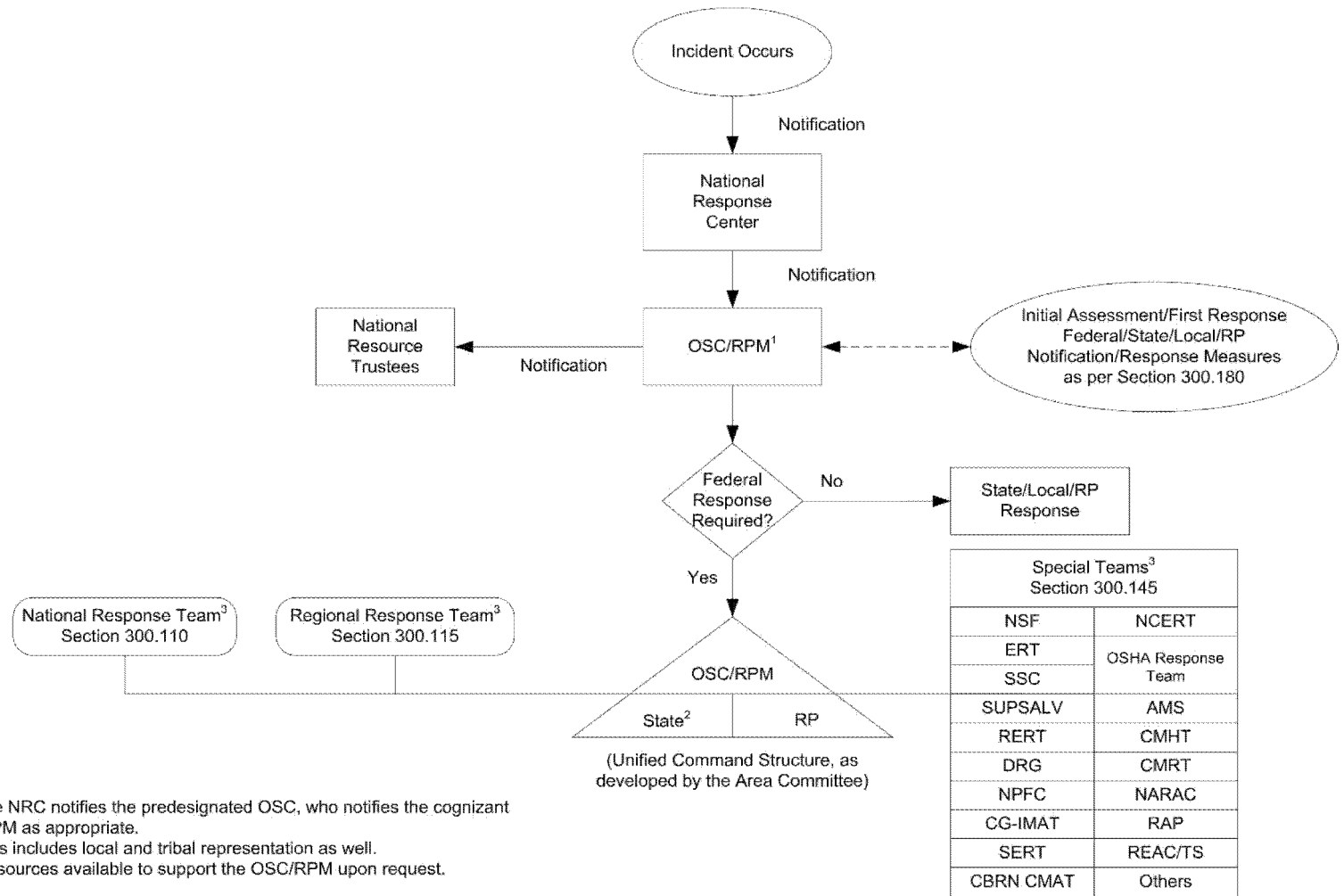
**Note to paragraph (d):** The National Incident Management System (NIMS) is issued by DHS. Federal departments and agencies follow NIMS and have adopted it for appropriate use in NCP emergency removal actions.

(e)(1) The organizational concepts of the National Response System (NRS) are depicted in the following Figures 1a and 1b:

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Figure 1a

National Response System Concepts: Response

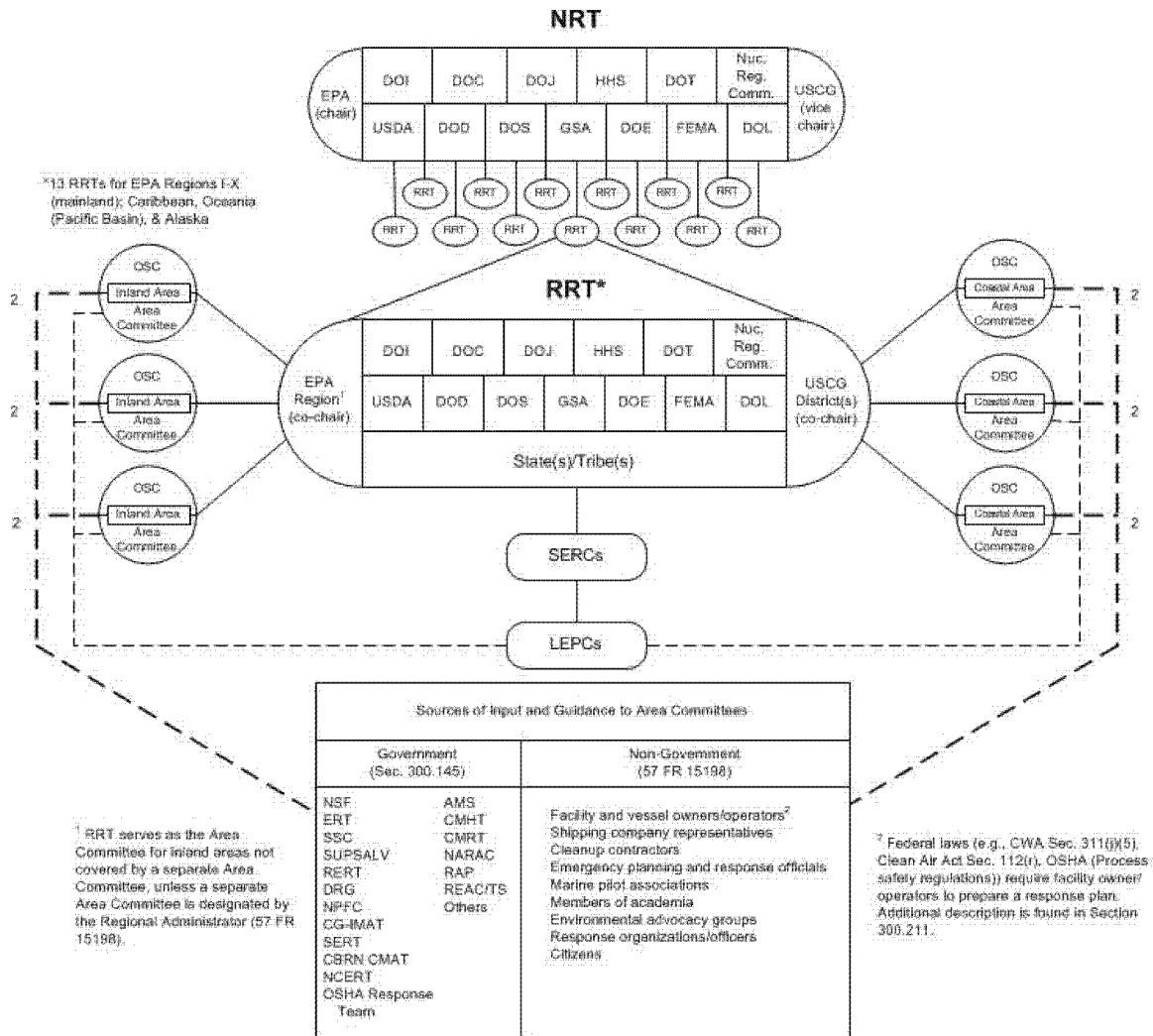


<sup>1</sup> The NRC notifies the predesignated OSC, who notifies the cognizant RPM as appropriate.

<sup>2</sup> This includes local and tribal representation as well.

<sup>3</sup> Resources available to support the OSC/RPM upon request.

Figure 1b  
National Response System Concepts: Planning



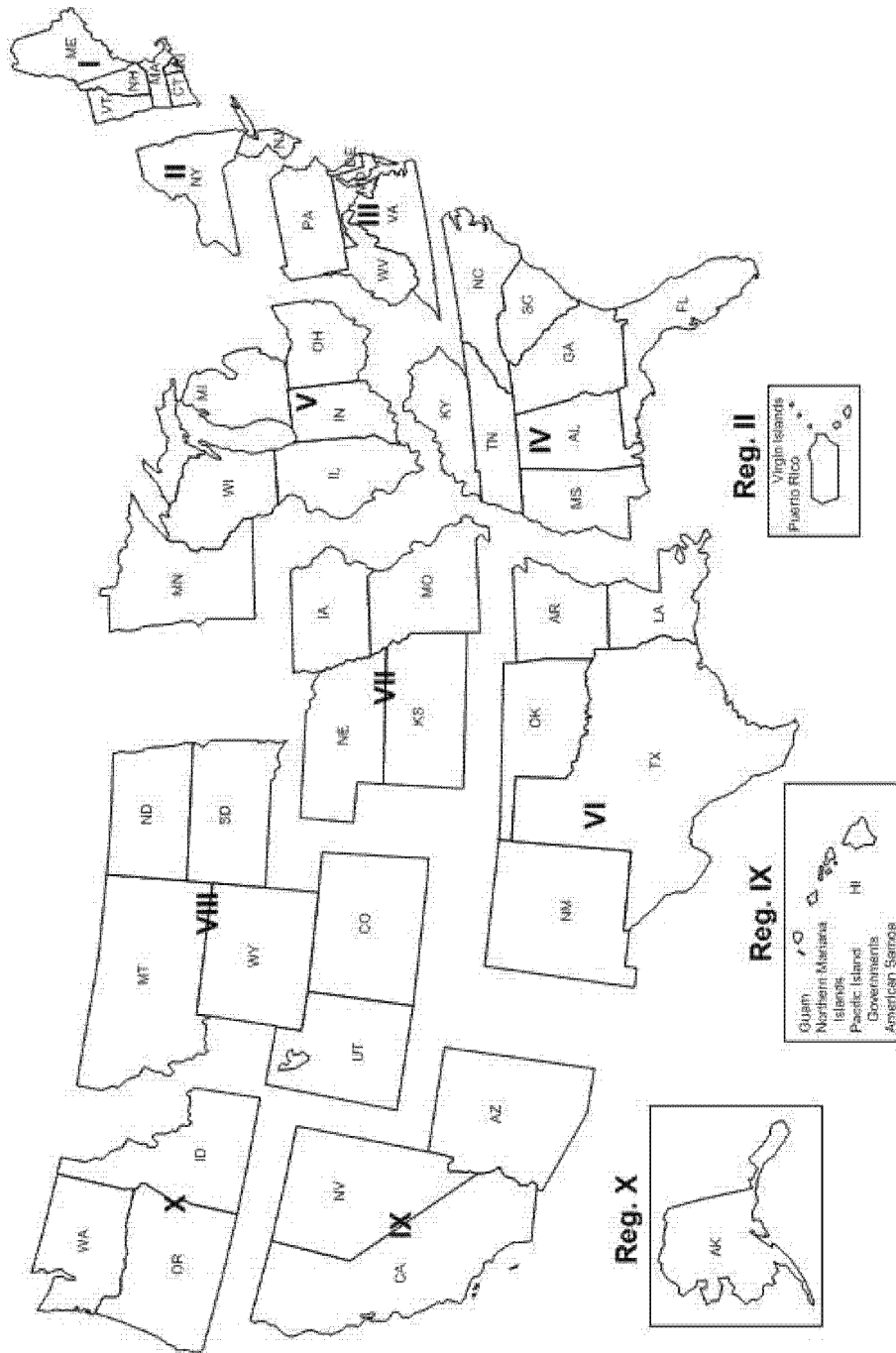
(2) The EPA regional boundaries (which are also the geographic areas of

responsibility for the RRTs) are shown in Figure 2:

\* \* \* \* \*

Figure 2

EPA Regional Boundaries for Ten Regions<sup>1</sup>



<sup>1</sup>Geographic boundaries for 13 RRTs are EPA Regions I-X (mainland); Caribbean; Oceania (Pacific Basin); & Alaska

■ 7. Amend § 300.115 by revising paragraphs (j)(4)(iii) and (iv), removing paragraph (j)(4)(v), and revising paragraphs (j)(5), and (j)(8) to read as follows:

**§ 300.115 Regional Response Teams.**

\* \* \* \* \*

(j) \* \* \*

(4) \* \* \*

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT; and

(iv) If the circumstances warrant, make recommendations to the regional

or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated.

(5) At the regional level, a Regional Emergency Operations Center (REOC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each REOC should be identified in the RCP.

\* \* \* \* \*

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of situation reports or

other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

\* \* \* \* \*

■ 8. Amend § 300.125 by revising paragraphs (a) and (b) to read as follows:

**§ 300.125 Notification and communications.**

(a) The National Response Center (NRC) is a component of and serves the National Response System, and is located at USCG Headquarters. It serves



as a national communications center, continuously manned, for handling activities related to response actions. The NRC provides communications support for the NRT. The NRC acts as the single point of contact under the NCP for receiving and disseminating reports of pollution incidents. Notice of discharges and releases must be made telephonically through a toll free number or a special local number. (Telecommunication Device for the Deaf (TDD) and collect calls are accepted). (Notification details appear in §§ 300.300 and 300.405.) The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate pre-designated federal OSC. The telephone report is also distributed to any interested NRT member agency, federal entity, or state or tribal government agency that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation.

(b) The agencies that provide the NRT Chair and Vice Chair, in conjunction with other NRT agencies, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC. The operation and management of the NRC is the responsibility of the Director of the NRC.

- \* \* \* \* \*
- 9. Amend § 300.130 as follows:
- a. Revise paragraph (f);
- b. Remove paragraphs (g), (h), and (i); and
- c. Add a note to the end of § 300.130.

**§ 300.130 Determinations to initiate response and special conditions.**

\* \* \* \* \*

(f) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, is excluded from the definition of release in 42 U.S.C. 9601(22)(C).

**Note to § 300.130:** The NRF and supporting documents describe how the NCP, and other federal authorities, may be used to respond to radiological releases. The NRF and supporting documents also describe how the NCP may be used in the event of a declaration of a major disaster or emergency by the President under the Stafford Act. The FEMA coordinates the federal response under the Stafford Act. The NRF and supporting documents,

including the Emergency Support Function #10—Oil and Hazardous Materials Response Annex, describe how NCP response structures and activities integrate with FEMA structures and activities during these responses. The NRF does not alter NCP authorities.

- 10. Amend § 300.135 by revising paragraphs (e) and (m) to read as follows:

**§ 300.135 Response operations.**

\* \* \* \* \*

(e) The OSC/RPM should consult regularly with the RRT, as appropriate, in carrying out the NCP and keep the RRT, as appropriate, informed of activities under the NCP.

\* \* \* \* \*

(m) The OSC shall submit situation reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

- \* \* \* \* \*
  - 11. Amend § 300.145 by:
  - a. Revising paragraph (a) introductory text;
  - b. Removing paragraph (a)(3);
  - c. Revising paragraphs (b)(4), (c)(1), (e), and (f); and
  - d. Adding paragraphs (i) through (n).
- The additions and revisions read as follows:

**§ 300.145 Special teams and other assistance available to OSCs/RPMs.**

(a) The NSF is a special team established by the USCG, including the three USCG Strike Teams and the NSFCC. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

\* \* \* \* \*

(b) \* \* \*

(4) OSC/RPM or RRT requests for ERT support should be made through the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or EPA Headquarters, Chief, Environmental Response Team.

(c) \* \* \*

(1) Generally, SSCs are provided by NOAA in the coastal zone, and by EPA in the inland zone. OSC/RPM requests for SSC support can be made directly to the SSC assigned to the area or to the agency member of the RRT. EPA SSCs can also be requested through the EPA Headquarters Emergency Operations Center or the team-specific EPA point of contact designated in this section for the EPA special team whose type of expertise is needed. NOAA SSCs can

also be requested through NOAA's Office of Response and Restoration. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

\* \* \* \* \*

(e) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request assistance from the USCG Salvage Engineering Response Team (SERT), DOD, the Strike Teams, or commercial salvors as necessary.

(f)(1) The Radiological Emergency Response Team (RERT) is established by EPA in accordance with its radiological disaster and emergency responsibilities. The RERT can provide response and technical assistance to the OSC/RPM for incidents or sites containing radiological hazards. The RERT can provide technical advice and assistance to prevent or minimize threats to public health and the environment; provide advice on protective measures to reduce or minimize radiation exposure; provide assessments of dose; perform site assessment, contamination surveys, monitoring, sampling, laboratory analyses and data assessments to assess and characterize environmental impacts; and provide technical advice and assistance for containment, cleanup, waste management, restoration, and recovery following a radiological incident. The RERT directly supports EPA's participation in the Federal Radiological Monitoring and Assessment Center (FRMAC), when the FRMAC is activated.

(2) The OSC/RPM may request RERT support through the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or on-duty EPA RERT Team Commander in the Office of Radiation and Indoor Air.

\* \* \* \* \*

(i) The U.S. Coast Guard Incident Management Assistance Team (CG-IMAT) is a scalable resource designed to assist federal OSCs by providing highly trained personnel who can assist in: Major incident management activities; ongoing training and qualification of Coast Guardsmen throughout the United States; carrying out exercises which validate plans and procedures and build confidence in capabilities; and, for the Coast Guard in general, the ongoing development of competent and effective management capabilities at Coast Guard

field units. By maintaining this comprehensive functionality, the CG-IMAT has significant in-garrison responsibilities that actively support all-hazard training, exercises, and readiness assessments. The CG-IMAT has four distinct capabilities:

(1) Incident Management Capability—The CG-IMAT is a Type-1 IMAT that can assist operational commanders to successfully manage incidents and events through the deployment of highly trained individuals, four-person Away Teams, 15-person Deployable Elements, or the entire CG-IMAT. The structure provides adaptive force packages to best support the needs of the operational commanders.

(2) Training Support Capability—The CG-IMAT can assist USCG Areas, Districts, Sectors, and Force Readiness Command in the conduct of NIMS training and support ongoing efforts to certify individuals in position-specific qualifications.

(3) Exercise Support Capability—The CG-IMAT can employ specific personnel to assist in the development, training, conduct, and evaluation of exercises.

(4) The Public Information Assist Team (PIAT) is an element of the CG-IMAT that is available to assist federal OSCs to meet the needs for public information during a response or exercise.

(5) For non-USCG federal OSCs, requests for CG-IMAT support can be made through the USCG Headquarters National Command Center. Requests for PIAT assistance can be made through the CG-IMAT or NRC.

(j)(1) The USCG SERT can provide immediate salvage engineering support in response to vessel casualties and emergencies. This includes independent technical evaluation of the situation and assistance in formulating practical and effective solutions.

(2) The SERT can provide expertise in evaluating vessel casualties, reviewing and developing salvage plans, and providing salvage technical assistance directly to the OSC/RPM. The SERT has access to vessel plans and salvage engineering analysis software, and knowledge of commercial vessel construction and stability. The SERT is able to deploy and provide on-site assistance.

(3) The OSC/RPM may request support through the NRC, directly from the SERT, or through the USCG Headquarters National Command Center or USCG Marine Safety Center.

(k)(1) The EPA Chemical, Biological, Radiological, Nuclear Consequence Management Advisory Team (CBRN CMAT) can provide response and

technical assistance for incidents or sites involving chemical, biological, radiological and/or nuclear hazards. Scientific and technical expertise can be provided to the OSC/RPM for all phases of CBRN environmental response, including characterization, decontamination and cleanup, clearance, and waste management. The CBRN CMAT directly supports EPA's participation in the FRMAC, when a FRMAC is activated.

(2) The CBRN CMAT can provide specialized scientific support and technical expertise specifically for characterization, decontamination and cleanup, clearance, and waste management of buildings and building contents, public infrastructure, transportation systems, and outdoor spaces. The CBRN CMAT engages in evaluating, advising, leading, or collaborating on various applied research projects that can support CBRN field response.

(3) The CBRN CMAT maintains technologically advanced response assets and capabilities, including but not limited to, an airborne stand-off chemical and radiological detection, infrared and photographic imagery platform that provides results within minutes, and a mobile laboratory designed to detect chemical warfare agents and toxic industrial chemicals.

(4) The OSC/RPM may request CBRN CMAT assistance through the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or EPA Headquarters, Director, CBRN Consequence Management Advisory Division.

(l)(1) The EPA National Criminal Enforcement Response Team (NCERT) in the Office of Criminal Enforcement, Forensics, and Training supports environmental crime investigations involving chemical, biological, or radiological releases to the environment. The team can also provide specialized law enforcement services in support of the EPA's overall mission to protect human health and the environment.

(2) The NCERT provides specially trained Law Enforcement Officers with all-hazards response capability to collect forensic evidence within contaminated zones and serve as law enforcement liaisons with other law enforcement agencies. The NCERT maintains several strategically placed response platforms that contain safety and forensic equipment to properly process a contaminated crime scene.

(3) The OSC/RPM may request NCERT support through the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or EPA Headquarters, Director, Office of

Criminal Enforcement, Forensics and Training.

(m)(1) The OSHA Response Team can support the OSC/RPM in the area of response worker safety and health. The team can provide safety and health expertise and support for incidents involving toxic industrial chemicals, chemical warfare agents, biological agents, ionizing and non-ionizing radiation, collapsed structures, demolition and other construction-type activities. The team is comprised of certified industrial hygienists, certified health physicists, professional engineers, toxicologists, occupational physicians, and specialized safety experts.

(2) The OSHA Response Team is available to assist OSCs/RPMs in their preparedness and response duties. Requests for support should be made through the NRC, or directly to OSHA's Health Response Team Director, located at OSHA's Salt Lake Technical Center in Sandy, Utah or OSHA's Director, Directorate of Technical Support and Emergency Management located in OSHA's national office.

(n)(1) DOE has the following special teams:

(i) Aerial Measuring System (AMS) can provide a rapid survey of radiation contamination during a radiological emergency by using aircraft equipped to detect radioactive contamination on the ground.

(ii) Consequence Management Home Team (CMHT) can assist field assets in the support of federal, state, tribal, and local response organizations with modeling, radiological operations planning, field monitoring techniques, and the analysis, interpretation and distribution of radiological data. These reach-back capabilities can be activated quickly to support public safety and minimize the health and environmental impact of a nuclear or radiological incident.

(iii) Consequence Management Response Team (CMRT) can provide data collection, assessment, and interpretation for decision makers in the event of a radiological incident.

(iv) National Atmospheric Release Advisory Center (NARAC) can provide near real-time assessment of atmospheric releases for rapid decision-making during an emergency involving a nuclear or radiological release.

(v) Radiation Emergency Assistance Center/Training Site (REAC/TS) can provide reach-back radiation medical assistance or deploy personnel and equipment for direct medical care in support of a radiological emergency. The REAC/TS also conducts robust

radiation medicine training for healthcare providers.

(vi) Radiological Assistance Program (RAP) can provide first response radiological assistance in the detection and identification of radiological and nuclear threats, and responds to events involving the release of radiological materials in the environment.

(2) All DOE teams may be requested through the DOE Watch Office, DOE Headquarters (National Nuclear Security Administration, Office of Emergency Operations). All teams may be requested independently of any other response construct they support. For example, the CMHT, CMRT, or AMS may be requested independent of a request for a Federal Radiological Monitoring and Assessment Center (FRMAC), which those teams normally support as the DOE component of the FRMAC when a FRMAC is activated. Deployed CMRT and RAP teams are typically supported by the CMHT. An OSC/RPM request for a CMRT or RAP team would include the support of the CMHT when DOE determines such CMHT support is needed.

■ 12. Amend § 300.155 by revising paragraphs (a) and (b) and adding a note to the end of § 300.155 to read as follows:

**§ 300.155 Public information and community relations.**

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing, as appropriate, a Joint Information Center (JIC) bringing together resources from federal and state agencies and the responsible party.

(b) A JIC may be established near the location of the incident to coordinate media relations and to issue official information on an incident. The OSC/RPM, in consultation with other response organizations as appropriate, determines the location of the JIC, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and a JIC has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared

through the OSC/RPM. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC/RPM by disseminating information on issues relating to damage assessment activities. Following termination of removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

\* \* \* \* \*

**Note to § 300.155:** NRF procedures for public affairs and external communications, including those in the Emergency Support Function #15—External Affairs Annex, may be activated and implemented in addition to NCP procedures.

■ 13. Revise § 300.165 to read as follows:

**§ 300.165 OSC after action reports.**

(a) As requested by the NRT or RRT, the OSC/RPM shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC after action report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC after action report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

■ 14. Amend § 300.170 by revising the introductory paragraph and paragraph (b)(1) to read as follows:

**§ 300.170 Federal agency participation.**

Federal agencies listed in § 300.175 have certain authorities and responsibilities established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have specific land management laws, policies, and regulations that may inform or affect response actions on federal lands under the jurisdiction, custody, or control of the agency. Some also have certain authorities and responsibilities relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs and ACPs, described in § 300.210, provide for agencies to

coordinate with each other in carrying out these authorities and responsibilities.

\* \* \* \* \*

(b) \* \* \*

(1) Make necessary information available to the NRT, RRTs, Area Committees, and OSCs/RPMs.

\* \* \* \* \*

■ 15. Revise § 300.175 to read as follows:

**§ 300.175 Federal agencies: additional responsibilities and assistance.**

(a) During preparedness planning or in an actual response, various federal agencies may be called upon to provide assistance in their respective areas of expertise, as indicated in paragraph (b) of this section, consistent with agency capabilities and legal authorities, including any federal land management laws, policies, and/or regulations that may inform or affect response actions taken on federally controlled land.

(b) The federal agencies include:

(1) USCG, as provided in 14 U.S.C. 1–3, is an agency in DHS, except when operating as an agency in the United States Navy in time of war. USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone, as described in § 300.120(a)(1). USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, vessel salvage, the manning, operation, and safety of vessels and marine facilities, and vessel environmental pollution control. USCG may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action. USCG manages the Preparedness for Response Exercise Program (PREP) and a Spill of National Significance (SONS) exercise program to test spill response plans at all levels of industry and government. The USCG's NPFC manages the OSLTF.

(2) EPA chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for all inland areas for which an ACP is required under CWA section 311(j) and for discharges and releases occurring in the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on human health and ecological effects of oil discharges or releases of hazardous substances,

pollutants, or contaminants; methods for determining the type and extent of environmental contamination; ecological and human health risk assessment methods; environmental pollution control techniques (*e.g.*, containment, decontamination, removal); and waste management and disposal. Access to EPA's scientific expertise can be facilitated through the EPA Headquarters Emergency Operations Center; the EPA representative to the Science and Technology Committee of the NRT; the EPA Office of Research and Development's Superfund Technical Liaison or Regional Scientists located in EPA Regional offices; the EPA representative to the RRT; or, for EPA special teams, as described in § 300.145. In addition, EPA can provide radiological monitoring and assessment assistance as part of the FRMAC, an interagency entity established under the NRF that may be activated by the lead agency to coordinate all federal environmental radiological monitoring and assessment activities for radiological or nuclear accidents or incidents. EPA augments the DOE-led FRMAC during the initial response (through RERT, CBRN CMAT, and other personnel) and assumes leadership of the FRMAC from DOE at a mutually agreed upon time. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(3) FEMA is an agency in DHS whose mission includes providing guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). The FEMA Protection and National Preparedness Office administers financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability.

(4) DOD has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. In the event of releases that are unrelated to DOD, DOD may, consistent with its operational requirements and upon request of the OSC, provide appropriate support to other federal agencies. In such event, the following components of

DOD may have particular relevance or expertise:

(i) United States Army Corps of Engineers (USACE) can provide design services, construction services, channel maintenance, removal of navigation obstructions, contract formation and administrative services, technical support for responses involving chemical, biological, radiological, or nuclear materials, and assistance in conducting temporary relocations. USACE has discretionary authority in an emergency situation to remove sunken vessels that are located in a federally-maintained navigable channel under 33 U.S.C. 403 and 409. USACE also has limited authority to remove debris from federally-maintained navigable channels and waterways under section 202 of the Water Resources Development Act of 1976 (Public Law 94-587). The USACE Regulatory Program administers Section 10 of the Rivers and Harbors Act of 1899, which requires Department of Army (DA) authorization for work or structures in, over, or under navigable waters of the U.S. or affecting the course, location, or condition of those waters; section 404 of the Clean Water Act, which requires DA authorization for the discharge of dredged or fill material into waters of the U.S., including wetlands; and section 103 of the Marine Protection, Research, and Sanctuaries Act, which requires DA authorization for the transportation of dredged material for ocean disposal.

(ii) The Pentagon office of Joint Director of Military Support allocates DOD resources in response to requests from civil authorities. Such requests for assistance are typically processed and acted upon after a written request via the DOD Executive Secretary.

(iii) U.S. Northern Command is the domestic combatant command which also has responsibility, when directed by the President or Secretary of Defense, to provide support and assistance to civil authorities, including consequence management operations.

(iv) U.S. Navy Supervisor of Salvage (SUPSALV) is the DOD component most knowledgeable and experienced in ship salvage, harbor clearance, towing, oil and hazardous spill response, underwater ship repair, and diving. The U.S. Navy has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents. In addition to the capabilities provided by SUPSALV, DOD may also, consistent with operational commitments, provide

locally deployed Navy oil spill response equipment and operating personnel.

(5) DOE generally provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Radiological assistance is available as described in § 300.145(n). In addition, DOE can provide radiological monitoring and assessment assistance to the OSC/RPM as part of the FRMAC, when the FRMAC is activated. DOE leads the FRMAC for the initial response, then transitions FRMAC leadership to EPA at a mutually agreed upon time.

(6) Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) Forest Service has responsibility for protection and management of national forests and national grasslands. Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction. Forest Service can also provide Incident Management Teams and support logistics such as communications and personnel.

(ii) Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage, and distribution of farm products; and human nutrition. ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological,

chemical, radiological, and industrial hazards. In emergency situations, ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities. ARS has a network of laboratories that can analyze samples of biologic select agents.

(iii) Natural Resources Conservation Service has personnel in nearly every county in the nation who are knowledgeable in soil, agronomy, engineering, and biology. These personnel can help to predict the effects of pollutants on soil and their movements over and through soils.

Technical specialists can assist in identifying potential hazardous waste disposal sites and provide review and advice on plans for remedial measures.

(iv) Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent the spread and contamination of non-affected areas and assist in animal carcass disposal. APHIS/Wildlife Services can also provide assistance in the assessment of wildlife impacts, hazing and wildlife capture and deterrence, and other wildlife-related services.

(v) Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, FSIS works with other federal and state agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products.

(7) DOC, through NOAA, provides trust resource representation to the NRT and RRTs, consultations on protected and endangered species, and scientific and operational support for responding to emergency events and contingency planning in coastal and marine areas and the Great Lakes. NOAA resources are available through the regional NOAA SSC, RRT representative, or through the NOAA Desk at the DHS National Operations Center. Specific NOAA responsibilities and capabilities are:

(i) *Scientific support for oil and other hazardous materials spill operations, including weapons of mass destruction events:* on-scene SSCs; assessments of the hazards that may be involved; predictions of movement and dispersion of the pollutant through trajectory modeling; information on the sensitivity of coastal environments to oil; field assessments of oil distributions on water or shorelines; sampling and/or monitoring and analytical analysis; recommendations on best practices for

protection of resources; coordination on the development of cleanup endpoints; recommendations on cleanup or mitigation techniques; and information management for environmental data;

(ii) *Scientific Support Coordinators* as a special team, described in § 300.145(c); established in a nationwide network, providing direct assistance to federal OSCs, coordinating scientific information from federal, state, local agencies, academia, tribes and private industry, supporting all aspects of response operations;

(iii) *Expertise and consultation on living marine resources and their habitats and other trustee resources*, including endangered species, marine mammals, essential fish habitat, and National Marine Sanctuary ecosystems; ecological, historical, and cultural resources at risk; recommendations on best practices for protection of Endangered Species Act species, essential fish habitat, and marine mammals; on-scene or remote support for oiled wildlife recovery and rehabilitation practices for NOAA trust resources; access to user communities, local and state resource management agency partners and injury assessment staff; and natural resource damage assessment;

(iv) *Meteorological and oceanographic data and forecasts:* information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes; and on-scene or remote National Weather Service support to include Incident Meteorologists or Warning Coordination Meteorologists;

(v) *Dissemination of informational messages* associated with specific hazardous events through the use of NOAA All Hazards Radio and other NOAA alert broadcast methods;

(vi) *Rapid hydrographic surveys* to locate underwater obstructions and update navigational charts; and

(vii) *Satellite and aircraft remote sensing and photogrammetric data.*

(8) HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as territorial, tribal, state and local governments.

(i) The principal HHS response is coordinated from the Office of the Assistant Secretary for Preparedness and Response (ASPR). Within HHS, the primary response to a hazardous

materials emergency comes from the Agency for Toxic Substances and Disease Registry (ATSDR) and Centers for Disease Control and Prevention (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention, recovery, and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA, while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive and have a centralized point of contact for supporting NCP responses.

(ii) Other HHS agencies involved in support during hazardous materials incidents either directly or through the ASPR and/or ATSDR/CDC include the Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, Administration for Children and Families, Substance Abuse and Mental Health Services Administration, and National Institutes of Health (NIH).

(iii) Statutory authority for HHS/NIH/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: worker safety training and basic research activities. Under section 126 of SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

(9) Department of the Interior (DOI) protects, manages, and provides access to U.S. natural and cultural resources and historic properties and to mineral resources in offshore waters of the U.S. Outer Continental Shelf (OCS). DOI protects and manages the Nation's natural resources and cultural heritage;

provides scientific and other information about those resources; and honors the Nation's trust responsibilities and special commitments to American Indians, Alaska Natives, and affiliated island communities. DOI manages the National Park System, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. DOI is responsible for migratory bird and wildlife conservation; historic preservation; endangered species conservation; surface-mined lands protection and restoration; mapping, geological, hydrological, and biological science for the Nation; and financial and technical assistance for the insular areas. DOI also regulates exploration, development, and production of mineral resources in the OCS and regulates offshore alternative energy activities. DOI should be contacted through the Office of Environmental Policy and Compliance (OEPC) Regional Environmental Officers (REOs), who are the designated members of RRTs. OEPC is the official DOI point-of-contact for oil and hazardous substances pollution emergency preparedness and response ([www.doi.gov/oepec](http://www.doi.gov/oepec)). OEPC represents DOI on the RRTs and NRT, providing coordinated DOI input to RRT and NRT preparedness and response documents and activities. OEPC REOs receive initial notification of actual (or potential) oil discharges and hazardous substances releases from OSCs and RPMs. OEPC subsequently contacts the appropriate DOI Bureau(s) and coordinates DOI participation in NRS activities. When necessary, OEPC serves as the DOI representative for incident-specific RRT and NRT activations and provides DOI input to decision-making on response actions to protect natural and cultural resources, which may address the use of chemical countermeasures and identification of places of refuge for vessels needing assistance. DOI bureaus and offices have relevant expertise as follows:

(i) United States Fish and Wildlife Service (USFWS): Provides expertise to protect threatened and endangered species and their habitats, migratory birds, anadromous fish, certain marine mammals, sea turtles on-shore, and historic properties, including input on appropriate cleanup techniques, actions and end points. Serves as the focal point within DOI for providing consultations to OSCs/RPMs regarding threatened or endangered species and their habitats. Coordinates all federal permitting for and oversight of bird hazing, collection, and treatment activities and coordination of all federal permitting

activities for hazing, collecting, rescuing, and holding migratory birds, certain marine mammals, and threatened and endangered species. Authorizes entry to, and oversees activities on, national wildlife refuge system lands.

(ii) National Park Service (NPS): Responsible for protection and management of units of the National Park System including, but not limited to, National Parks, National Recreation Areas, National Seashores, National Historic Sites, National Battlefield Parks, National Monuments, and Wild and Scenic Rivers. Provides advice on and participates in activities affecting historic properties and cultural resources. For incidents involving NPS lands and/or resources, NPS can participate in preparedness activities and response decision-making to address access, sensitive natural and cultural resources and historic properties, protection priorities, public health and safety, law enforcement, and other issues related to removal and remediation actions taken or planned on NPS-managed lands. NPS also has independent authority under the Park System Resource Protection Act 16 U.S.C. 1911 for recovery of costs on response actions taken to minimize the destruction, loss, or injury to park system resources.

(iii) U.S. Geological Survey (USGS): Performs research in support of biological resource management; inventories, monitors, and reports on the status of and trends in the nation's biotic resources; and transfers the information gained in research and monitoring to resource managers and others concerned with the care, use, and conservation of the nation's natural resources. USGS biologic research laboratories can advise and support NCP responses. USGS can also provide support services related to geology, hydrology (ground water and surface water), geospatial information, and natural hazards.

(iv) Bureau of Land Management (BLM): Responsible for authorization of entry to, and resource protection of, the land and minerals managed by BLM. BLM provides expertise in emergency response, particularly for fire and hazardous materials incidents. Many BLM offices are equipped to provide assistance with sampling, investigation, surveillance, and security. BLM also has expertise in on-shore energy production, cadastral survey, cultural and historic properties, natural resources, and federal property acquisition and disposal.

(v) Bureau of Ocean Energy Management (BOEM): Promotes energy

independence, environmental protection, and economic development through responsible, science-based management of offshore conventional and renewable energy and marine mineral resources. BOEM's Office of Environmental Programs conducts environmental reviews, including National Environmental Policy Act analyses and compliance documents for each major stage of energy development planning. These analyses inform the bureau's decisions on its five year OCS oil and gas leasing program, and conventional and renewable energy leasing and development activities. Additionally, BOEM's scientists conduct and oversee environmental studies to inform policy decisions relating to the management of energy and marine mineral resources on the OCS.

(vi) Bureau of Safety and Environmental Enforcement (BSEE): Regulates and oversees the exploration, development, and production operations for oil and natural gas on the OCS to ensure that it is done in a safe and environmentally responsible manner. BSEE's functions include oil and gas permitting, facility inspections, regulations and standards development, safety research, environmental compliance and enforcement, and oil spill prevention and readiness for facilities located in both federal (OCS) and state waters seaward of the coastline that handle, store, or transport oil. BSEE reviews and approves producers' oil spill response plans, and conducts readiness capability assessments through unannounced oil spill exercises and inspection of oil spill response equipment. During oil spills from offshore facilities seaward of the coastline, BSEE provides expertise on source control activities under the direction of the federal OSC. BSEE also funds applied oil spill response research and manages Ohmsett—the National Oil Spill Response and Renewable Energy Test Facility—through its Oil Spill Response Research Program.

(vii) Bureau of Reclamation (BOR): Provides advice and information on operation, control, and maintenance of water systems and related resources, including dams, reservoirs, and channels. BOR has expertise in engineering and hydrology and can provide design services, construction, contracting, oversight and administration activity.

(viii) Office of Surface Mining Reclamation and Enforcement: Provides advice on surface coal mining, including abandoned coal mined lands, coal outcrop fires, coal mine wastes, waste bank stability, and toxic drainage.

(ix) Bureau of Indian Affairs (BIA): Assists in coordinating and communicating with, and obtaining access to, Indian lands and tribal officials. BIA has many programs to assist tribal governments and uphold Indian trust responsibilities.

(x) Office of Insular Affairs: Provides assistance to American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. May provide intergovernmental expertise to foster communications to implement the NCP in these areas.

(xi) Office of Aviation Services: Provides access to DOI-approved aircraft, including on-scene inspection and certification teams, and arranges for air traffic control via the Federal Aviation Administration.

(10) Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharges or releases, and federal agency responses. In addition, DOJ represents the federal government, including its agencies, in litigation relating to such discharges or releases. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC/RPM for the response. DOJ components, such as the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, and Drug Enforcement Administration, can coordinate with OSCs on investigative and enforcement activities.

(11) Department of Labor (DOL), through OSHA and the states operating plans approved under section 18 of the Occupational Safety and Health Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the Occupational and Safety Health Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those states with approved plans that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and consultation to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities.

(12) DOT provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials. DOT, through PHMSA, establishes oil discharge contingency planning requirements for pipelines, transport by rail and containers or bulk transport of oil.

(13) Department of State (DOS) plays a key role in supporting the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS

will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance with Nuclear Regulatory Commission incident response procedures to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

(15) General Services Administration (GSA) provides logistical support for a variety of goods and services via its acquisitions capability to federal, state, tribal, local and non-governmental organization entities. GSA also provides leasing support for needed facilities; transportation services for air, land, or sea; and telecommunications support. GSA can provide advisory assistance to other government agencies to facilitate lodging, charter air, and vehicle rentals, among other items, off of its Federal Supply Schedules.

■ 16. Amend § 300.205 by revising Figure 4 in paragraph (g) to read as follows:

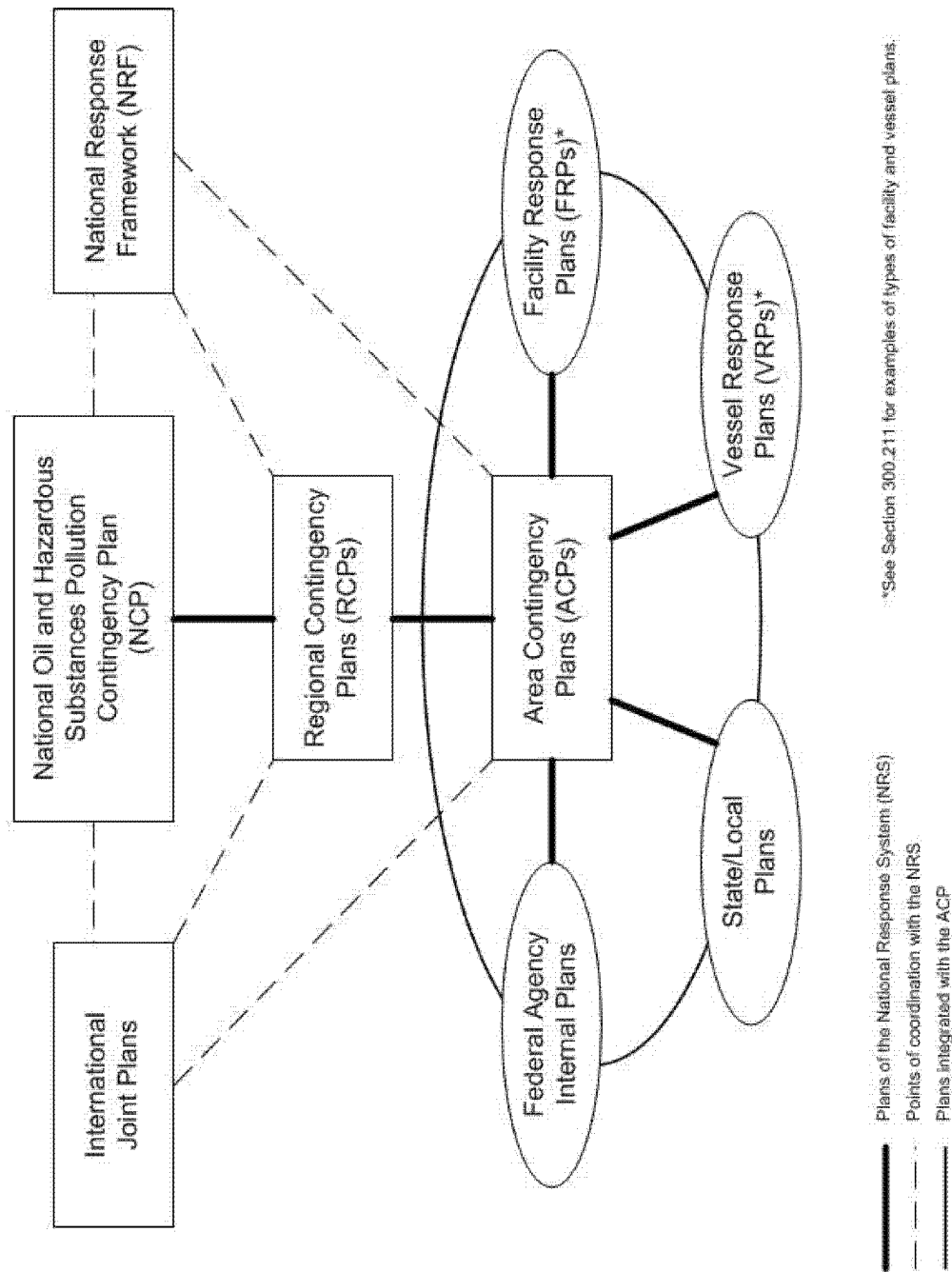
**§ 300.205 Planning and coordination structure.**

\* \* \* \* \*

(g) \* \* \*

Figure 4

Relationship of Plans



- 17. Amend § 300.211 by:
  - a. Revising the introductory text;
  - b. Revising paragraph (f); and
  - c. Adding table 1 to § 300.211
- The additions and revisions read as follows:

**§ 300.211 OPA facility and vessel response plans.**

This section describes and cross-references the regulations that implement section 311(j)(5) of the CWA.

A tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably expect to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge,

and to a substantial threat of such a discharge, of oil or a hazardous substance. These response plans are required to be consistent with applicable Area Contingency Plans. These regulations are codified as follows and summarized in table 1 to § 300.211:

- \* \* \* \* \*
- (f) For rolling stock, these regulations are codified in 49 CFR part 130.



**Table 1 to § 300.211—OPA Facility and Vessel Response Plan Regulations**

Facility/Vessel Type and Regulatory Name of Plan	Regulations	Federal Department/Agency Responsible for Regulations
Tank vessels – <i>Vessel Response Plan</i>	33 CFR part 155	USCG
Offshore facilities – <i>Oil Spill Response Plan</i>	30 CFR part 254	DOI/BSEE
Onshore facilities/Non-transportation related – <i>Facility Response Plan</i>	40 CFR 112.20	EPA
Onshore facilities/Transportation-related – <i>Response Plan (for Marine-Transportation-Related Facility)</i>	33 CFR part 154	USCG
Pipeline facilities (onshore oil pipelines) – <i>Response Plan</i>	49 CFR part 194	DOT/PHMSA
Rolling stock – <i>Response Plan (Comprehensive written plan, 49 CFR 130.31(b))</i>	49 CFR part 130	(Plans for cargo tanks are submitted to DOT/Federal Highway Administration. Plans for tank cars are submitted to DOT/Federal Railroad Administration.)

■ 18. Amend § 300.323 by revising paragraph (a) and adding a note to the end of § 300.323 to read as follows:

**§ 300.323 Spills of national significance.**

(a) A discharge may be classified as a SONS by the Administrator of EPA for discharges occurring in the inland zone and by the Commandant of the USCG for discharges occurring in the coastal zone.

\* \* \* \* \*

**Note to § 300.323:** The EPA Administrator and USCG Commandant maintain the authority to designate an incident as a SONS under the NCP. This authority is separate from other federal authorities that may be exercised by other federal officials and other federal departments and agencies under the NRF.

■ 19. Amend § 300.405 by revising paragraphs (d) and (f)(3) to read as follows:

**§ 300.405 Discovery or notification.**

\* \* \* \* \*

(d) The NRC will generally need information that will help to characterize the release. This will include, but not be limited to: Location of the release; type(s) of material(s) released; an estimate of the quantity of material released; possible source and cause of the release; and date and time of the release. Reporting under paragraphs (b) and (c) of this section shall not be delayed due to incomplete notification information.

\* \* \* \* \*

(f) \* \* \*

(3) If radioactive substances are present in a release, the RERT should be notified for evaluation and assistance through the EPA Headquarters Emergency Operations Center, EPA representative on the RRT, or on-duty EPA RERT Team Commander in the Office of Radiation and Indoor Air, consistent with § 300.145(f).

\* \* \* \* \*

■ 20. Amend § 300.415 by revising paragraph (f) to read as follows:

**§ 300.415 Removal action.**

\* \* \* \* \*

(f) Where necessary to protect public health or welfare, the lead agency may request that EPA conduct a temporary relocation or that state/local officials conduct an evacuation.

\* \* \* \* \*

[FR Doc. 2016–00663 Filed 1–22–16; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 20**

[WT Docket No. 15–285; DA 16–26]

**Fourteen-Day Extension of Time To File Comments and Reply Comments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** In this document, the Federal Communications Commission

(Commission) finds that a limited extension in this proceeding would be beneficial to the development of a complete record on the issues, and it grants a fourteen-day extension of time for comments filed in response to the Commission's Notice of Proposed Rulemaking (NPRM) in, regarding Hearing Aid Compatibility Benchmarks.

**DATES:** Interested parties may file comments on the NPRM on or before January 28, 2016, and reply comments on or before February 12, 2016.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 15–285; FCC 15–155, by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection modifications proposed in the NPRM should be submitted to the Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via email to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Michael Rowan, Wireless Telecommunications Bureau, (202) 418–1883, email [Michael.Rowan@fcc.gov](mailto:Michael.Rowan@fcc.gov), or Eli Johnson, Wireless Telecommunications Bureau (202) 418–1395, email [Eli.Johnson@fcc.gov](mailto:Eli.Johnson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in WT Docket No. 15–285,

DA 16–26, released on January 11, 2016. The full text of the document is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Additionally, the complete item is available on the Commission's Web site at <http://www.fcc.gov>.

### Synopsis

1. On November 20, 2015, the Commission released the NPRM in WT Docket No. 15–285, FCC 15–155, regarding Hearing Aid Compatibility Benchmarks. The NPRM provided that comments are due on January 14, 2016, and that reply comments are due on January 29, 2016. On January 8, 2016, the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP and the Rural Wireless Association, Inc. filed a Joint Request for Extension of Time to File Comments seeking to extend the comment deadline based on the proximity of the January 15, 2016 deadline for submitting annual hearing aid compatibility reports for the 2015 reporting period.

2. The Commission notes that extensions of time are not routinely granted, and states that such extensions may be warranted when, among other things, the additional time will serve the public interest. The Commission finds that providing a limited extension in this proceeding would be beneficial to the development of a complete record on the issues and that an extension of time therefore serves the public interest. The Commission extends the deadline for filing comments to January 28, 2016 and the deadline for filing reply comments to February 12, 2016.

3. The Commission takes this action pursuant to authority found in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46.

### Procedural Matters

#### *Ex Parte Rules—Permit-But-Disclose*

4. The proceeding that the NPRM in WT Docket No. 15–285, FCC 15–155, initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation

within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### *Comment Filing Procedures*

5. Pursuant to sections 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 the NPRM on or before the dates indicated on the first page of this document. All filings related to the NPRM should refer to WT Docket No. 15–285. 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/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy 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.

6. 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 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.

7. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Federal Communications Commission.

**Peter Trachtenberg,**

*Deputy Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.*

[FR Doc. 2016-01316 Filed 1-22-16; 8:45 am]

**BILLING CODE 6712-01-P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 577

[Docket No. NHTSA-2016-0001]

RIN 2127-AL66

#### Update Means of Providing Notification; Improving Efficacy of Recalls

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorizes the Secretary of Transportation to amend, by regulation, the means of notification required under the Safety Act, to be in a manner other than, or in addition to, first-class mail. Furthermore, Section 24104 of the Fixing America's Surface Transportation Act (FAST Act) expounds on the need to update the means of notification by requiring the Agency to include notification by electronic means in addition to first class mail notification, within 270 days of its enactment. MAP-21 also authorizes the Secretary of Transportation to improve the efficacy of recalls by requiring manufacturers to send additional notifications of defects or noncompliance if a second notification by the manufacturer does not result in an adequate number of motor vehicles or replacement equipment being returned for remedy.

NHTSA seeks public comment on the means, in addition to first class mail, of providing notification to owners, purchasers, and dealers, by a manufacturer of a motor vehicle or replacement equipment, that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. As a result of this ANPRM, the Agency anticipates receiving information that will aid the Agency in developing a rule implementing the notification requirements under MAP-21 and the FAST Act. The Agency anticipates that comments and information received will aid in updating the Agency's regulations.

**DATES:** Comments must be received on or before March 10, 2016.

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

- *Internet:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590.

- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- *Facsimile:* (202) 493-2251.

Regardless of how you submit your comments, please mention the docket number of this document.

You may also call the Docket at (202) 366-9322.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading in the **SUPPLEMENTARY INFORMATION** section of 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 under the Public Participation heading in the Supplementary Information section below for more information.

**FOR FURTHER INFORMATION CONTACT:** For substantive issues: Jennifer Timian, Office of Defects Investigation, National Highway Traffic Safety Administration, at (202) 366-4000. For legal issues: Justine Casselle, Office of the Chief Counsel, National Highway Traffic Safety Administration, at (202) 366-2992.

#### SUPPLEMENTARY INFORMATION:

- I. Executive Summary
- II. Notification Requirements Before and After MAP-21
  - A. Means of Notification
  - B. Additional Notifications
- III. Public Participation
  - A. Means and Methods of Notification
  - B. General Owner Knowledge and Behavior/Availability of Information to Owners
  - C. Privacy Act
- IV. Rulemaking Analyses and Notices
- V. Submission of Comments

#### I. Executive Summary

The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorizes the Agency to amend, through rulemaking, the means of providing notification to owners, purchasers, and dealers, by a manufacturer of a motor vehicle or replacement equipment, that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable federal motor vehicle safety standard. MAP-21 also authorizes NHTSA to improve recall effectiveness by requiring manufacturers to send additional notifications of defects or noncompliance if a second notification by the manufacturer does not result in an adequate number of motor vehicles or replacement equipment being returned for remedy. Finally, MAP-21 authorizes NHTSA to permit "public notice" in addition to individualized notification. More recently, Section 24104 of the Fixing America's Surface Transportation Act (FAST Act) requires the Agency to amend the means of notification to owners by including electronic notification in addition to first class mail notification.

Much has changed in the ways and means by which manufacturers communicate with their customers and influence behavior since the 1970's when U.S. law first required manufacturers to notify owners in the event of a safety recall. Hard copy mail has become far less prominent in the wake of virtually instantaneous electronic message such as email and text messaging, in addition to heavy use of social media. First class mail does not inform as to whether an owner actually received the mail, let alone whether they read it and understood it, whereas electronic messaging technologies are capable of confirming whether the message at least was delivered to the address given. This ANPRM seeks comments and supporting information on the specific means and methods of notification that manufacturers use, and those that manufacturers consider are most effective, to reach their owners and purchasers as well as motivate them to have safety recalls completed. We seek to learn and obtain opinion on what methods should be required of manufacturers, as well as what methods are viable as alternatives in the event a recall campaign does not meet expectations and/or the Agency believes a public notification as contemplated by the statute is appropriate. This is all in an effort to leverage the new authorities NHTSA has been given to most efficiently and effectively improve safety recall completion rates. NHTSA will use the comments and supporting information submitted in response to this ANPRM to inform its development of a regulatory proposal that would allow notification of safety related recalls to be issued by means other than, or in addition to, first-class mail.

## II. Notification Requirements Before and After MAP-21

### A. Means of Notification

49 U.S.C. 30118(c) requires motor vehicle manufacturers or manufacturers of replacement equipment to “notify . . . the owners, purchasers, and dealers of vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer:

1. Learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or
2. Decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The manner by which this required notice would be given to owners or purchasers of vehicles or equipment is governed by 49 U.S.C. 30119(d). Prior to

MAP-21, and for vehicle recalls, section 30119(d) required notice is to be sent via first-class mail to the registered owner, or if the registered owner could not be identified, to the most recent purchaser known to the manufacturer. 49 U.S.C. 30119(d)(1)(A)–(B). For recalls of replacement equipment, the statute required notification to the most recent purchaser. *Id.*

Section 31310 of MAP-21 amended the notice provisions in 49 U.S.C. 30119(d) to allow the Secretary of Transportation, and by delegation NHTSA's Administrator, the flexibility to determine the manner by which notifications about safety recalls under 49 U.S.C. 30118 must be sent. The statute requires notification to be sent to each registered owner whose name and address is reasonably ascertainable through State records or other available sources, or the most recent purchaser known to the manufacturer. 49 U.S.C. 30119(d)(1)(A)–(B). Manufacturers are also required to notify dealers under the statute. 49 U.S.C. 30119(d)(4). The amended statutory language authorizes the Agency to engage in a rulemaking to permit notification of vehicle defects and noncompliance by means other than first-class mail, such as electronic notification. Recently, the FAST Act expounds on this authority by expressly requiring the Agency to amend, by rulemaking, the means of notification to include electronic notification.

### B. Additional Notifications

Not only did Section 31310 address the means of providing notification, both on an individualized basis and on a more broad-based level, but it also addressed improving the efficacy of recalls through additional notifications. Previously, 49 U.S.C. 30119(e) authorized the Secretary to order a second notification if the Secretary determined that the first notification failed to result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy. The statute was silent, however, as to whether additional notifications beyond a second notification could be required. Section 31310 resolves this question by amending 49 U.S.C. 30119(e), which now, under 49 U.S.C. 30119(e)(2)(A)(i), authorizes the Secretary to order additional notifications if the Secretary determines that a second notification also failed to result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy.

Like the notifications addressed above, the means of additional notifications is to be in a “manner

prescribed by the Secretary, by regulation.” 49 U.S.C. 30119(e)(2)(A)(i). This language anticipates the Agency will engage in rulemaking to contemplate and permit, if not order where warranted, notification of motor vehicle and equipment defects and failures to comply by means other than first-class mail.

## III. Public Participation

NHTSA invites comments and information on how the agency can best leverage the new flexibilities it has been given under MAP-21 and the FAST Act to update the required means manufacturers use, whether as a first notification or as a follow-up notification, to successfully notify their owners and purchasers and urge them toward seeking the free remedies they are offered. As a general matter, the Agency requests that commenters provide as much research, evidence, or data as possible to support their comments, including cost-benefit information, as that information will be of great assistance to the Agency as it moves forward in the development of a proposed rule. The questions below are intended to focus, but not limit, the information and opinions commenters offer. Commenters are encouraged to offer any suggestions or tactics that may not have been expressly mentioned in this notice.

### A. Means and Methods of Notification

(1) How effective has traditional first class mail been at reaching owners? What is the estimated delivery rate for vehicle recalls where registered owner information from state agencies and the U.S. territories are available? What is the estimated delivery rate for equipment recalls where these information sources are not available? How many owners are equipment manufacturers able to notify using traditional first class mail?

(2) Other than by first class mail, in what ways can and do manufacturers notify owners about safety recalls? How do, or should, those means and methods change dependent upon the product being sold or how it was sold (*e.g.*, vehicles as opposed to replacement equipment, or online sales as opposed to brick and mortar retail shops)? What are the respective rates of delivery success for these methods? What information or technology is available and used to calculate these rates of delivery?

(3) What are the corresponding rates of remedy completion for these methods discussed in your response to paragraph (2) above?

(4) What sales and marketing methods and techniques could be employed for safety recall communications? Which have shown the most success in terms of owners understanding and owner recall completion, which have shown the least, and why? What information or technology is available and used to calculate these findings and how do manufacturers determine if these methods motivated the recall completion as opposed to the recall completion being motivated by other tools such as first class mailings?

(5) If manufacturers communicate with owners through email, text messaging, smart phone applications, or other electronic means, which method of communication do manufacturers find most effective at reaching owners? Which method of communication do owners prefer? Are there best practices as to when and how these communications are applied and when they are not? Are there certain demographics that seem to respond less or more to certain types of electronic communications?

(6) Are manufacturers using social media to inform owners of safety recalls and influence owners' behavior to have recalls work completed? What media is being used and which have been the most or least effective in terms of "click-throughs" or other methods for tracking owner attention? Are there certain demographics that seem to respond less or more to social media generally and/or specific types of social media? Are there best practices as to when and how these communications are applied and when they are not?

(7) Are there any legal or other limitations of which the Agency should be aware in contemplating any of the alternatives noted above or mentioned in your comments?

(8) Do manufacturers currently have access to owners' email addresses? Excluding collecting emails at point of sale, from where do manufacturers collect this information and how do they determine its "freshness" or accuracy? Should owners be required to provide an email address as part of a purchase or service transaction? Should the answer depend on how and where the product was purchased, the purchase price of the product, or some other factor? Why or why not?

(9) What contingencies do manufacturers have in place to avoid spam filters or to indicate that an email relates to a safety recall explicitly? What assurances are, or could be, put in place to confirm that an email was (a) received and (b) opened?

(10) The purpose of 49 CFR part 577 is "to ensure that notifications of defects

or noncompliances adequately inform and effectively motivate owners of potentially defective or noncomplying motor vehicles or items of replacement equipment to have such vehicles or equipment inspected and, where necessary, remedied as quickly as possible." Does notification by means other than first-class mail and email carry out this purpose? What about text alerts, social media campaigns, and other less traditional methods?

#### *B. General Owner Knowledge and Behavior/Availability of Information to Owners*

(1) Do owners read and understand the information they are currently receiving from required safety recall notices delivered via first class mail? What data or research supports your response?

(2) Is there data identifying why owners do not react to safety recall notices they receive from their manufacturers? What does that data suggest would increase owner behavior toward recall completion? Is there data indicating whether an increase in owners recall completion is more likely to occur in the presence of cash incentives, service offers, or other means? Is there data indicating otherwise?

(3) What recall information do owners want and how do they want it expressed? Are there particular words or phrases? Are their particular formats or graphics that align more with recall completion? If any focus group studies have been conducted by manufacturers or other organizations regarding owners' needs in this area, should the Agency use them to aid in assessing how to meet those needs?

(4) Should the Agency engage in its own behavior study including, but not limited to, surveys, polls, and focus groups? If so, what questions should be asked? What strategies used? How large of a survey or poll should be conducted?

#### *C. Privacy Act*

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 (65 FR 19477-78).

#### **IV. Rulemaking Analyses and Notices**

##### *Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. NHTSA has considered the impact of this ANPRM under the Department of Transportation's regulatory policies and procedures. This ANPRM seeks comments and supporting information on how the Agency can best update the means of notifying owners, purchasers, and dealers of recalls in an effort to improve vehicle safety recall completion rates. Because this rulemaking only seeks comments and information to aid in the Agency's development of a proposed rule, the impact of this ANPRM is limited. Therefore, this rulemaking has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

##### *Paperwork Reduction Act*

As this Notice is an ANPRM, we are not proposing to adopt any new information collection or record keeping requirements. If, after considering the public comments received in response to this notice NHTSA decides to issue a notice of proposed rulemaking that includes information collection or record keeping requirements, that notice will discuss any new paperwork burden associated with those proposed requirements.

##### *Regulatory Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### **V. Submission of Comments**

##### *How can I influence NHTSA's thinking on this rulemaking?*

Your comments will help us improve this proposed rulemaking. We invite you to provide different views on options we discuss, new approaches we have not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information. We welcome your views on all aspects of this ANPRM, but request comments on specific issues throughout this document. Your comments will be most

effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid evidence and data to support your views.
- If you estimate potential costs, explain how you arrived at that estimate.
- Tell us which parts of the ANPRM you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to the specific sections of the ANPRM.

Your comments must be written in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. 49 CFR 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments to the docket electronically by logging onto <http://www.regulations.gov> or by the means given in the **ADDRESSES** section at the beginning of this document. Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the docket. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulations. 49 CFR part 512.

*Will the agency consider late comments?*

We will consider all comments that the docket receives before the close of business on the comment closing date indicated in the **DATES** section. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider it in developing the next step in this rulemaking, we will consider that comment as an informal suggestion for future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the comments received by the docket at the address given in the **ADDRESSES** section. You may also see the comments on the Internet (<http://regulations.gov>). Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material. Anyone is able to search the electronic form of all comments 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 (65 FR 19476 at 19477–78).

**Authority:** 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Issued in Washington, DC, on January 14, 2016 under authority delegated pursuant to 49 CFR 1.95.

**Frank S. Borris II**,  
*Acting Associate Administrator for Enforcement.*

[FR Doc. 2016–01291 Filed 1–22–16; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 130919819–5999–01]

RIN 0648–BD68

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures; Amendment 28

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 28). If approved and implemented by the Secretary of Commerce (Secretary), Amendment 28 would revise the Gulf of Mexico (Gulf) red snapper commercial and recreational sector allocations of the stock annual catch limits (ACLs). As a result of the revised sector allocations proposed in Amendment 28, this proposed rule would revise the red snapper commercial and recreational quotas (which are equivalent to the ACLs) and the recreational annual catch targets (ACTs). This proposed rule would also set the Federal charter vessel/headboat and private angling component quotas and ACTs based on the revised recreational sector's ACL and ACT. The purpose of this proposed rule and Amendment 28 is to reallocate the Gulf red snapper harvest consistent with the 2014 red snapper assessment update while ensuring the allowable catch and recovery benefits from the rebuilding red snapper stock are fairly and equitably allocated between the commercial and recreational sectors.

**DATES:** Written comments must be received on or before March 10, 2016.

**ADDRESSES:** You may submit comments on the amendment identified by “NOAA–NMFS–2013–0146” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)

[#/docketDetail;D=NOAA-NMFS-2013-0146](#), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 28, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2013/am28/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am28/index.html).

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

**Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, optimum yield from federally managed fish stocks. The Magnuson-Stevens Act requires that in allocating fishing privileges among fishermen, such allocation shall be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. For stocks like red snapper, which are subject to a rebuilding plan, the Magnuson-Stevens Act also requires that harvest restrictions and recovery benefits be allocated fairly and equitably among the fishing sectors. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. The purpose of Amendment 28 is to reallocate red snapper harvest from the commercial sector to the recreational sector, consistent with the 2014 red snapper update assessment, to ensure that the allowable catch and recovery benefits from a rebuilding stock are fairly and equitably allocated between the sectors. The current commercial allocation would be reduced from 51 percent to 48.5 percent of the stock ACL and the recreational allocation would be

increased from 49 percent to 51.5 percent of the stock ACL. This shift in allocation is based on the increase in the total allowable harvest attributable to the calibration of Marine Recreational Information Program (MRIP) catch estimates that were used in a 2014 update assessment. This proposed rule would implement the shift in allocation by modifying the commercial and recreational quotas as well as recreational component quotas consistent with the revised red snapper allocation. This proposed rule would also revise the applicable ACTs. All weights described in this proposed rule are in round (whole) weight.

*Red Snapper Management*

The Gulf red snapper stock is currently overfished and is under a rebuilding plan projected to end in 2032. Consistent with the rebuilding plan, both the commercial and recreational quotas have been allowed to increase as the red snapper stock has recovered. The red snapper commercial and recreational ACLs are equal to the applicable quotas.

The recreational sector, which has experienced red snapper quota overages and more recently, shorter red snapper seasons, is managed through a variety of measures including separate Federal charter vessel/headboat and private angling component quotas and ACTs, recreational bag and size limits, and closed seasons. Since 2014, the recreational season length is projected each year based on the applicable ACTs, which are set 20 percent less than the applicable quotas. In addition, an overage adjustment is required if the total recreational quota is exceeded and red snapper are overfished. The red snapper commercial sector has been managed under an individual fishing quota (IFQ) program since 2007 (71 FR 67447, November 22, 2006). Although the commercial sector has also experienced quota overages in the past, since the beginning of the IFQ program, the commercial sector has not exceeded its quota.

In recent years, the Council has expressed its intent to evaluate and possibly adjust the allocation of reef fish resources between the commercial and recreational sectors. The Council has discussed NOAA's Catch Share Policy as well as its own allocation policy, and consistent with those policies, has considered changes to sector allocations for red snapper and several grouper species. Amendment 28 and this proposed rule specifically address red snapper allocation between the commercial and recreational sectors.

*Red Snapper Assessments*

In 2013, the Southeast Data, Assessment, and Review 31 Gulf red snapper benchmark assessment was conducted and was then reviewed by the Council's Scientific and Statistical Committee (SSC). Based on their review, the SSC made recommendations for a revised red snapper acceptable biological catch (ABC) and overfishing limit (OFL). In 2014, a red snapper update assessment (2014 update assessment) was conducted. This assessment included more recent data and incorporated two changes to the recreational landings information: (1) Calibrated historical landings; and (2) new age (size) selectivity information for fishing years 2011-2013 for all recreational fleets. The calibrated historical landings resulted from important changes that were made to the design of the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey in 2013 to cover the fishing day more effectively than the original Marine Recreational Fisheries Statistics Survey (MRFSS). As a result, MRIP tended to produce higher estimates of red snapper landings and discards than MRFSS. Therefore, the original time series of MRFSS estimates were calibrated to the new time series of MRIP, which resulted in higher historical landings estimates for the recreational sector. Also, the update assessment included new age (size) selectivity information for fishing years 2011-2013 for all recreational fleets. This was done because recreational red snapper fishermen appeared to be selecting for larger and older fish in recent years.

The results of the update assessment were first presented to the SSC and Council at their respective January 2015 meetings via a PowerPoint presentation. The results of the update assessment were subsequently used by the SSC to make new ABC recommendations. Specifically, the SSC recommended revised red snapper ABCs of 14.30 million lb (6.49 million kg), 13.96 million lb (6.33 million kg), and 13.74 million lb (6.23 million kg), for the 2015, 2016, and 2017 fishing years, respectively. The Council held a webinar meeting and approved a framework action to set the 2015-2017 red snapper quotas consistent with the SSC's recommendations and a final rule implementing the framework action published in May 2015 (80 FR 24832, May 1, 2015).

*Allocation*

The initial allocation for the commercial and recreational sectors was



set in Amendment 1 to the FMP and was based on the percentage of total landings during the base period of 1979–1987 (55 FR 2078, January 22, 1990). The Council evaluated several different alternatives that would increase the recreational sector's red snapper allocation during the development of Amendment 28. These alternatives included straightforward percentage changes, changes based on the red snapper stock ACL, and changes based on the new recreational catch information used in the 2014 update assessment. The Council initially considered alternatives that would increase the commercial sector's red snapper allocation. At that time, analyses from the NMFS Southeast Fisheries Science Center (SEFSC) suggested that shifting red snapper allocation from the commercial to the recreational sector would increase net economic benefits. Thus, the Council determined that reallocating red snapper to the commercial sector would not achieve the purpose of the amendment at that time, which was to increase the net benefits from red snapper fishing and increase the stability of the red snapper component of the reef fish fishery, particularly for the recreational sector. Therefore, the Council removed those alternatives from the amendment. After the 2014 update assessment, the purpose and need statement of the amendment was revised to reallocating the red snapper harvest consistent with the assessment update to ensure the allowable catch and recovery benefits are fairly and equitably allocated between the commercial and recreational sectors. When the draft environmental impact statement (EIS) was published for comment, it included this revised purpose and need statement and two new alternatives added by the Council to address the new information and the revised purpose and need. The draft EIS did not include alternatives that would increase the commercial sector's allocation because the new scientific information did not change any previous understanding of commercial landings. More information about the Council's decision not to include these alternatives and an analysis of the environmental consequences of increasing the commercial allocation are provided in the response to comments section (Appendix D) of Amendment 28 and integrated final EIS. Accordingly, NMFS has made a preliminary determination that Amendment 28 includes a reasonable range of alternatives consistent with the

requirements of the National Environmental Policy Act.

NMFS has also made a preliminary determination that Amendment 28 is consistent with section 302(i)(6) of the Magnuson-Stevens Act, which requires that interested parties "have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures." The preferred allocation alternative selected by the Council is based on the increase in the total allowable harvest that was attributable to the calibration of MRFSS catch estimates to the new MRIP time series used in the 2014 update assessment. The written report of the update assessment was not available until September 2015, which is after the Council took final action on Amendment 28. However, that report merely memorializes the information that was previously presented to the Council and the public, and was used by the Council to increase the quotas in the spring of 2015. The public had an opportunity to comment on the assessment results both during the Council webinar and during the comment period on the proposed rule to implement the quota increase that was published in April 2015. The amount of increase in the total allowable harvest attributable to the MRIP recalibration was derived from projections provided by the SEFSC in March 2015 and that analysis is included in Appendix H to Amendment 28.

The preferred allocation alternative was determined by first allocating the red snapper quota that would result if MRIP catch estimates were not calibrated according to the status quo allocation percentages (51 percent commercial and 49 percent recreational) and then adding the amount of red snapper quota estimated to result from the recalibration to the recreational sector derived from the SEFSC projections. Percentages of the 2015–2017 red snapper annual quotas allocated to each sector fluctuated based on the quota and on the amounts attributed to the recalibration. Thus, the Council decided to base the proposed commercial and recreational allocation on the average red snapper allocations for the projected years. Consequently, Amendment 28 would revise the Gulf red snapper allocation to 48.5 percent of the stock ACL to the commercial sector and 51.5 percent of the stock ACL to the recreational sector.

NMFS has made a preliminary determination that this allocation is consistent with National Standard 4 and the requirements of section 303(a)(14) of

the Magnuson-Stevens Act. National Standard 4 requires, in relevant part, that any allocation be fair and equitable, and reasonably calculated to promote conservation. Section 303(a)(14) requires that any rebuilding plan that reduces harvest in a fishery allocate harvest restrictions and recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors. The allocation is fair and equitable because it addresses changes in the methodology in collecting recreational landings information that indicate that recreational harvests have been underestimated and that the stock is more productive than previously thought. Allocating the quantifiable increase in the total allowable harvest attributable to the calibration to the recreational sector is a straightforward way to help address the impacts of the changes to the survey methodology on recreational catch estimates. This shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits by recognizing that future recreational harvest will be monitored based on an improved methodology that results in higher landings estimates. This allocation is also reasonably calculated to promote conservation because the resulting commercial and recreational quotas keep the harvest under the overfishing limit, new accountability measures that have been implemented for the recreational sector are constraining harvest to the recreational quota, and analyses indicate that the shift in allocation is not expected to affect the speed of recovery to the Gulf-wide management rebuilding target.

#### *Quotas*

Given the red snapper stock ACLs of 13.96 million lb (6.33 million kg) for the 2016 fishing year and 13.74 million lb (6.23 million kg) for the 2017 fishing year, under the proposed allocation the commercial quota would be 6.768 million lb (3.070 million kg) and 6.664 million lb (3.023 million kg) for the 2016 and 2017 fishing years and the recreational quota would be 7.192 million lb (3.262 million kg) and 7.076 million lb (3.210 million kg) for the 2016 and 2017 fishing years. For the recreational sector, the ACT would be set 20 percent less than the recreational quota and result in ACTs of 5.754 million lb (2.610 million kg) for 2016 and 5.661 million lb (2.568 million kg) for 2017. As described in Amendment 40 to the FMP, the recreational quota and ACT would be further divided into Federal charter vessel/headboat and private angling component quotas and ACTs based on an allocation of 42.3



percent to the Federal charter vessel/headboat component and 57.7 percent to the private angling component (80 FR 22422, April 22, 2015). As a result, this proposed rule would set the 2016 and 2017 Federal charter vessel/headboat component quotas at 3.042 million lb (1.380 million kg) and 2.993 million lb (1.358 million kg), and the component ACTs at 2.434 million lb (1.104 million kg) and 2.395 million lb (1.086 million kg), respectively. The rule would also set the 2016 and 2017 private angling component quotas at 4.150 million lb (1.882 million kg) and 4.083 million lb (1.852 million kg), and the component ACTs at 3.320 million lb (1.506 million kg) and 3.266 million lb (1.481 million kg), respectively. If Amendment 28 is approved by the Secretary and implemented, the commercial sector's amount of red snapper available in the IFQ program would be revised for the 2016 and 2017 fishing years and the season lengths for the recreational sector, and associated components, would be determined using the revised component ACTs.

NMFS has made a preliminary determination the proposed commercial and recreational quotas are consistent with the requirements of section 407(d)(2). Section 407(d)(2) must be read in context with the rest of section 407(d) as well as the Magnuson-Stevens Act as a whole. Section 407(d) was enacted in 1996 as part of the Sustainable Fisheries Act and provides that any fishery plan amendment submitted by the Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act must contain conservation and management measures that (1) establish separate quotas for recreational fishing and commercial fishing, and (2) "ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations." The Council complied with the mandate of section 407(d) in early 1997 by submitting a framework action to establish a recreational quota with a closure provision that reflected the allocation established in Amendment 1 to the FMP. A final rule implementing the recreational quota was published in September 1997 (62 **Federal Register** 46677, September 4, 1997).

There are three general provisions of the Magnuson-Stevens Act that are particularly relevant to the allocation decision addressed by Amendment 28. These are National Standard 4 and section 303(a)(14), which address, in relevant part, the fairness and equity of allocations, and National Standard 2, which requires that conservation and

management measures shall be based on best scientific information available. The adjustment to the allocation chosen by the Council is based on new scientific information which indicates that historical recreational landings were greater than previously estimated. Revised historical recreational landings were then used in the update assessment and had a quantifiable impact on the results of that assessment. As explained above, allocating this quantifiable increase in the total allowable harvest to the recreational sector is a straightforward way to help address the impacts of the changes to the data collection methodology on recreational catch estimates. To give effect to all of the provisions of the statute, NMFS has made a preliminary determination that: (1) The Council complied with the mandates of section 407(d)(2) by establishing a recreational quota in 1997 that reflected the previously established allocation; and (2) that this provision does not prohibit future action to adjust the allocations as necessary to ensure consistency with the other general requirements of the Magnuson-Stevens Act, such as National Standard 2, National Standard 4, and section 303(a)(14). Furthermore, there is nothing that indicates any intent to exclude the allocations in the red snapper component of the reef fish fishery from these general requirements.

Because the Amendment 28 rulemaking to reallocate the red snapper stock ACL will be implemented after January 1, 2016, a framework action has been developed by the Council and submitted to NMFS that would hold back 4.9 percent of the 2016 commercial quota. The final rule for that framework action published on November 27, 2015 (80 FR 73999). The purpose of the framework action is to allow IFQ allocation to be distributed to IFQ shareholders based on the 2016 commercial quota proposed in Amendment 28. If Amendment 28 is not implemented, the held back portion of the red snapper commercial quota would be distributed back to the commercial sector.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 28, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the RFA, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. Moreover, the proposed rule is not expected to change current reporting, record-keeping, and other compliance requirements on directly affected small entities.

This proposed rule is expected to directly affect federally permitted commercial fishermen that harvest red snapper in the Gulf. Commercial harvest of red snapper in the Gulf is currently managed under an IFQ program. From 2010 through 2014, an annual average of 375 vessels landed at least 1 lb (0.45 kg) of red snapper. Each vessel generated annual average dockside revenues of approximately \$102,000 (2014 dollars), of which \$36,000 were from red snapper, \$38,000 from other species jointly landed with red snapper, and \$28,000 from other species on trips without red snapper. Vessels that caught and landed red snapper may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals. It is noted that the 2014 commercial red snapper landings data are preliminary.

With respect to the proposed changes in the red snapper recreational allocation, only recreational anglers are allowed to keep red snapper harvested under the recreational quota and would be directly affected by changes in the allowable harvest. However, recreational anglers are not small entities under the RFA. Although for-hire businesses (charter vessels and headboats) operate in the recreational sector, these businesses only sell fishing services to recreational anglers and do not have harvest privileges to the red snapper recreational quota/ACT. For-hire vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision by anglers to purchase these services. Changing the red snapper recreational quota only defines how

much red snapper can be harvested and the quota is a factor in the determination of the length of the red snapper season. Changing the quota does not explicitly prevent the continued offer or sale of for-hire fishing services. In the event of a shortened recreational season precipitated by a recreational quota reduction, fishing for other species can continue when the season is closed. In the event of a recreational quota increase and associated lengthening in the recreational open season, the basic service offered remains the same, though the list of species that may be retained is expanded. Because the proposed change in the red snapper recreational quota would not directly alter the basic service sold by for-hire vessels, in general, this proposed action would not directly apply to or regulate their operations. Any change in vessel business would be a result of changes in angler demand for these fishing services that occurs as a result of the behavioral decision by anglers, *i.e.*, to fish or not. This behavioral decision would be a consequence of how anglers determine the change in allowable harvest will affect them. Therefore, any effects on the associated for-hire vessels would be one step removed from the anglers' decision and an indirect effect of the proposed action. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed action.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million (North American Industry Classification System, NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

Based on revenue information, all 375 commercial vessels directly affected by the rule can be considered small entities. Thus, the proposed rule would affect a substantial number of small entities. Because all entities expected to be directly affected by the proposed rule are determined for the purpose of this analysis to be small business entities, the issue of disproportional effects on large and small entities does not arise in the present case.

The proposed action would change the commercial and recreational sector

allocation of the red snapper quota from 51 percent for the commercial sector and 49 percent for the recreational sector to 48.5 percent and 51.5 percent for the commercial and recreational sectors, respectively. Relative to the current red snapper ACLs for the 2016 and 2017 fishing years, the proposed reallocation would reduce the commercial sector allocation by 0.352 million lb (0.160 million kg) in 2016 and 0.343 million lb (0.156 million kg) in 2017, or a total of 0.695 million lb (0.315 million kg) over 2 years. Based on 2013 median ex-vessel price per pound for red snapper of \$4.83 when adjusted to 2014 prices (\$4.75 at 2013 dollars), these commercial quota reductions would be expected to reduce total gross revenue (ex-vessel revenue, minus the IFQ program's 3 percent cost recovery fee) of vessels that commercially harvest red snapper by approximately \$1.48 million (2014 dollars) in 2016 and \$1.45 million in 2017 for all vessels. Over 2 years, total revenue reductions would be \$2.93 million, or an average of \$1.46 million per year for all vessels. This average revenue reduction may be considered to approximate the annual revenue reduction of affected commercial vessels over a number of years for which the commercial quota is held at about the same levels as in 2016 and 2017. Based on the 2010–2014 average of 375 vessels that commercially harvested red snapper, the revenue reduction per vessel would be approximately \$3,893 annually. This amount is approximately 4 percent of total per vessel revenues from all species.

The following discussion describes the eight alternatives that were not selected as preferred in Amendment 28 by the Council.

The first alternative, the no action alternative, would maintain the current commercial and recreational allocation of the red snapper ACL. This alternative would maintain relatively the same economic benefits to commercial vessels but at levels higher than those afforded by the preferred alternative. The second alternative would increase the recreational sector's allocation by 3 percent, resulting in a 48 percent commercial and 52 percent recreational sector allocation. The third alternative would increase the recreational sector's allocation by 5 percent, resulting in a 46 percent commercial and 54 percent recreational sector allocation. The fourth alternative would increase the recreational sector's allocation by 10 percent, resulting in a 41 percent commercial and 59 percent recreational sector allocation. The fifth alternative would allocate to the recreational sector

75 percent of the red snapper ACL increases beyond 9.12 million lb (4.14 million kg), resulting in a 42 percent commercial and 58 percent recreational sector allocation in 2016 and 42.3 percent commercial and 57.7 percent recreational sector allocation in 2017. The sixth alternative would allocate to the recreational sector all red snapper ACL increases beyond a stock ACL of 9.12 million lb (4.14 million kg), resulting in a 33.3 percent commercial and 66.7 percent recreational sector allocation in 2016 and 33.9 percent commercial and 66.1 percent recreational sector allocation in 2017. The seventh alternative would allocate to the recreational sector 75 percent of any red snapper ACL increases beyond a stock ACL 10.0 million lb (4.54 million kg), resulting in a 43.6 percent commercial and 56.4 percent recreational sector allocation in 2016 and 43.9 percent commercial and 56.1 percent recreational sector allocation in 2017. The eighth alternative (Alternative 9 in Action 1) would allocate increases in the red snapper ACL due to the recalibration of MRIP catch estimates and to the change in size selectivity to the recreational sector, resulting in a 42.5 percent commercial and 57.5 percent recreational sector allocation in 2016 and 2017. All these other alternatives, except the no action alternative, would result in larger quota and revenue reductions for the commercial vessels that harvest red snapper. Therefore, the Council determined that the preferred alternative in Amendment 28 best meets the goal of ensuring the allowable catch and recovery benefits from the rebuilding red snapper stock are fairly and equitably allocated between the commercial and recreational sectors.

#### List of Subjects in 50 CFR Part 622

Allocation, Commercial, Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: January 14, 2016.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) *Commercial quota for red snapper.*

(A) For fishing year 2015—7.293 million lb (3.308 million kg), round weight.

(B) For fishing year 2016—6.768 million lb (3.070 million kg), round weight.

(C) For fishing year 2017 and subsequent fishing years—6.664 million lb (3.023 million kg), round weight.

\* \* \* \* \*

(2) \* \* \*

(i) *Recreational quota for red snapper.*(A) *Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined).*

(1) For fishing year 2015—7.007 million lb (3.178 million kg), round weight.

(2) For fishing year 2016—7.192 million lb (3.262 million kg), round weight.

(3) For fishing year 2017 and subsequent fishing years—7.076 million lb (3.210 million kg), round weight.

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015—2.964 million lb (1.344 million kg), round weight.

(2) For fishing year 2016—3.042 million lb (1.380 million kg), round weight.

(3) For fishing year 2017—2.993 million lb (1.358 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015—4.043 million lb (1.834 million kg), round weight.

(2) For fishing year 2016—4.150 million lb (1.882 million kg), round weight.

(3) For fishing year 2017—4.083 million lb (1.852 million kg), round weight.

\* \* \* \* \*

■ 3. In § 622.41, revise (q)(2)(iii) to read as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(q) \* \* \*

(2) \* \* \*

(iii) *Recreational ACT for red snapper.* (A) *Total recreational ACT (Federal charter vessel/headboat and private angling component ACTs combined).*

(1) For fishing year 2015—5.606 million lb (2.543 million kg), round weight.

(2) For fishing year 2016—5.754 million lb (2.610 million kg), round weight.

(3) For fishing year 2017 and subsequent fishing years—5.661 million lb (2.568 million kg), round weight.

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015—2.371 million lb (1.075 million kg), round weight.

(2) For fishing year 2016—2.434 million lb (1.104 million kg), round weight.

(3) For fishing year 2017—2.395 million lb (1.086 million kg), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015—3.234 million lb (1.467 million kg), round weight.

(2) For fishing year 2016—3.320 million lb (1.506 million kg), round weight.

(3) For fishing year 2017—3.266 million lb (1.481 million kg), round weight.

[FR Doc. 2016-01279 Filed 1-22-16; 8:45 am]

BILLING CODE 3510-22-P

# Notices

Federal Register

Vol. 81, No. 15

Monday, January 25, 2016

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 COMMERCE

### Bureau of Industry and Security

#### Proposed Information Collection; Comment Request; National Security and Critical Technology Assessments of the U.S. Industrial Base

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 25, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [Jjessup@doc.gov](mailto:Jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482-8093, [Mark.Crace@bis.doc.gov](mailto:Mark.Crace@bis.doc.gov).

The link below clarifies the policies and procedures of the Bureau of Industry and Security (BIS) for conducting surveys to obtain information in order to perform industry studies assessing the U.S. industrial base to support the national defense pursuant to the Defense Production Act of 1950, as amended. <https://www.federalregister.gov/articles/2015/07/15/2015-17388/us-industrial-base-surveys-pursuant-to-the-defense-production-act-of-1950>

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Department of Commerce, in coordination with the Department of Defense and other Federal agencies, conducts survey assessments of U.S. industrial base sectors deemed critical to U.S. national security. The information gathered is necessary to determine the health and competitiveness as well as the needs of these critical market segments in order to maintain a strong U.S. industrial base.

#### II. Method of Collection

Submitted electronically.

#### III. Data

*OMB Control Number:* 0694-0119.

*Form Number(s):* N/A.

*Type of Review:* Regular submission extension.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 28,000.

*Estimated Time per Response:* 8 to 14 hours per response.

*Estimated Total Annual Burden Hours:* 308,000 hours.

*Estimated Total Annual Cost to Public:* \$0.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2016-01338 Filed 1-22-16; 8:45 am]

**BILLING CODE 3510-33-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No.: 151217999-5999-01]

RIN 0693-XC058

#### National Cybersecurity Center of Excellence (NCCoE) Wireless Medical Infusion Pumps Use Case for the Health Care Sector

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Wireless Medical Infusion Pumps use case for the health care sector. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Health Care Sector program. Participation in the use case is open to all interested organizations.

**DATES:** Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than February 24, 2016. When the use case has been completed, NIST will post a notice on the NCCoE Health Care Sector program Web site at [https://nccoe.nist.gov/projects/use\\_cases/health\\_it](https://nccoe.nist.gov/projects/use_cases/health_it) announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

**ADDRESSES:** The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to [HIT\\_NCCoE@nist.gov](mailto:HIT_NCCoE@nist.gov); or via hardcopy to National Institute of Standards and Technology, NCCoE; 100 Bureau Drive, MS 2002, Gaithersburg, MD, 20899. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of

this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A CRADA template can be found at: <https://nccoe.nist.gov/library/nccoe-consortium-crada-example>.

**FOR FURTHER INFORMATION CONTACT:**

Gavin O'Brien via email at [HIT\\_NCCoE@nist.gov](mailto:HIT_NCCoE@nist.gov); by telephone 240-314-6815; or by mail to National Institute of Standards and Technology, NCCoE; 100 Bureau Drive, MS 2002, Gaithersburg, MD, 20899. Additional details about the NCCoE Health Care Sector program are available at [https://nccoe.nist.gov/projects/use\\_cases/health\\_it](https://nccoe.nist.gov/projects/use_cases/health_it).

**SUPPLEMENTARY INFORMATION:**

*Background:* The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

*Process:* NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Wireless Medical Infusion Pumps use case for the health care sector. The full use case can be viewed at: [https://nccoe.nist.gov/projects/use\\_cases/health\\_it](https://nccoe.nist.gov/projects/use_cases/health_it).

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below

up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

*Use Case Objective:* In the past, medical devices were standalone instruments that interacted only with the patient. Today, medical devices have operating systems and communication hardware that allow them to connect to networks and other devices. While this technology has created more powerful tools and improved health care, it has led to additional risks in safety and security.

The goal of this use case is to help health care providers secure their medical devices on an enterprise network, with a specific focus on wireless infusion pumps.<sup>1</sup> This use case begins the process to identify the actors interacting with infusion pumps, define the interactions between the actors and the system, perform a risk assessment, identify applicable mitigating security technologies, and provide an example implementation.

Clinicians and patients rely on infusion pumps for safe and accurate administration of fluids and medications. However, the FDA has identified problems that can compromise the safe use of external infusion pumps. These issues can lead to over or under-infusion, missed treatments, or delayed therapy.

The publication of the use case is merely the beginning of a process that will identify research participants and components of a laboratory environment to identify, evaluate and test relevant security tools and controls. The approach may include: risk assessment

<sup>1</sup> For purposes of this notice, NIST is adopting the definition of external infusion pumps provided on the Food and Drug Administration (FDA) Protecting and Promoting Your Health Web site as: "Medical devices that deliver fluids, including nutrients and medications such as antibiotics, chemotherapy drugs, and pain relievers, into a patient's body in controlled amounts. Many types of pumps, including large volume, patient-controlled analgesia, elastomeric, syringe, enteral, and insulin pumps, are used worldwide in health care facilities such as hospitals, and in the home." <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/GeneralHospitalDevicesandSupplies/InfusionPumps/>.

and analysis, logical design, build development, test & evaluation and security control mapping. The output of the process will be the publication of a multi-part Practice Guide to assist the community in evaluating the security environment surrounding their infusion pumps deployed in a clinical setting.

A detailed description of the Wireless Medical Infusion Pumps use case is available at [https://nccoe.nist.gov/projects/use\\_cases/health\\_it](https://nccoe.nist.gov/projects/use_cases/health_it)

*Requirements:* Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section two of the Wireless Medical Infusion Pumps use case (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

1. Wireless infusion pump
2. Pump server
3. Network
4. Alarm manager
5. Electronic medication administration record (eMAR)
6. Point of care medication system
7. In hospital pharmacy system
8. Computerized physician order entry (CPOE)
9. IT security system
10. Network security system
11. Credentialing/credentialing server
12. Asset management and monitoring systems

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in the Security Control Map section of the Wireless Medical Infusion Pumps use case (for reference, please see the link in the PROCESS section above):

1. Automatic logoff
2. Audit controls
3. Authorization
4. Configuration of security features
5. Cybersecurity product upgrades
6. Data backup and disaster recovery
7. Emergency access
8. Health data de-identification
9. Health data integrity and authenticity
10. Malware detection/protection
11. Node authentication
12. Person authentication
13. Physical locks and devices
14. Security guides
15. System and application hardening
16. Third-party components in product lifecycle roadmaps
17. Health data storage confidentiality

18. Transmission confidentiality  
19. Transmission integrity

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the Wireless Medical Infusion Pump capability in NCCoE facilities which will be conducted in a manner consistent with Federal requirements (e.g., FIPS 200, FIPS 201, SP 800-53, and SP 800-63).

Additional details about the Wireless Medical Infusion Pumps use case for the Health care sector are available at [https://nccoe.nist.gov/projects/use\\_cases/health\\_it](https://nccoe.nist.gov/projects/use_cases/health_it). NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Wireless Medical Infusion Pump capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the health care community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Wireless Medical Infusion Pumps use case. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Wireless Medical Infusion Pump capability will be announced on the NCCoE Web site at least two weeks in

advance at <https://nccoe.nist.gov/>. The expected outcome of the demonstration is to improve wireless medical infusion pumps across an entire health care sector enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE Web site <https://nccoe.nist.gov/>.

**Richard Cavanagh,**

*Acting Associate Director for Laboratory Programs.*

[FR Doc. 2016-01344 Filed 1-22-16; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE370**

#### Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice; receipt of application for exempted fishing permit.

**SUMMARY:** This notice announces receipt of an exempted fishing permit (EFP) application from the Alaska Seafood Cooperative (AKSC) and co-applicants. If granted, this EFP would allow the applicants to remove halibut from a trawl codend on the deck, and release those fish back to the water in a timely manner to increase survivability. These halibut would be sampled by NMFS-trained observers for length and physical condition using standard International Pacific Halibut Commission (IPHC) halibut mortality assessment methods. The objectives of the EFP application are to (1) test methods for sorting halibut on deck for suitability as an allowable fish handling mode for the non-pollock catcher/processor trawl fisheries (Amendment 80, community development quota (CDQ), and trawl limited access) in the Bering Sea and Aleutian Islands under an eventual regulated program; (2) simplify and improve on elements that worked under a 2015 deck sorting EFP project; and (3) address challenges and issues that arose in the 2015 EFP. This experiment has the potential to promote the objectives of the Magnuson-Stevens

Fishery Conservation and Management Act and the Northern Pacific Halibut Act.

**DATES:** Comments on this EFP application must be submitted to NMFS on or before February 9, 2016. The North Pacific Fishery Management Council (Council) will consider the application at its meeting from February 1, 2016, through February 9, 2016, in Portland, OR.

**ADDRESSES:** The Council meeting will be held at the Benson Hotel, 309 SW Broadway, Portland, OR 97205. The agenda for the Council meeting is available at <http://www.npfmc.org>. You may submit comments on this document, identified by NOAA-NMFS-2015-0162, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)/#/docketDetail;D=NOAA-NMFS-2015-0162, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS Web site at <http://alaskafisheries.noaa.gov/>.

The June 2014 IPHC Report is available from the Council Web site at <http://www.npfmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907-586-7111.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), which the Council prepared

under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

### Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery. Halibut is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. Halibut caught incidentally by catcher/processors in the nonpelagic trawl groundfish fisheries must be weighed on a NMFS-approved scale, sampled by observers, and returned to the ocean as soon as possible. The Council establishes annual maximum halibut bycatch allowances and seasonal apportionments adjusted by an estimated halibut discard mortality rate (DMR) for groundfish fisheries. The DMRs are based on the best information available, including information contained in the annual Stock Assessment and Fishery Evaluation report, available at <http://www.alaska.fisheries.noaa.gov/>. NMFS approves the halibut DMRs developed and recommended by the IPHC and the Council for the BSAI groundfish fisheries for use in monitoring the halibut bycatch allowances and seasonal apportionments. The IPHC developed these DMRs for the BSAI groundfish fisheries using the 10-year mean DMRs for those fisheries.

Directed fishing in a groundfish fishery closes when the halibut mortality apportionment for the fishery is reached, even if the target species catch is less than the seasonal or annual quota for the directed fishery. In the

case of the Bering Sea flatfish fishery, seasons have been closed before fishery quotas have been reached to prevent the fishery from exceeding the halibut mortality apportionment.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), halibut mortality apportionments were established for the Amendment 80 sector and for Amendment 80 cooperatives. Amendment 80 is a catch share program that allocates several BSAI non-pollock trawl groundfish fisheries (including the flatfish fishery) among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector. Though halibut mortality apportionments provide Amendment 80 cooperatives more flexibility to use available mortality, halibut mortality continues to constrain fishing in some Amendment 80 fisheries. Therefore, this sector is actively exploring ways to continue to reduce halibut mortality.

Before incidentally caught halibut are returned to the sea, at-sea observers must estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 assure that observer estimates of halibut and groundfish catch are credible and accurate, and that potential bias is minimized. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a codend, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

In 2009 and 2012, halibut mortality experiments were conducted by members of the Amendment 80 sector under EFP 09–02 (74 FR 12113, March 23, 2009) and EFP 12–01 (76 FR 70972, November 16, 2011). By regulation, all catch including halibut is moved across a flow scale below deck before the halibut is returned to the sea. Halibut mortality increases with increased handling and time out of water. Under the 2009 and 2012 EFPs, experimental methods for sorting catch on a vessel's deck allowed halibut to be returned to the sea in less time, with less handling relative to halibut routed below deck and over the flow scale. The halibut mortality during flatfish fishing under the 2009 and 2012 EFPs was estimated to be approximately 17 metric tons (mt) and 10.8 mt, respectively, less than the amounts estimated from the DMR for this fishery. The reduced halibut mortality under the 2009 and 2012 EFPs is attributed to the improved condition

of halibut through reduced handling and time out of water.

In 2015, test fishing under EFP 2015–02 (80 FR 3222, January 22, 2015) expanded on results of the 2009 and 2012 EFPs to explore the feasibility of deck sorting halibut in additional fisheries, on more vessels, and during a longer interval of time during the fishing season. The primary objective was to reduce halibut mortality in the Amendment 80 groundfish fisheries in 2015. Fishing under the EFP began in May and continued through November. The most prominent result from the 2015 EFP was that substantial halibut mortality savings were achieved from deck sorting on catcher/processors operating in non-pollock Bering Sea fisheries. The preliminary estimate of halibut savings under the 2015 EFP is 131 mt. For the nine vessels that participated in the 2015 EFP, all but one achieved mortality rates in the range of 41 percent to 53 percent, compared to the standard mortality rate of 80 percent in the Bering Sea flatfish fisheries without deck sorting (average across target fisheries of interest for the 2015 EFP).

Reducing halibut mortality is a high priority for the IPHC, the Council, and NMFS. In June 2014, the Council received a report from the IPHC about the impact of halibut bycatch in the groundfish fisheries on the short- and long-term yields in the directed halibut fishery. The IPHC report (see **ADDRESSES**) presented scenarios under which increases in halibut bycatch or decreases in the exploitable halibut biomass would result in no directed fishery yield in IPHC Management Area 4CDE per the IPHC's harvest policy. At its June 2014 meeting, the Council passed a motion requesting all groundfish industry sectors to undertake voluntary efforts to reduce halibut mortalities in the BSAI resulting from halibut bycatch, as well as discards in the directed fishery, by 10 percent from the current 5-year average levels, through the 2014–15 fishing seasons. The Council also encouraged NMFS to work closely with the Amendment 80 sector to develop deck sorting procedures and technologies that could reduce halibut mortalities with the eventual goal of implementing a full-scale program. In 2015, in part due to these voluntary efforts and deck sorting procedures, 43 percent (1,888 mt) of halibut prohibited species catch (PSC) was unused and “left in the water.” In 2014, by comparison, 22 percent (985 mt) of halibut PSC was unused. The total halibut mortality in the BSAI in 2015 was 2,537 mt.



In June 2015, the Council took final action to reduce halibut PSC mortality limits in the BSAI groundfish fisheries overall from 4,426 mt to 3,515 mt, a 21 percent reduction. The Council took final action to reduce the halibut PSC mortality limit for the Amendment 80 sector by 25 percent, from 2,325 mt to 1,745 mt per year. NMFS published a proposed rule to implement Amendment 111 and these PSC reductions to the FMP for groundfish of the BSAI on November 16, 2015 (80 FR 71650).

### Proposed Action

On December 16, 2015, the AKSC, an Amendment 80 cooperative, submitted an application for an EFP for 2016 to build on the information collected in prior deck sorting EFPs and further reduce halibut mortality in the Amendment 80, CDQ, and trawl limited access sectors. The objectives of the proposed 2016 EFP are to test modifications to the procedures and approaches in the 2015 EFP that (1) move substantively towards implementation of deck sorting as an allowable fish handling mode for the non-pollock catcher-processor trawl fisheries in the BSAI; (2) simplify and improve on elements that worked from the 2015 EFP; and (3) address challenges and issues that arose in the 2015 EFP. Consistent with 2015 methods, the EFP would allow crew on board catcher/processors to sort halibut removed from a codend on the deck of the vessel. Those sorted halibut could be released back to the water after the halibut are measured for length and tested for physical condition using standard IPHC viability assessment methods.

The applicants propose to test several new aspects that would inform a future, operationalized deck sorting process in Federal regulations:

(1) Observers instead of sea samplers would be used to track and monitor halibut sorted on deck;

(2) A single set of procedures would be used to account for halibut on EFP trips, *i.e.*, vessels would not be able to switch between EFP and normal hauls on a single trip; and

(3) Concepts for halibut holding tanks on deck would be tested.

The applicant proposes to begin EFP fishing in May 2016 and end on December 31, 2016. The EFP would allow halibut to be sorted, sampled, and released prior to being weighed on a flow scale, to achieve the experimental objectives and reduce halibut mortality. This EFP application requests an amount of halibut PSC mortality for vessels engaged in experimental fishing

not to exceed the 2016 halibut PSC mortality apportionments set out in Table 14 of the Final 2015 and 2016 Harvest Specifications (available at [https://alaskafisheries.noaa.gov/sites/default/files/15\\_16bsaitable14.pdf](https://alaskafisheries.noaa.gov/sites/default/files/15_16bsaitable14.pdf)). Participants request no additional groundfish or halibut quota as part of this EFP application, and all groundfish catch will accrue against the appropriate Amendment 80, CDQ, or trawl limited access sector catch and PSC allowances.

Participating vessels would procure and use three NMFS-trained at-sea observers during EFP trips. Observers would perform all of their duties on deck and in the factory during 8-hour shifts, leaving up to four hours per observer per day for error checking and the additional work to enter data for halibut sorted on deck. Work shifts would not exceed 12 hours per observer. Three observers would therefore work overlapping 12-hour shifts for continuous coverage to track the amount of halibut mortality for fish sorted on deck to determine halibut mortality amounts from EFP-permitted vessels.

Using observers instead of sea samplers as in the 2015 EFP would resolve some of the issues that emerged in 2015 regarding equipment usage, long shifts with few breaks, training, lines of authority, and timely access to the data. Observers would be able to enter and extrapolate data via the NMFS Catch Accounting System so PSC usage by EFP participants would be reported and tracked in near real-time along with non-EFP participants' usage and would accrue against the sectors' halibut PSC mortality apportionments. If the halibut mortality apportionment is reached, the EFP permit holder would notify NMFS and end EFP fishing. As required by existing regulations, Amendment 80 fishing will also cease when the annual halibut mortality apportionment is reached.

The applicants propose a modified factory sampling procedure relative to the one used in 2015. Under the 2015 EFP, halibut that were not sorted on deck were collected by the crew in the factory under the supervision of a sea sampler. The sea sampler measured all halibut collected in the factory, and a mortality rate of 90 percent was used to determine total halibut mortality in the factory. The observers did not account for halibut mortality on EFP hauls in 2015, rather the EFP participants and sea samplers determined and tracked halibut mortality for EFP hauls.

In 2016, halibut that are not sorted on deck would flow to the factory and would be available to the observer for sampling. The on-duty observer would collect species composition samples per

standard protocols to estimate the proportion of halibut in the haul relative to other species. The proportion of halibut estimated to be in the haul would be extrapolated to the total haul catch weight to estimate the total amount of halibut not sorted on deck. A mortality rate of 90 percent would be applied to the amount of halibut in the factory to estimate the halibut mortality from the factory. The resulting factory halibut mortality amount would be combined with the amount of halibut mortality estimated in the deck-sorted portion of the haul to estimate the total halibut mortality for each EFP haul.

The following example is provided as an illustration for how total halibut mortality would be calculated for a haul under the 2016 EFP. Assume a vessel catches 400 kilograms (kg) of halibut in one haul. Assume 92 percent of the halibut is removed on deck and the vessel achieves a halibut discard mortality of 50 percent by releasing these fish from deck. In this example, the amount of halibut mortality on deck is 184 kg. A halibut mortality of 90 percent is applied to the 32 kg of halibut that are sampled in the factory, resulting in a halibut mortality of 28.8 kg in the factory. In this example, the total halibut mortality for the haul is 212.8 kg.

The halibut mortality data collected by observers would be available to NMFS in near-real time for inseason management in 2016. In addition to the observer samples, under the 2016 EFP, vessel crew would conduct a census of halibut in the factory, after they have been available to the observer for sampling, to compare observer estimates of total halibut and census results.

Under the 2015 EFP, vessels could switch between EFP fishing and regular commercial fishing during a single fishing trip. In 2016, EFP participants would operate under a single catch handling and accounting method for all hauls on a fishing trip designated as an EFP trip. This modification is expected to reduce potential confusion aboard the vessel and improve efficiency for catch accounting and scientific personnel. Operators of participating vessels would still have a way to opt out of sorting on deck when it is potentially unsafe or when the vessel has located a fishing area where halibut bycatch is very low.

The applicants propose to test the concept of holding deck-sorted halibut in tanks with recirculating sea water on the deck of the vessel to minimize post-release depredation by orcas and to improve halibut viability if observer sampling cannot keep pace with the deck-sorting by crew. During EFP fishing in 2015, some participants noted



that depredation by orcas on post-release, deck-sorted halibut was at times high, especially in the arrowtooth flounder target fishery. The option of holding halibut in sea water tanks would allow the vessel to wait or change location and release halibut when or where they are less likely to be depredated. Another potential benefit of holding deck-sorted halibut in tanks would be to maintain or improve the halibut's viability by placing them in oxygenated water if sampling by the observer fell behind the pace of sorting.

This proposed action would exempt participating catcher/processors from selected 50 CFR part 679 prohibitions, and monitoring and observer requirements. Should the Regional Administrator issue a permit based on this EFP application, the conditions of the permit will be designed to minimize halibut mortality and any potential for biasing estimates of groundfish and halibut mortality. Vessels participating in EFP fishing may be exempt from, at minimum, the following regulations:

1. the prohibition against interfering with or biasing the sampling procedure employed by an observer including physical, mechanical, or other sorting or discarding of catch before sampling, at § 679.7(g)(2);

2. the requirements to weigh all catch by an Amendment 80 vessel on a NMFS-approved scale at § 679.93(c)(1) and by all vessels at § 679.28(b); and

3. the requirement to return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition at § 679.21(b)(2)(ii).

In 2017, the AKSC would be required to submit to NMFS a report of the EFP results after EFP experimental fishing has ended in 2016. The report would include a comparison of halibut mortality from halibut sampled during the EFP and an estimate of halibut mortality under standard IPHC halibut mortality rates for those target fisheries. Additionally, the report should compare the estimated amount of halibut sampled by observers in the factory with the census of halibut collected in the factory by vessel crew to evaluate the precision and associated variance of sampled-based extrapolations and to inform a decision of the best way to account for factory halibut in a regulated program. Finally, the report should evaluate the effectiveness of using sea water holding tanks on deck to improve the viability and minimize depredation by orcas on deck-sorted halibut.

Under the EFP, participants would be limited to their groundfish allocations under the 2016 harvest specifications.

The amount of halibut mortality applied to the EFP activities would be subject to review and approval by NMFS.

This EFP would be valid upon issuance in 2016 until either the end of 2016 or when the annual halibut mortality apportionment is reached in areas of the BSAI open to directed fishing by the various sectors. EFP-authorized fishing activities would not be expected to change the nature or duration of the groundfish fishery, gear used, or the amount or species of fish caught by the participants.

The fieldwork that would be conducted under this EFP is not expected to have a significant impact on the human environment as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP application during its February 2016 meeting, which will be held at the Benson Hotel in Portland, OR. The EFP application will also be provided to the Council's Scientific and Statistical Committee for review at the February Council meeting. The applicant has been invited to appear in support of the application.

#### Public Comments

Interested persons may comment on the application at the February 2016 Council meeting during public testimony or until February 9, 2016. Information regarding the meeting is available at the Council's Web site at <http://www.npfmc.org>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: January 20, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016-01342 Filed 1-22-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD961

#### Pacific Island Fisheries; Special Coral Reef Ecosystem Fishing Permit for Offshore Aquaculture

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

**ACTION:** Notice of availability of draft environmental assessment; request for comments.

**SUMMARY:** NMFS proposes to issue a Special Coral Reef Ecosystem Fishing Permit that would authorize Kampachi Farms, LLC, to stock, culture, and harvest fish that are part of the coral reef ecosystem management unit in a submerged net pen moored in Federal waters about 5.5 nm (10.2 km) off the west coast of the Island of Hawaii. This notice informs the public that NMFS prepared a draft environmental assessment (EA) of the potential impacts of the proposed activity.

**DATES:** NMFS must receive comments on the draft EA by February 16, 2016.

**ADDRESSES:** You may submit comments on the draft EA, identified by NOAA-NMFS-2015-0137, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0137](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0137), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

**Instructions:** NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:**

Melanie Brown, Sustainable Fisheries, NMFS PIR, 808-725-5171.

**SUPPLEMENTARY INFORMATION:** NMFS proposes to issue a Special Coral Reef Ecosystem Fishing Permit to Kampachi Farms, LLC (applicant), consistent with Federal regulations for Hawaii coral reef ecosystem fisheries management at Title 50, Code of Federal Regulations, Part 665.224, and the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP). NMFS would authorize the applicant to stock, culture, and harvest kampachi, a native coral reef ecosystem management unit fish (*Seriola rivoliana*, Almaco jack, marketed as Kona Kampachi®). NMFS would authorize the activity for 2 years.

The applicant would use a floating, submerged, cylindrical net pen with an area of 1,083 m<sup>3</sup> (38,246 ft<sup>3</sup>) net pen, suspended from a 30-m (98-ft) diameter float ring. The applicant would tether the net pen, made of brass and synthetic meshes, to a 60-ft (18-m) feed vessel. The net pen, float ring, and feed vessel are collectively called the Velella Delta Array. The applicant would secure the array to a single-point mooring in Federal waters approximately 6,000 ft (1,830 m) deep, 5.5 nm (10.2 km) west of Keauhou Bay, Hawaii. The exact position of the Velella Delta Array would depend on wind and currents and would approach no closer than 3 nm (5.6 km) from shore.

The proposed activity requires a special permit because the FEP and Federal regulations do not identify the Velella Delta Array as an approved gear type to fish for coral reef ecosystem management unit species. If NMFS authorizes the activity, the applicant would use the Velella Delta Array to grow and harvest 30,000 kampachi from fingerlings in two 15,000-fish cohorts. The applicant would stock the net pen with first-generation offspring from wild fish.

NMFS anticipates that the low density of cultured fish, the procedures proposed to minimize feed waste, and the flushing by ocean currents, would minimally affect water quality. The net materials resist both biofouling and leaching. The net pen design includes a single mesh entry panel on the top that Kampachi Farms staff would use only after raising the pen to the surface. The project design and operating procedures would prevent fish escapes.

The applicant would equip the array's float ring and feed vessel with GPS navigation units to provide constant location information on the array, simplifying retrieval operations if the array were to break free from the

mooring. In the unlikely case of the array separating from the mooring, the applicant would notify the U.S. Coast Guard and immediately recover any lost gear. In addition to requiring the applicant to monitor the array, NMFS would require the applicant to avoid interactions with protected species (*i.e.*, marine mammals, seabirds, sea turtles, and reef corals), prevent fish escapes, dispose of dead fish on land, maintain harvest and transshipment reports, and, if needed, accommodate a scientific observer.

NMFS expects that the array would aggregate pelagic fish, and fishermen would be able to continue fishing near the array. The small size of the array would not adversely affect fish catches in the ocean west of the Island of Hawaii.

The applicant must also obtain a permit from the U.S. Army Corps of Engineers (USACE) to use the mooring, and NMFS prepared the draft EA in collaboration with the USACE. When finalized, NMFS will use the EA to determine whether or not the activity would be a major Federal action with the potential for significant environmental impacts. If NMFS determines that the proposed activity would have significant impacts, we would need to prepare an environmental impact statement. The EA will also inform our decision whether or not to issue the permit. Additionally, the EA will inform the USACE preparation of their own environmental evaluations in accordance with USACE procedures for the mooring permit.

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

Dated: January 20, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016-01343 Filed 1-22-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Health Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board will take place.

**DATES:**

*Wednesday, February 10, 2016*

8:45 a.m.–11:30 a.m. (Open Session)  
11:30 a.m.–12:45 p.m. (Administrative Working Meeting)  
12:45 p.m.–4:15 p.m. (Open Session)

**ADDRESSES:** Inn by the Sea Hotel, Wind and Sea Room, 7830 Fay Avenue, La Jolla, California 92037 (Pre-meeting registration required; see guidance in **SUPPLEMENTARY INFORMATION**, "Public's Accessibility to the Meeting").

**FOR FURTHER INFORMATION CONTACT:** The Executive Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681-6653, Fax: (703) 681-9539, [christine.e.bader.civ@mail.mil](mailto:christine.e.bader.civ@mail.mil). For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, [kendal.l.brown2.ctr@mail.mil](mailto:kendal.l.brown2.ctr@mail.mil), (703) 681-6670, Fax: (703) 681-9539.

**SUPPLEMENTARY INFORMATION:** This meeting is being held 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, and in accordance with section 10(a)(2) of the Federal Advisory Committee Act.

Additional information, including the agenda and electronic registration, is available at the DHB Web site, <http://www.health.mil/About-MHS/Other-MHS-Organizations/Defense-VHealth-Board/Meetings>.

**Purpose of the Meeting:** The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues or lessons learned related to military medicine, health policy, health research, disease/injury prevention, health promotion, and healthcare delivery.

**Agenda:** Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165 and subject to availability of space, the DHB meeting is open to the public from 8:45 a.m. to 11:30 a.m. and 12:45 p.m. to 4:15 p.m. on February 10, 2016. The DHB anticipates receiving a progress update from the Healthcare Delivery Subcommittee on the pediatric clinical preventive services review and an update from the Public Health Subcommittee on their review of improving Defense Health Program medical research processes. In addition, information briefings will be presented on, Naval Health Research Center and

Naval Medical Center San Diego research activities, challenges, and opportunities, Center for Wireless and Population Health Systems, Naval Center for Combat and Operational Stress Control, and Perspectives of a Deployed Combat Hospital Commander.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Monday, February 1, 2016 to register. Additional details will be provided to all registrants.

*Special Accommodations:* Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Written Statements:* Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should not be longer than two type-written pages and address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: January 20, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–01330 Filed 1–22–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Environmental Assessment for the Acceptance and Disposition of Spent Nuclear Fuel Containing U.S.-Origin Highly Enriched Uranium From the Federal Republic of Germany

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability; public meeting.

**SUMMARY:** The U.S. Department of Energy (DOE) announces the availability of its draft environmental assessment (EA) (DOE/EA–1977) evaluating the potential environmental impacts from a proposed action to receive, store, process and disposition spent nuclear fuel (SNF) from the Federal Republic of Germany at DOE's Savannah River Site (SRS) (Draft German Spent Nuclear Fuel EA).<sup>1</sup> This SNF is composed of kernels containing thorium and U.S.-origin highly enriched uranium (HEU) embedded in small graphite spheres that were irradiated in research reactors used for experimental and/or demonstration purposes. DOE invites public comments on the Draft Spent Nuclear Fuel from Germany EA and is announcing a public meeting.

**DATES:** The 45-day public comment period extends from the date of publication of this notice in the **Federal Register** through March 11, 2016. DOE will consider all comments received via email by 11:59 p.m. Eastern Standard Time or postmarked by that date. Comments submitted after that date and time will be considered to the extent practicable.

DOE will hold a public meeting to receive comments on the Draft Spent Nuclear Fuel from Germany EA. The meeting will be held on:

- February 4, 2016, (7:00 p.m. to 9:00 p.m.) at the North Augusta Community Center, 495 Brookside Drive, North Augusta, South Carolina 29841.

**ADDRESSES:** This Draft Spent Nuclear Fuel from Germany EA is available at the following sites:

<sup>1</sup>This environmental assessment was announced as the *Environmental Assessment for the Acceptance and Disposition of Used Nuclear Fuel Containing U.S.-Origin Highly Enriched Uranium from the Federal Republic of Germany* in DOE's Notice of Intent (NOI) on June 4, 2014 (79 FR 32256). The title has been changed.

<http://energy.gov/nepa/office-nepa-policy-and-compliance>  
<http://www.srs.gov/sro/germanheuproj.html>  
<http://www.srs.gov/general/pubs/envbul/nepa1.htm>

To request a print copy of the Draft Spent Nuclear Fuel from Germany EA please submit your request to Tracy Williams, NEPA Compliance Officer, U.S. Department of Energy, P.O. Box B, Aiken, South Carolina 29802; or by telephone at (803) 952–8278.

DOE invites Federal agencies, state and local governments, Native American tribes, industry, other organizations, and members of the general public to submit comments on DOE's Draft Spent Nuclear Fuel from Germany EA. Please direct written comments on the Draft Spent Nuclear Fuel from Germany EA to Tracy Williams, NEPA Compliance Officer, U.S. Department of Energy, P.O. Box B, Aiken, South Carolina 29802.

Comments on the Draft Spent Nuclear Fuel from Germany EA may also be submitted by email to [GermanSpentNuclearFuelEA@leidos.com](mailto:GermanSpentNuclearFuelEA@leidos.com). DOE will give equal weight to written comments and oral comments received at the public meeting. Requests to be placed on the German Spent Nuclear Fuel EA mailing list should be directed to Tracy Williams at the postal or email addresses above.

**FOR FURTHER INFORMATION CONTACT:** To request further information on SRS spent nuclear fuel disposition activities or background information on the proposed project, please contact Tracy Williams at the address as listed above.

For general information concerning DOE's NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GG–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585: (202) 586–4600, or leave a message toll-free, at (800) 472–2756; fax (202) 586–7031; or send an email to [AskNEPA@hq.doe.gov](mailto:AskNEPA@hq.doe.gov).

This Draft Spent Nuclear Fuel from Germany EA is available on the DOE NEPA Web site at <http://nepa.energy.gov>, and also at the SRS Web site at <http://www.srs.gov/general/pubs/envbul/nepa1.htm>.

#### SUPPLEMENTARY INFORMATION:

##### Background

DOE has prepared the Draft Spent Nuclear Fuel from Germany EA in accordance with Council on Environmental Quality and DOE National Environmental Policy Act (NEPA) implementing regulations at 40 CFR parts 1500 through 1508 and 10

CFR part 1021, respectively. The Draft Spent Nuclear Fuel from Germany EA analyzes the potential environmental impacts of receipt, storage, processing, and disposition of SNF from Germany containing, prior to irradiation, approximately 900 kilograms (kg) of U.S.-origin HEU. The SNF is composed of kernels containing thorium and U.S.-origin HEU embedded in small graphite spheres.

The United States provided the HEU to Germany between 1965 and 1988. The spent fuel was irradiated at the Arbeitsgemeinschaft Versuchsreaktor (AVR) reactor, which operated from 1967 to 1988, and the Thorium High Temperature Reactor (THTR)-300, which operated from 1983 to 1989. These reactors operated as part of Germany's research and development program for pebble bed, high-temperature, gas-cooled reactor technology.

In a February 2012 letter, the State Secretary of the Federal Ministry of Education and Research of the Federal Republic of Germany requested DOE's Under Secretary for Nuclear Security to consider accepting the SNF, and collaboration on the request was initiated in May 2012. In April 2014, DOE, the Federal Ministry of Education and Research of the Federal Republic of Germany, and the Ministry for Innovation, Science and Research of the State of North Rhine-Westphalia on behalf of the North Rhine-Westphalian State Government, Germany, signed a Statement of Intent<sup>2</sup> to cooperate in conducting the preparatory work necessary to support DOE's consideration of the request that it accept the spent fuel from Germany and to use SRS facilities for processing and disposition of the spent fuel. The preparatory work includes conducting studies, technical and engineering work, as well as preparation of this Draft Spent Nuclear Fuel from Germany EA. The Draft Spent Nuclear Fuel from Germany EA and the engineering work will allow DOE to reach an informed decision on the proposed receipt, acceptance, processing and disposition of the spent nuclear fuel from Germany. The Statement of Intent specifies that Forschungszentrum Julich, an interdisciplinary research center funded primarily by the German government, is bearing the cost of the preparatory phase—feasibility studies and NEPA analysis—and if there is a decision to proceed with the project, would also bear the costs associated with

acceptance, processing, and disposition of the spent nuclear fuel.

#### Purpose and Need for Action

DOE's purpose and need for the receipt, storage, processing, and disposition of the SNF from Germany is to support the U.S. policy objective to reduce, and eventually to eliminate, HEU from civil commerce. This action would further the U.S. HEU minimization objective by returning U.S.-origin HEU from Germany to the United States for safe storage and disposition in a form no longer usable for an improvised nuclear device, a radiological dispersal device, or other radiological exposure device.

#### Proposed Action and Alternatives

In the Draft Spent Nuclear Fuel from Germany EA, DOE considers a No Action Alternative as required under NEPA, and two action alternatives for acceptance and disposition of the graphite-based SNF currently stored in Germany. Under the No Action Alternative, the SNF would not be transported to the United States for management and disposition.

The two action alternatives differ in processing technology and location at SRS where the processing would occur. Under both of the proposed action alternatives, the SNF would be transported from Germany and processed at SRS for final disposition as a proliferation-resistant waste form. The proposed action alternatives are identified by the respective SRS processing location. The H-Area Alternative (so named because most activities would involve H-Area facilities) includes three processing options (Vitrification Option, Low-Enriched Uranium Waste Option, and Low-Enriched Uranium/Thorium Waste Option) that use H-Canyon to differing extents; the L-Area Alternative (so named because the alternative would involve mostly L-Area facilities) would implement melt and dilute processing in L-Area. Existing and planned SRS infrastructure and facilities would be used to process the spent nuclear fuel from Germany.

The shipping campaign from Germany would involve about 30 shipments over approximately a 3.5-year period to transport 455 CASTOR<sup>3</sup> casks containing the SNF from Germany aboard chartered ships across the Atlantic Ocean to Joint Base Charleston-Weapons Station near Charleston, South Carolina. From Joint Base Charleston-Weapons Station, the CASTOR casks

would be transported to SRS on dedicated trains.

Processing steps would involve separating the HEU kernels from their graphite matrix, then processing the kernels through either H-Canyon and the SRS Liquid Nuclear Waste Facilities, or through a new melt and dilute process that would be installed in L-Area. The HEU kernels are embedded in a graphite (carbon) matrix which must be removed for the HEU kernels to be processed. Two methods for removing the graphite surrounding the fuel kernels (referred to as carbon digestion), a molten salt digestion process and a vapor digestion process, are evaluated in this EA.

#### H-Area Alternative

Under the H-Area alternative, three options for dissolving the kernels after carbon digestion are evaluated:

- The vitrification option provides for dissolution of the kernels in H-Canyon with direct transfer of the entire dissolver solution to the existing Liquid Nuclear Waste Facilities. Under this option, the high-activity fraction of the dissolver solution would be disposed as vitrified high-level radioactive waste and the low-activity fraction as low-level radioactive waste saltstone.

- The low-enriched uranium waste option provides for dissolution of the kernels in H-Canyon followed by solvent extraction in H-Canyon to separate the uranium. The resulting uranium solution would be down blended and grouted (*i.e.*, solidified by mixing with cement) to meet acceptance criteria for disposal as low-level radioactive waste. The remainder of the dissolver solution would be processed through the Liquid Nuclear Waste Facilities into high- and low-level radioactive waste as indicated for the vitrification option.

- The low-enriched uranium/thorium waste option provides for dissolution of the kernels in H-Canyon followed by solvent extraction in H-Canyon for separation of the uranium and thorium. The resulting uranium/thorium solution would be down blended and grouted to meet acceptance criteria for disposal as low-level radioactive waste. The remainder of the dissolver solution would be processed through the Liquid Nuclear Waste Facilities into high- and low-level radioactive waste as indicated for the vitrification option.

#### L-Area Alternative

Under the L-Area Alternative, the kernels would be down-blended and converted to a uranium-aluminum alloy in a melt and dilute process in L-Area.

<sup>2</sup> The referenced Statement of Intent is provided in the Draft EA as Appendix A.

<sup>3</sup> CASTOR is the name given to a dry-storage cask for storage and transport of radioactive material.

The resulting ingots would be stored in concrete overpacks on a pad in L-Area. Unlike the H-Area processing methods, the kernels would not be dissolved prior to final processing.

#### NEPA Process

All comments on the Draft Spent Nuclear Fuel from Germany EA received during the public comment period will be considered and addressed in the Final Spent Nuclear Fuel from Germany EA. DOE will address comments submitted after the close of the public comment period on the Draft EA to the extent practicable. Following the public comment period, and based on the EA and consideration of all comments received, DOE will either issue a Finding of No Significant Impact (FONSI) or announce its intent to prepare an environmental impact statement (EIS). If DOE determines that a FONSI is appropriate, both the Final EA and FONSI will be made available to the public.

If DOE determines that an EIS is needed, either during preparation of the Final Spent Nuclear Fuel from Germany EA or after completing the EA, DOE would issue in the **Federal Register** a Notice to prepare an EIS. In that case, the June 2014 public comment process would serve as the scoping process that normally would follow a Notice of Intent to prepare an EIS.

Issued in Washington, DC on January 15, 2016.

#### Edgardo DeLeon,

*Director, Office of Nuclear Materials Disposition.*

[FR Doc. 2016-01371 Filed 1-22-16; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Quadrennial Energy Review; Notice of Public Meeting

**AGENCY:** Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

**ACTION:** Notice of public meeting.

**SUMMARY:** At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER Task Force), will convene a public meeting to introduce the topic of the second installment of the Quadrennial Energy Review, an integrated study of the U.S. electricity system from generation through end use. A mixture of panel discussions and a public comment period will frame multi-stakeholder

discourse around deliberative analytical questions relating to the intersection of electricity and its role in promoting economic competitiveness, energy security, and environmental responsibility.

**DATES:** The public meeting will be held on February 4, 2016, beginning at 9:00 a.m. Eastern Time. Written comments are welcome, especially following the public meeting, and should be submitted within 60 days of the meeting.

**ADDRESSES:** The meeting will be held at the United States Capitol Visitor Center Congressional Auditorium, in Washington, DC.

Starting on February 4, 2016, you may submit written comments online at <http://energy.gov/qer> or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA-60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0121.

**FOR FURTHER INFORMATION CONTACT:** John Richards, EPSA-60, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: 202-586-0507 Email: [John.Richards@Hq.Doe.Gov](mailto:John.Richards@Hq.Doe.Gov).

**SUPPLEMENTARY INFORMATION:** On January 9, 2014, President Obama issued a *Presidential Memorandum—Establishing a Quadrennial Energy Review*. To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review (QER) Report, policy analysis and modeling, and stakeholder engagement.

The Quadrennial Energy Review process itself involves robust engagement of federal agencies and outside stakeholders, and further enables the federal government to translate policy goals into a set of analytically based, integrated actions for proposed investments over a four year planning horizon. Unlike traditional federal Quadrennial Review processes, the QER is conducted in a multi-year installment series to allow for more focused analysis on particular sub-sectors of the energy system. The initial focus for the Quadrennial Energy Review was our Nation's transmission, storage and distribution infrastructures

that link energy supplies to intermediate and end users, because these capital-intensive infrastructures tend to set supply and end use patterns, investments and practices in place for decades. On April 21, 2015, the Quadrennial Energy Review Task Force released its first Quadrennial Energy Review installment report entitled, "Energy Transmission, Storage, and Distribution Infrastructure". Among the issues highlighted by the analysis in the first installment of the QER were the growing dependencies of all critical infrastructures and economic sectors on electricity, as well as, the increasing interdependence of the various energy subsectors. In response to these findings, and to provide an appropriate consideration of an energy sector undergoing significant technological and regulatory change, the second installment of the QER will conduct a comprehensive review of the nation's electricity system, from generation to end use, including a more comprehensive look at electricity transmission, storage, and distribution infrastructure covered in installment one. The electricity system encompasses not just physical structures, but also a range of actors and institutions. Under this broad framing, the second installment intends to consider the roles and activities of all relevant actors, industries, and institutions integral to continuing to supply reliable and affordable electricity at a time of dramatic change in technology development. Issues to be considered in QER analyses include fuel choices, distributed and centralized generation, physical and cyber vulnerabilities, federal, state, and local policy direction, expectations of residential and commercial consumers, and a review of existing and evolving business models for a range of entities throughout the system.

Significant changes will be required to meet the transformational opportunities and challenges posed by our evolving electricity system. The Administration is seeking public input on key questions relating to possible federal actions that would address the challenges and take full advantage of the opportunities of this changing system to meet the Nation's objectives of reliable, affordable and clean electricity. Over the course of 2016, the Secretariat for the Quadrennial Energy Review Task Force will hold a series of public meetings to discuss and receive comments on the issues outlined above, and well as, others, as they relate to the second installment of the Quadrennial Energy Review.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as, associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of, input from the private sector is necessary to develop and implement effective policies. State and local policies, the views of non-governmental, environmental, faith-based, labor, and other social organizations, and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective Federal energy policies.

The interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies, will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

#### **February 4, 2016: Quadrennial Energy Review Public Meeting**

On February 4, 2016, the DOE will hold a public meeting in Washington, DC on electricity from generation through end use. The meeting will feature facilitated panel discussions, followed by an open microphone session. People who would like to speak during the open microphone session at the public meeting should come prepared to speak for no more than five minutes and will be accommodated on a first-come, first-served basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, on the morning of the meeting.

In advance of the meeting, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: <http://energy.gov/qer>.

*Submitting comments online.* DOE will accept public comments on the QER from February 4, 2016, to July 1, 2016, at <http://energy.gov/qer>. Submitting comments online to the DOE Web site will require you to provide your name and contact information. Your contact information will be viewable to DOE staff only. Your first and last names, organization name (if any), and submitter representative name (if any), will be publicly viewable. Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through the DOE Web site cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section, below.

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No tele-facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible,

they should carry the electronic signature of the author.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Confidential information should be submitted to the Confidential QER email address: [QERConfidential@hq.doe.gov](mailto:QERConfidential@hq.doe.gov).

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### **Other Public QER Meetings**

Specific dates and locations will be announced in future **Federal Register** notices and on the DOE Web site at <http://energy.gov/qer>.

Issued in Washington, DC, on January 19, 2016.  
**April Salas,**  
*QER Secretariat Director, Quadrennial Energy Review Task Force, U.S. Department of Energy.*

[FR Doc. 2016-01372 Filed 1-22-16; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Northern New Mexico****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, February 10, 2016, 2:00 p.m.–4:00 p.m.**ADDRESSES:** NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995-0393; Fax (505) 989-1752 or Email: [menice.santistevan@em.doe.gov](mailto:menice.santistevan@em.doe.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE-EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE-EM for action.

*Purpose of the Waste Management (WM) Committee:* The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice,

suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

**Tentative Agenda**

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from January 13, 2016
- Old Business
- New Business
- Update from DOE
- Presentation by DOE: National Nuclear Security Administration and Office of Environmental Management Memorandum of Understanding/Memorandum of Agreement Briefing
- Public Comment Period
- Sub-Committee Breakout Session
- Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: <http://energy.gov/em/nnmcab/northern-new-mexico-citizens-advisory-board>.

Issued at Washington, DC, on January 20, 2016.

**LaTanya R. Butler,***Deputy Committee Management Officer.*

[FR Doc. 2016-01370 Filed 1-22-16; 8:45 am]

**BILLING CODE 6405-01-P****DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, February 10, 2016, 6:00 p.m.**ADDRESSES:** Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.**FOR FURTHER INFORMATION CONTACT:**

Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 241-3315; Fax (865) 576-0956 or email: [melyssa.noe@orem.doe.gov](mailto:melyssa.noe@orem.doe.gov) or check the Web site at <http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board>.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- DOE Presentation
- Additions/Approval of Agenda
- Motions/Approval of January 13, 2016 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

*Public Participation:* The EM SSAB, Oak Ridge, 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 Melyssa P.



Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

**Minutes:** Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: <http://energy.gov/ore/services/community-engagement/oak-ridge-site-specific-advisory-board>.

Issued at Washington, DC, on January 19, 2016.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2016-01369 Filed 1-22-16; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9941-57-OA]

### Request for Nominations of Candidates for EPA's Science Advisory Board 2016-2018 Scientific and Technological Achievement Awards Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office invites nominations of scientific experts from a diverse range of disciplines to be considered for appointment to the SAB's 2016-2018 Scientific and Technological Achievement Awards (STAA) Committee described in this notice.

**DATES:** Nominations should be submitted in time to arrive no later than February 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** For further information about the SAB's STAA Committee membership appointment process and schedule, please contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB

Staff Office, by telephone/voice mail at (202) 564-2134; by fax at (202) 565-2098 or via email at [hanlon.edward@epa.gov](mailto:hanlon.edward@epa.gov).

General information concerning the EPA SAB can be found at the EPA SAB Web site at <http://www.epa.gov/sab>.

#### SUPPLEMENTARY INFORMATION:

**Background:** The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The STAA Committee is an ad hoc subcommittee of the SAB that provides advice through the chartered SAB on recommendations for awards under EPA's STAA program. The SAB and the 2016-2018 STAA Committee will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The EPA established the STAA in 1980 to recognize Agency scientists and engineers who published their work in the peer-reviewed literature. The STAA Program is an agency-wide competition to promote and recognize scientific and technological achievements by EPA employees. The STAA program is administered and managed by the EPA's Office of Research and Development (ORD). Each year the SAB has been asked to review the EPA's STAA nominations and make recommendations to the Administrator for monetary awards. The SAB Staff Office is seeking nominations of experts to serve on the SAB 2016-2018 STAA Committee, which operates under the auspices of the SAB.

**Request for Nominations:** The SAB Staff Office is seeking nominations of experts to form the SAB 2016-2018 STAA Committee in the following disciplines as they relate to human health and the environment: Air pollution exposure; chemistry and geochemistry; chemical engineering; civil and environmental engineering; ecology; environmental economics; groundwater and surface water contaminant fate and transport; human health effects and risk assessment; hydrology and hydrogeology; monitoring and measurement methods for air and water; risk management; transport and fate of contaminants; water quality; and water and wastewater treatment processes. The SAB Staff Office is especially interested in scientists and engineers with expertise

described above who have knowledge and experience in air quality; aquatic and ecological toxicology; chemical safety; climate change; community environmental health; dosimetry and inhalation toxicology; drinking water; ecological modeling; ecological risk assessment; ecosystem services; energy and the environment; epidemiology; green chemistry; homeland security; human health dosimetry; mechanisms of toxicity and carcinogenicity; metabolism; statistics; sustainability; toxicokinetics; toxicology; waste and waste management; and water re-use.

**Process and Deadline for Submitting Nominations:** Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the 2016-2018 STAA Committee identified in this notice. Nominations should be submitted in electronic format (preferred over hard copy) using the "Nomination of Experts" link at the bottom of the SAB homepage at <http://www.epa.gov/sab>). To receive full consideration, nominations should include the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Edward Hanlon as indicated above in this notice. Nominations should be submitted in time to arrive no later than February 16, 2016. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at <http://www.epa.gov/sab>. Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant



information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review committee includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. The SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for committee membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory committees; and, (f) for the committee as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address <http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument>.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document, *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA-SAB-EC-02-010), which is posted on the SAB Web site at [http://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/\\$File/ec02010.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/$File/ec02010.pdf).

Dated: January 13, 2016.

**Thomas Brennan,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2016-01349 Filed 1-22-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0818; FRL-9941-09]

### Ortho-Phthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA) (CAS No. 643-79-8) to treat the internal active thermal control system (IATCS) coolant of the International Space Station, comprised of the United States (U.S.) Laboratory Module, the Japanese Experiment Module, the Columbus, and Node 3, to control aerobic/microaerophilic water bacteria. The applicant proposes the use of a chemical which is not currently registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before February 9, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2015-0818, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

#### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their

location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

## II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or state agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of OPA in the International Space Station IATCS coolant to control aerobic/microaerophilic water bacteria. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that it has considered the registered biocides and has concluded that OPA is the most effective biocide which meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. The International Space Station would not have an adequate long-term solution for controlling the micro-organisms in the coolant systems without the use of OPA.

The OPA is immobilized onto a porous resin material. Delivery into the coolant system is through connecting a stainless steel canister which contains the OPA-impregnated resin into the coolant system loop, using flexible hose and quick disconnects. As the coolant fluid flows through the canister, the OPA effectively elutes from the resin material into the coolant fluid.

The applicant proposes to make one application to obtain a concentration of up to 500 mg/L OPA, to the loops of the IATCS coolant system of the International Space Station comprised of the U.S. Laboratory Module (coolant system volume of 272 L), the Japanese Experiment Module (coolant system volume of 213 L), the Columbus (coolant system volume of 150 L), and Node 3 (coolant system volume of 194 L) for a total volume of 829 L. The maximum amount potentially used under the emergency exemption totals 1,964 cm<sup>3</sup> OPA resin, and would provide control of aerobic/

microaerophilic water bacteria for approximately one year, at which point the system would require replenishment. NASA has obtained approval for this use through EPA authorization of emergency exemptions annually over the past four years.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of an active ingredient which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the National Aeronautics and Space Administration.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: January 15, 2016.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016-01350 Filed 1-22-16; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[3060-xxxx]

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 ways to further reduce the information collection burden on 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 OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before February 24, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <<http://www.reginfo.gov/public/do/PRAMain>>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060-xxxx.  
*Title:* Ensuring Continuity of 911 Communications Report and Order.  
*Form No.:* N/A.

*Type of Review:* New information collection.

*Respondents:* Business or for profit.

*Number of Respondents and Responses:* 570 respondents; 570 responses.

*Estimated Time per Response:* 0-70 hours.

*Frequency of Response:* Initial point of sale disclosure and third party disclosure requirement which occurs on an annual basis.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), and 251(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 251(e)(3); section 101 of the NET 911 Improvement Act of 2008, Public Law 110-283, 47 U.S.C. 615a-1; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 47 U.S.C. 615c.

*Total Annual Burden:* 1,888 hours.

*Total Annual Cost:* No Cost.

*Privacy Impact Assessment:* No impact.

*Nature and Extent of Confidentiality:* The Commission is not requesting respondents to submit confidential information to the Commission.

*Needs and Uses:* We create new section 12.5 of our rules to place limited backup power obligations on providers of facilities-based fixed, residential voice services that are not line-powered to ensure that such service providers meet their obligation to provide access to 911 service during a power outage, and to provide clarity for the role of consumers and their communities should they elect not to purchase backup power.

Specifically, we require providers to disclose to subscribers the following information: (1) Availability of backup power sources; (2) service limitations with and without backup power during a power outage; (3) purchase and replacement options; (4) expected backup power duration; (5) proper usage and storage conditions for the backup power source; (6) subscriber backup power self-testing and monitoring instructions; and (7) backup power warranty details, if any. Each element of this information must be given to subscribers both at the point of sale and annually thereafter, as described in the rule.

The disclosure requirements are intended to equip subscribers with necessary information to purchase and maintain a source of backup power to enhance their ability to maintain access to reliable 911 service from their homes.

We permit providers to convey both the initial and annual disclosures and information described above by any means reasonably calculated to reach the individual subscriber. For example, a provider may meet this obligation through a combination of disclosures via email, an online billing statement, or other digital or electronic means for

subscribers that communicate with the provider through these means. For a subscriber that does not communicate with the provider through email and/or online billing statements—such as someone who ordered service on the phone or in a physical store and receives a paper bill by regular mail—email would not be a means reasonably calculated to reach that subscriber.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary.*

[FR Doc. 2016-01320 Filed 1-22-16; 8:45 am]

**BILLING CODE P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b), notice is hereby given that at 10:32 a.m. on Thursday, January 21, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation’s supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days’ notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the “Government in the Sunshine Act” (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: January 21, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016-01446 Filed 1-21-16; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[CFDA Numbers: 93.592, 93.224]

### Announcing the Award of a Single-Source Program Expansion Supplement Grant to Futures Without Violence in San Francisco, CA

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of the award of a single-source program expansion supplement grant under the Family Violence Prevention and Services Act (FVPSA) Technical Assistance Project to Futures Without Violence to support training and technical assistance activities.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Family Violence Prevention and Services (DFVPS), announces the award of \$370,000 as a single-source program expansion supplement to Futures Without Violence in San Francisco, CA. The award is a collaboration between ACF/ACYF/FYSB/FVPSA, contributing \$120,000, and HHS/Health Resource Services Administration (HRSA), Bureau of Primary Health Care (BPHC), contributing \$250,000.

**DATES:** The period of support is September 29, 2015, through September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Shawndell Dawson, Senior Program Specialist, Family Violence Prevention and Services Program, 1250 Maryland Avenue SW., Suite 8215, Washington, DC 20024. Telephone: 202-205-1476; email: [Shawndell.Dawson@acf.hhs.gov](mailto:Shawndell.Dawson@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The grantee is funded under FYSB’s FVPSA Program as a technical assistance provider serving as the FVPSA-funded National Health Resource Center on Domestic Violence.

In accordance with an intra-agency agreement, HRSA/BPHC will provide obligation authority for \$250,000 to the ACF/ACYF/FYSB/DFVPS to provide national-level health care and domestic violence training and technical assistance. In accordance with this intra-agency agreement, ACF/ACYF/FYSB/DFVPS has supplemented an existing training and technical assistance cooperative agreement with Futures Without Violence through September 30, 2016. The HRSA/BPHC and ACF/ACYF/FYSB/DFVPS staffs will

meet regularly and facilitate ongoing communication to coordinate the delivery of national training and technical assistance to primary health clinics.

Supplemental award funds will support the grantee in providing training and technical assistance to domestic violence service and health care providers.

This award will expand the scope of Futures Without Violence's technical assistance activities to include additional activities concerned with assessing and responding to domestic violence in health clinics and supporting children/youth and abused parents experiencing domestic violence. This additional technical assistance and training may involve such activities as: (1) Providing technical assistance for nine health centers to create health system changes that support providers and create sustainable responses to victims of intimate partner violence; (2) providing training on comprehensive, culturally competent responses to domestic violence within a Patient Centered Medical Home model; (3) creating new technical assistance resources that promote protective factors and resilience when working with children, youth, and teens impacted by domestic violence, which includes fostering stronger relationships with their non-abusive parents or caregivers; (4) providing training to domestic violence programs that improves consistent implementation of evidence-informed, trauma-informed, and culturally relevant programming for children, youth, and abused parents; (4) maintaining an online resource for domestic violence programs: [www.PromisingFuturesWithoutViolence.org](http://www.PromisingFuturesWithoutViolence.org).

The solicited application from Futures Without Violence underwent objective review by a federal panel using criteria that assessed the application's project approach, its organizational capacity, and budgeting of projected project costs.

**Statutory Authority:** The statutory authority for this award is Section 310 of FVPSA, as amended by Section 201 of the CAPTA Reauthorization Act of 2010, Pub. L. 111-320. The HRSA authority for its funding is through Section 330 of the Public Health Service Act (42 U.S.C. 254b).

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016-01328 Filed 1-22-16; 8:45 am]

**BILLING CODE 4184-32-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Announcement of the Award of a Single-Source Expansion Supplement Grant to PathWays PA in Philadelphia, PA**

**AGENCY:** Family and Youth Services Bureau (FYSB), ACYF, ACF, HHS.

**ACTION:** Notice of the award of a single-source expansion supplement grant Transitional Living Program (TLP) to PathWays PA in Philadelphia, PA, to serve additional runaway and homeless youth.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau's (FYSB), Runaway and Homeless Youth Program, announces the award of \$200,000 as a single-source expansion supplement grant to PathWays PA to support activities and services for homeless youth under the TLP grant in Philadelphia, PA.

**DATES:** The period of support is September 30, 2015, through September 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Resa F. Matthew, Director, Division of Adolescent Development and Support, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20201; telephone: (202) 401-5124; email: [resa.matthew@acf.hhs.gov](mailto:resa.matthew@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** PathWays PA will serve homeless parenting and non-parenting young women age 16-21. Over the next 12 months, they will serve 10 residential homeless young women in the city of Philadelphia, PA.

The goal of PathWays PA's TLP program is to support homeless youth with positive adult supervision while supporting them in building the assets, strengths, and resources necessary for successful independence. Youth will be housed in five one-bedroom apartments. While in the program, the youth will build life skills and carry out developmental tasks to gain the capacity for independent living and address their assessed/identified needs. They will build assets and strengthen protective factors that reduce the impact of prior trauma (e.g., domestic violence) and reduce the harm of high-risk behaviors through gaining skills in money management, budgeting, consumer education, and use of credit; building life skills and interpersonal skills (and parenting, as appropriate); acquiring their high school diploma or equivalent

(e.g., GED); strengthening job attainment skills, and improving their mental and physical health.

PathWays PA TLP staff will work with each youth in the context of their experience (e.g., domestic violence) to minimize the impact of trauma and to develop coping skills through a Personalized Empowerment Plan (PEP). The PEP will identify their pathway for transitioning from supervised participation in the program to independent living or another appropriate living arrangement. As part of this plan, staff will facilitate connections with agencies, organizations, and resources in Philadelphia that will assist in the youth's transition to independence and create a strong plan for aftercare support.

*Statutory Authority:* Runaway and Homeless Youth Act, 42 U.S.C. 5701-5752, as most recently amended by the Reconnecting Homeless Youth Act, of 2008, Pub. L. 110-378 on October 8, 2008. Under Sec. 321 Authority for Program, the Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth (42 U.S.C. 5714-1).

*CFDA Number:* 93.550.

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016-01340 Filed 1-22-16; 8:45 am]

**BILLING CODE 4184-33-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

[CFDA Number: 93.592]

**Announcing the Award of a Single-Source Program Expansion Supplement Grant to Casa de Esperanza in St. Paul, MN**

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of the award of a single-source program expansion supplement grant under the Family Violence Prevention and Services Act (FVPSA) Technical Assistance (TA) Project to Casa de Esperanza to support training and technical assistance activities.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of

Family Violence and Prevention Services (DFVPS) announces the award of \$125,000 as a single-source program expansion supplement to the Casa de Esperanza in St. Paul, MN. The grantee, funded under the Family Violence Protection and Services Act (FVPSA) program, is a national technical assistance (TA) provider that assists FVPSA service providers to build the capacity of domestic violence programs to respond to the complex and diverse needs of survivors of domestic violence and dating violence from Latino communities.

**DATES:** The period of support for the single-source program expansion supplement is September 30, 2015 through September 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Seema Zeya, Program Specialist, Family Violence Prevention and Services Program, 1250 Maryland Avenue SW., Suite 8220, Washington, DC 20024. Telephone: 202-205-7889; Email: [Seema.Zeya@acf.hhs.gov](mailto:Seema.Zeya@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Supplemental award funds will support the grantee in providing training and technical assistance to domestic violence service providers.

This award will expand the scope of Casa de Esperanza's technical assistance activities to include supplemental activities around the issue of trafficking for domestic violence programs which may involve activities, such as:

- Training on the intersections of domestic violence, sexual violence, and trafficking including, but not limited to, webinars;
- Listening sessions with FVPSA grantees and culturally-specific community-based organizations regarding needs, challenges, and barriers related to offering trafficking services (*i.e.*, online, via phone, or in person);
- Documentation of current promising practices for serving survivors of trafficking within domestic violence programs and within culturally-specific community-based organizations (*i.e.*, program profiles, a case study, online page);
- Development of a technical assistance plan for fostering and sustaining collaborative partnerships on domestic violence and human trafficking which could include a pilot with 1–2 communities;
- Resource development: Factsheets or concept brief paper on the intersection of domestic violence and human trafficking with recommendations to enhance the provision of direct services for victims; facilitating stronger multidisciplinary

partnerships; or culturally/trauma-informed programming.

In addition, the grantee will support and provide training around the issue of language access planning for domestic violence programs for activities, including:

- State-specific training and technical assistance for the 20 State Domestic Violence Coalitions that completed the 2015 Training of Trainers which will include travel to deliver state-specific training;
- Listening sessions with FVPSA state administrators, coalitions, and culturally-specific community based organizations;
- Documentation of the technical assistance needs, implementation successes, and implementation challenges of 20 states beginning language access planning and working to improve language accessibility within their states; and
- Recommendations for state-specific capacity building for the 20 states to enhance statewide language access, including the development of language access plans.

Federal staff conducted an objective review of the solicited application using criteria related to the project's approach, its organizational capacity, and the projected budget for proposed costs in assessing the application.

**Statutory Authority:** Section 310 of the Family Violence Prevention and Services Act, as amended by Section 201 of the CAPTA Reauthorization Act of 2010, Pub. L. 111-320.

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016-01326 Filed 1-22-16; 8:45 am]

**BILLING CODE 4184-32-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

[CFDA Number: 93.550]

**Announcement of the Award of a Single-Source Expansion Supplement Grant to the Board of Trustees of the University of Illinois, Chicago, IL**

**AGENCY:** Family and Youth Services Bureau (FYSB), ACYF, ACF, HHS

**ACTION:** Notice of the award of a single-source expansion supplement grant to the Board of Trustees of the University of Illinois, Chicago, IL. The award will expand the original scope of approved activities under 3/40 Blueprint: Creating the Blueprint to Reduce LGBTQ Youth

Homelessness and will support the (1) review the findings of the systematic review of the literature conducted as part of the 3/40 Blueprint to identify (a) factors that facilitate positive outcomes for transgender youth in stable housing, education and employment, permanent connections, and well-being, and (2) interventions that may facilitate positive outcomes for transgender Runaway and Homeless Youth (RHY).

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Runaway and Homeless Youth, announces the award of \$150,000 as a single-source expansion supplement grant to the Board of Trustees of the University of Illinois, Chicago, IL, to support activities under the 3/40 Blueprint: Creating the Blueprint to Reduce LGBTQ Youth Homelessness. 3/40 Blueprint: Creating the Blueprint to Reduce LGBTQ Youth Homelessness has been reviewing research, gathering qualitative information, and collecting data to assist in building the capacity of Transitional Living Programs (TLPs) to meet the needs of runaway and homeless youth who identify as lesbian, gay, bisexual, transgender, and/or questioning (LGBTQ).

**DATES:** The period of support is September 30, 2015 through September 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Resa F. Matthew, Director, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Avenue SW., Washington, DC 20024; Telephone: (202) 401-5124; Email: [resa.matthew@acf.hhs.gov](mailto:resa.matthew@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this grant is to assist in building the capacity of TLPs to serve youth who identify as lesbian, gay, bisexual, transgender, and/or questioning (LGBTQ) and are experiencing homelessness. Through this demonstration grant, FYSB is solidifying its commitment to improving access to services that meet the unique needs of transgender homeless youth. The intent of the targeted supplement is to support knowledge development to strengthen efforts for better understanding and to address the needs of transgender youth experiencing homelessness. Efforts may include identifying innovative, transgender-specific intervention strategies, determining culturally appropriate screening and assessment tools, gathering information on services and

systems of support that respond to the needs of the transgender youth, pinpointing the gaps in services, and better understanding the needs of transgender youth served by Runaway and Homeless Youth (RHY) agencies.

Specifically, this supplemental award will support the review of findings on the systematic review of the literature conducted as part of the 3/40 BLUEPRINT to identify factors that facilitate positive outcomes for transgender youth in stable housing, education and employment, permanent connections, and well-being interventions that may facilitate positive outcomes for transgender RHY.

**Statutory Authority:** Runaway and Homeless Youth Act, 42 U.S.C. 5701–5752, as most recently amended by the Reconnecting Homeless Youth Act, of 2008, Pub. L. 110–378 on October 8, 2008. Under Section 343, the Secretary may make grants to carry out research, evaluation, demonstration, and service projects regarding activities under this title designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth with a concentration on Transitional Living Programs.

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016–01332 Filed 1–22–16; 8:45 am]

**BILLING CODE 4182–33–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Announcement of the Award of a Single-Source Expansion Supplement Grant to the National Runaway Switchboard**

**AGENCY:** Family and Youth Services Bureau (FYSB), ACYF, ACF, DHHS.

**ACTION:** Notice of the award of a single-source expansion supplement grant to the National Runaway Switchboard to support the translation of “Let’s Talk Curriculum” into Spanish and disseminate it to culturally appropriate prevention resources to expand outreach to Latino youth and their families.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Adolescent Development and Support (DADS), announces the award of a single-source expansion supplement grant of \$34,000 to the National Runaway Switchboard to support

research and the translation of “Let’s Talk Curriculum” into Spanish and disseminate it to culturally appropriate prevention resources to expand outreach to Latino youth and their families.

**DATES:** The award will support activities from September 29, 2015 through September 29, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Holloway, Central Office Program Manager, Runaway and Homeless Youth Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20201; Telephone: 202–205–9560; Email: [Christopher.Holloway@acf.hhs.gov](mailto:Christopher.Holloway@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The National Runaway Safeline, operated by the National Runaway Switchboard, serves as the federally-designated national communication system for homeless and runaway youth. Through hotline and online services, the National Runaway Switchboard provides crisis intervention, referrals to local resources, and education and prevention services to runaway, homeless, and at-risk youth, their families, and communities 24 hours a day, 7 days a week, every day of the year, in a neutral and confidential manner. Beyond its mission, the National Runaway Switchboard is committed to elevate the dialogue about runaway and homeless youth issues to ensure everyone understands the importance of supporting vulnerable youth, the programs that serve them, and the value of disseminating prevention materials to increase skills and competencies among at-risk youth.

The expansion supplement award will allow the National Runaway Switchboard to:

- Conduct research to increase public education on issues impacting at-risk, runaway, and homeless youth and to disseminate data about the need to support youth-serving programs in communities nationwide.
- Translate the “Let’s Talk Curriculum” into a Spanish version and disseminate it to culturally appropriate prevention resources to expand outreach to Latino youth and their families.

The National Runaway Switchboard will conduct the research to analyze their data and utilize the research findings to enhance prevention programs, improve technical support, and reach out to diverse media outlets to increase public knowledge on these issues. More important, the research information will assist youth-serving organizations in explaining the need for their services. Often, local stakeholders

do not understand the importance of providing services and programs to runaway and homeless youth because they are not aware of the impact of these issues. When a youth runs away, the impact is felt throughout an entire community. By learning about the causes, short-term, and long-term effects of runaway and homeless behaviors, communities can move away from stereotypes and provide the resources and connections needed for vulnerable youth.

The research and Spanish translation services are crucial projects that support the Switchboard’s efforts, and FYSB’s commitment, to provide resources to runaway and homeless youth, underserved communities, and those who support these vulnerable populations.

**Statutory Authority:** Section 331 of the Runaway and Homeless Youth Act, as amended by the Reconnecting Homeless Youth Act of 2008, Public Law 110–378, authorizes the award of grants for the National Communication System for Runaway and Homeless Youth (42 U.S.C. 5714–11).

*CFDA Number:* 93.550.

**Christopher Beach,**

*Senior Grants Policy Specialist, Office of Administration, Division of Grants Policy.*

[FR Doc. 2016–01339 Filed 1–22–16; 8:45 am]

**BILLING CODE 4184–33–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Announcement of the Award a Single-Source Program Expansion Supplement Grant to BCFS Health and Human Services in San Antonio, TX**

**AGENCY:** Office of Refugee Resettlement, ACF, HHS.

**ACTION:** The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of a single-source program expansion supplement grant to BCFS Health and Human Services (BCFS) in San Antonio, TX, under the Unaccompanied Children’s (UC) Program to support home study services.

**SUMMARY:** The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of a single-source program expansion supplement grant for \$500,000. The expansion supplement grant will support the need to increase home study capacity to expedite

completion of home studies for approximately 400 UCs.

BCFS provides nationwide coverage of home study services to children in the care and custody of ORR, as well as services to include counseling, case management, and additional support services to the family or to the UC and their sponsor when a UC is released from ORR's care and custody.

**DATES:** Supplemental award funds will support activities from September 29, 2015 through September 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 901 D Street SW., Washington, DC 20447. Email: [DCSProgram@acf.hhs.gov](mailto:DCSProgram@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** While this number of referrals to the Unaccompanied Children Program in FY 2015 is well below the total referrals from FY 2014, ORR has seen a change to recent referral trends, including a steady August referral rate and an increasing occupancy rate of UC in care. This increase in referrals has also generated a correlating increase in the need for home study services. The supplemental awards will support and expand home study services for UC to facilitate their release from ORR custody.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet the service requirements and the urgent need for expansion of services. The program's ability to avoid a buildup of children waiting, in Border Patrol stations, for placement in shelters, can only be accommodated through the expansion of the existing program and its services through the supplemental award.

**Statutory Authority:** This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85-4544RJK (C. D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110-457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85-4544-RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

*CFDA Number:* 93.676

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016-01336 Filed 1-22-16; 8:45 am]

**BILLING CODE 4184-45-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[CFDA Number: 93.592]

#### Announcing the Award of a Single-Source Program Expansion Supplement Grant to the Asian & Pacific Islander American Health Forum in Oakland, CA

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of the award of a single-source program expansion supplement grant under the Family Violence Prevention and Services Act (FVPSA) Technical Assistance (TA) Project to the Asian & Pacific Islander American Health Forum in Oakland, CA, to support training and technical assistance activities by the Asian and Pacific Islander Institute on Domestic Violence (APIIDV).

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Family Violence and Prevention Services (DFVPS), announces the award of \$175,000 as a single-source program expansion supplement grant to the Asian & Pacific Islander American Health Forum. The grantee, funded under the Family Violence Protection and Services Act (FVPSA) program, is a technical assistance (TA) provider that assists FVPSA service providers to build the capacity of domestic violence programs.

**DATES:** The period of support for the single-source program expansion supplement is September 30, 2015 through September 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Seema Zeya, Program Specialist, Family Violence Prevention and Services Program, 1250 Maryland Avenue SW., Suite 8220, Washington, DC 20024. Telephone: 202-205-7889; Email: [Seema.Zeya@acf.hhs.gov](mailto:Seema.Zeya@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Supplemental award funds will support the grantee, Asian & Pacific Islander American Health Forum, in providing training and technical assistance (T/TA)

to domestic violence service providers by the Asian and Pacific Islander Institute on Domestic Violence (APIIDV) in San Francisco, CA.

This award will expand the scope of T/TA activities to include supplemental activities concerning the issue of trafficking for domestic violence programs, which may involve activities including:

- Training on the intersection of issues related to domestic violence, sexual violence, and victims of trafficking including:

- Listening sessions with FVPSA grantees and culturally specific, community-based organizations regarding needs, challenges, and barriers related to offering services on trafficking;

- Documentation of current promising practices for serving survivors of trafficking within domestic violence programs and culturally specific, community-based organizations;

- Development of a TA plan for fostering and sustaining collaborative partnerships on domestic violence and human trafficking, which may include a community pilot program;

- Resource development that will include the development and dissemination of factsheets and/or concept papers on the intersection of issues related to domestic violence and human trafficking that will provide recommendations that will enhance the provision of direct services for victims, facilitate strengthening multidisciplinary partnerships, or the development of culturally-informed trauma-related programming; and

- Convening a working group that examines typologies related to human trafficking that are specific to Asian communities that will develop intervention and prevention recommendations for service providers and TA providers.

In addition, APIIDV will support and provide training on the issue of language access planning for domestic violence programs that will include activities such as:

- Training and technical assistance for the 20 State Domestic Violence Coalitions that have already completed the 2015 Training of Trainers;

- Listening sessions with FVPSA state administrators, coalitions, and culturally-specific community-based organizations;

- Documentation of the technical assistance needs, implementation successes, and implementation challenges of the 20 states that are beginning language access planning and



are working to improve language accessibility within their states; and

- Recommendations for state-specific capacity building for the 20 states intended to enhance statewide language access, which will include the development of language access plans.

An objective review of was conducted that assessed the grantee's application using criteria related to the project's approach, the organization's capacity, and the development of costs for the project's budget.

**Statutory Authority:** Section 310 of the Family Violence Prevention and Services Act, as amended by Section 201 of the CAPTA Reauthorization Act of 2010, Pub. L. 111-320.

**Christopher Beach,**

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016-01329 Filed 1-22-16; 8:45 am]

BILLING CODE 4184-32-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Annual Update of the HHS Poverty Guidelines**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

**DATES:** *Effective Date:* January 25, 2016, unless an office administering a program using the guidelines specifies a different effective date for that particular program.

**ADDRESSES:** Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and

Evaluation, Room 422F.5, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690-7507—or visit <http://aspe.hhs.gov/poverty/>.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I-864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1-800-375-5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Health Resources and Services Administration Information Center at 1-800-275-4772. You also may visit <http://www.hrsa.gov/gethealthcare/affordable/hillburton/>.

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's Web site at <http://www.census.gov/hhes/www/poverty/poverty.html> or contact the Census Bureau's Customer Service Center at 1-800-923-8282 (toll-free) and <https://ask.census.gov> for further information.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are used as an eligibility criterion by the Community Services Block Grant program and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI-U). The guidelines in this 2016 notice reflect the 0.1 percent price increase between calendar years 2014 and 2015. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. In rare circumstances, the rounding and standardizing adjustments in the formula result in small decreases in the poverty guidelines for some household

sizes even when the inflation factor is not negative. In order to prevent a reduction in the guidelines in these rare circumstances, a minor adjustment was implemented to the formula beginning this year. In cases where the year-to-year change in inflation is not negative and the rounding and standardizing adjustments in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2016 guidelines are roughly equal to the poverty thresholds for calendar year 2015 which the Census Bureau expects to publish in final form in September 2016.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's new Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

**2016 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA**

Persons in family/household	Poverty guideline
1 .....	\$11,880
2 .....	16,020
3 .....	20,160
4 .....	24,300
5 .....	28,440
6 .....	32,580
7 .....	36,730
8 .....	40,890

For families/households with more than 8 persons, add \$4,160 for each additional person.

**2016 POVERTY GUIDELINES FOR ALASKA**

Persons in family/household	Poverty guideline
1 .....	\$14,840
2 .....	20,020
3 .....	25,200
4 .....	30,380
5 .....	35,560
6 .....	40,740
7 .....	45,920
8 .....	51,120

For families/households with more than 8 persons, add \$5,200 for each additional person.



2016 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1 .....	\$13,670
2 .....	18,430
3 .....	23,190
4 .....	27,950
5 .....	32,710
6 .....	37,470
7 .....	42,230
8 .....	47,010

For families/households with more than 8 persons, add \$4,780 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the “OMB” (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as “the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).”

Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged

and non-aged one-person and two-person units.)

Note that this notice does not provide definitions of such terms as “income” or “family,” because there is considerable variation in defining these terms among the different programs that use the guidelines. These variations are traceable to the different laws and regulations that govern the various programs. This means that questions such as “Is income counted before or after taxes?”, “Should a particular type of income be counted?”, and “Should a particular person be counted as a member of the family/household?” are actually questions about how a specific program applies the poverty guidelines. All such questions about how a specific program applies the guidelines should be directed to the entity that administers or funds the program, since that entity has the responsibility for defining such terms as “income” or “family,” to the extent that these terms are not already defined for the program in legislation or regulations.

Dated: January 21, 2016.

**Sylvia M. Burwell,**

*Secretary of Health and Human Services.*

[FR Doc. 2016–01450 Filed 1–22–16; 8:45 am]

**BILLING CODE 4150–05–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Ritz-Carlton Hotel, Plaza II, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3E72A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892934, (240) 669–5023, *fdesilva@niaid.nih.gov*.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; “Comprehensive Resources for HIV Microbicides and Biomedical Prevention (N01)”.

*Date:* February 18, 2016.

*Time:* 10:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health Room 3F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Jay R. Radke, Ph.D., AIDS Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G11B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC–9823, Bethesda, MD 20892–9823, (240) 669–5046, *jay.radke@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–01313 Filed 1–22–16; 8:45 am]

**BILLING CODE 4140–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Submission for OMB Review; 30-Day Comment Request; Media-Smart Youth Leaders Program**

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 16, 2015, pages 62541–62542, and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, may not conduct or

sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Direct Comments to OMB:** 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA\_submission@omb.eop.gov* or by fax to 202-395-6974, Attention: NIH Desk Officer.

**DATES: Comment Due Date:** Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instrument or to request more information on the proposed project contact: Dr. Sarah Glavin, Acting Director, Office of Science Policy, Analysis, and Communications, Eunice Kennedy Shriver National Institute of Child Health and Human Development,

National Institutes of Health, 31 Center Dr., Bldg. 31, Rm. 2A28, Bethesda, MD 20892, or call non-toll-free number (301) 496-7898, or email your request, including your address to: *glavins@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

**Proposed Collection:** Application for Consideration for the Media-Smart Youth Leaders Program: 0925-New, Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

**Need and Use of Information Collection:** Media-Smart Youth: Eat, Think, and Be Active! is an interactive program designed to teach youth ages 11-13 about how media can affect their health. Developed by the NIH's Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), the program includes 10 lessons on media analysis, nutrition, and physical activity, plus a final capstone project. The Media-Smart Youth Leaders Program is designed for teens and adults, ages 15 years and up, who are interested in bringing the Media-Smart Youth program to their

community. In return for recruiting youth participants, teaching the 10 lessons, and leading the final project, Media-Smart Youth Leaders will receive leadership experience, community service hours, and recognition from the NICHD. To help Leaders succeed, the NICHD will provide training, ongoing assistance, and a small funding amount for program expenses.

The purpose of this information collection is to solicit information from applicants about their qualifications that would make them effective Leaders, their reason for wanting to pursue this opportunity, and the details of their proposed program (including, but not limited to, location, community partner(s), and proposed budget). This information will help NICHD staff select the candidates for the program who are most likely to succeed in implementing the full curriculum and teaching youth effective lessons about nutrition, physical activity, and media.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 800.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Media-Smart Youth Leaders Program Application Form.	Applicants .....	300	1	2.5	750
Media-Smart Youth Leaders Program Application Form.	Advisors .....	300	1	5/60	25
Media-Smart Youth Leaders Program Application Form.	Community partners .....	300	1	5/60	25

Dated: January 11, 2016.  
**Sarah Glavin,**  
*Project Clearance Liaison, NICHD, NIH.*  
 [FR Doc. 2016-01379 Filed 1-22-16; 8:45 am]  
**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C.,

as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

**Date:** February 17, 2016.

**Time:** 8:00 a.m. to 4:00 p.m.

**Agenda:** To review and evaluate contract proposals.

**Place:** National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

**Contact Person:** B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, RM 3G50, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823,

Bethesda, MD 20892-9823, 240-669-5074, *pricebd@niaid.nih.gov*.

**Name of Committee:** National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

**Date:** February 18, 2016.

**Time:** 10:00 a.m. to 2:00 p.m.

**Agenda:** To review and evaluate contract proposals.

**Place:** National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

**Contact Person:** Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G41, National Institutes of Health/ NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, 240-669-5067, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-01314 Filed 1-22-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

*Date:* February 17–18, 2016.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

*Contact Person:* Kathryn M. Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, [koellerk@csr.nih.gov](mailto:koellerk@csr.nih.gov).

*Name of Committee:* Digestive, Kidney and Urological Systems Integrated Review Group, Systemic Injury by Environmental Exposure.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301-435-1169, [greenwep@csr.nih.gov](mailto:greenwep@csr.nih.gov).

*Name of Committee:* Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Pentagon City, 1250 S Hayes St, Arlington, VA 22202.

*Contact Person:* Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301-594-6375, [mcintyrt@csr.nih.gov](mailto:mcintyrt@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton La Jolla Hotel, 3299 Holiday Court, La Jolla, CA 92037.

*Contact Person:* Lynn E. Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806-3323, [luethkel@csr.nih.gov](mailto:luethkel@csr.nih.gov).

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group, Biostatistical Methods and Research Design Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Grand Hyatt Seattle, 721 Pine Street, Seattle, WA 98101.

*Contact Person:* Peter J. Kozel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301-435-1116, [kozelp@mail.nih.gov](mailto:kozelp@mail.nih.gov).

*Name of Committee:* Digestive, Kidney and Urological Systems Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188 MSC7818, Bethesda, MD 20892-7818, (301) 435-0682, [zhaoa2@csr.nih.gov](mailto:zhaoa2@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Glia Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Lorient Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

*Contact Person:* Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301-537-9986, [macarthurlh@csr.nih.gov](mailto:macarthurlh@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group,

Oral, Dental and Craniofacial Sciences Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Terrance Marriott Redondo Beach, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301-435-1781, [liuyh@csr.nih.gov](mailto:liuyh@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR Panel: Academic Industrial Partnership.

*Date:* February 18, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435-8363, [wrightds@csr.nih.gov](mailto:wrightds@csr.nih.gov).

*Name of Committee:* Cell Biology Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.

*Date:* February 18–19, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

*Contact Person:* John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301-408-9519, [burchjb@csr.nih.gov](mailto:burchjb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIB Clinical Pediatric and Fetal Applications.

*Date:* February 18, 2016.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301-435-2598, [firrellj@csr.nih.gov](mailto:firrellj@csr.nih.gov).

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

*Date:* February 18–19, 2016.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108,

MSC 7766, Bethesda, MD 20892,  
301.326.9721 [Lorand@mail.nih.gov](mailto:Lorand@mail.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

*Date:* February 19, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA.

*Contact Person:* Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892-7844, 301-435-1033, [gaianonr@csr.nih.gov](mailto:gaianonr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 13-293: Gut Microbiota-Derived Factors in the Integrated Physiology and Pathophysiology of Diseases within NIDDK's mission.

*Date:* February 19, 2016.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594-1245, [ivinsj@csr.nih.gov](mailto:ivinsj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Immune System Plasticity in the Pathogenesis and Treatment of Complex, Dental, Oral, and Craniofacial Diseases.

*Date:* February 19, 2016.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Torrance Marriott, Redondo Beach, CA, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, [kumarra@csr.nih.gov](mailto:kumarra@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 15, 2016.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-01315 Filed 1-22-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2016-0006]

### Privacy Act of 1974; Department of Homeland Security U.S. Customs and Border Protection-007 Border Crossing Information System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, "Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-007 Border Crossing Information (BCI) System of Records." This system of records allows DHS/CBP to collect and maintain records on border crossing information for all individuals who enter, are admitted or paroled into, and (when available) exit from the United States, regardless of method or conveyance. The BCI includes certain biographic and biometric information; photographs; certain mandatory or voluntary itinerary information provided by air, sea, bus, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing.

This system of records notice was previously published in the **Federal Register** on May 11, 2015 (80 FR 26937). A Final Rule exempting portions of this system from certain provisions of the Privacy Act was published on Feb. 3, 2010, and remains in effect (75 FR 5491); however, the Department of Homeland Security recently published a Notice of Proposed Rulemaking to clarify the exemptions for this system (80 FR 79487, Dec. 22, 2015) and a new Final Rule is forthcoming.

DHS/CBP is updating this system of records notice to provide notice of that BCI may be stored on both DHS unclassified and classified networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

The exemptions for the existing system of records notice published May 11, 2015 (80 FR 26937) continue to apply for this updated system of records for those categories of records listed in the previous BCI system of records

notice. DHS will include this system in its inventory of record systems.

**DATES:** This updated system will be effective upon the public display of this notice. Although this system is effective upon publication, DHS will accept and consider comments from the public and evaluate the need for any revisions to this notice.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2016-0006 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: John Connors (202) 344-1610, Privacy Officer, U.S. Customs and Border Protection, Privacy and Diversity Office, 1300 Pennsylvania Avenue, Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343-1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

### SUPPLEMENTARY INFORMATION:

#### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) proposes to update and reissue a current DHS system of records titled, "DHS/CBP-007 Border Crossing Information (BCI) System of Records." DHS/CBP is updating the system location for this system of records notice (SORN) to reflect that records within the DHS/CBP BCI system are also stored on both DHS unclassified and classified networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice.

DHS/CBP's priority mission is to prevent terrorists and terrorist weapons from entering the country while facilitating legitimate travel and trade. To facilitate this mission, DHS/CBP

maintains BCI about all individuals who enter, are admitted or paroled into, and (when available) exit from the United States regardless of method or conveyance. The BCI includes certain biographic and biometric information; photographs; certain mandatory or voluntary itinerary information provided by air, sea, bus, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing. BCI resides on the TECS (not an acronym) information technology (IT) platform. DHS/CBP is updating this system of records notice to provide notice that BCI records may be stored on both DHS unclassified and classified networks to allow for analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice.

DHS/CBP is responsible for collecting and reviewing BCI from travelers entering and departing the United States as part of DHS/CBP's overall border security and enforcement missions. All individuals crossing the border are subject to DHS/CBP processing upon arrival in the United States. Each traveler entering the United States is required to establish his or her identity, nationality, and admissibility, as applicable, to the satisfaction of a CBP Officer during the clearance process. To manage this process, DHS/CBP creates a record of an individual's admission or parole into the United States at a particular time and port of entry. DHS/CBP also collects information about U.S. citizens and certain aliens (in-scope travelers pursuant to 8 CFR 215.8, "requirements for biometric identifiers from aliens on departure from the United States") upon departure from the United States for law enforcement purposes and to document their border crossing.

DHS is statutorily mandated to create and integrate an automated entry and exit system that records the arrival and departure of aliens, verifies alien identities, and authenticates alien travel documents through the comparison of biometric identifiers (8 U.S.C. 1365(b)). Certain aliens may be required to provide biometrics (including digital fingerprint scans, palm prints, photographs, facial and iris images, or other biometric identifiers) upon arrival in or departure from the United States. The biometric data is stored in the Automated Biometric Identification System (IDENT) IT system. IDENT stores and processes biometric data (e.g., digital fingerprints, palm prints, photographs, and iris scans) and links biometrics with biographic information to establish and verify identities. The IDENT IT system serves as the biometric

repository for DHS and also stores related biographic information.

Collection of additional biometric information from individuals crossing the border (such as information regarding scars, marks, tattoos, and palm prints) aids biometric sharing between the Department of Justice (DOJ) Integrated Automated Fingerprint Identification System (IAFIS)/Next Generation Identification (NGI) and the IDENT system. The end result is enhanced access to (and in some cases acquisition of) IAFIS/NGI information by the IDENT system and its users. DHS, DOJ/FBI, and the Department of State (DOS)/Bureau of Consular Services entered into a Memorandum of Understanding (MOU) for Improved Information Sharing Services in 2008. The MOUs established the framework for sharing information in accordance with an agreed-upon technical solution for expanded IDENT/IAFIS/NGI interoperability, which provides access to additional data for a greater number of authorized users.

CBP collects border crossing information stored in this system of records through a number of sources, for example: (1) Travel documents (e.g., a foreign passport) presented by an individual at a CBP port of entry when he or she provided no advance notice of the border crossing to CBP; (2) carriers that submit information in advance of travel through the Advance Passenger Information System (APIS); (3) information stored in the Global Enrollment System (GES) (see DHS/CBP-002 Global Enrollment System (GES) SORN, 78 FR 3441, (January 16, 2013)) as part of a trusted or registered traveler program; (4) non-federal governmental authorities that issued valid travel documents approved by the Secretary of DHS (e.g., an Enhanced Driver's License (EDL)); (5) another federal agency that issued a valid travel document (e.g., data from a DOS visa, passport including passport card, or Border Crossing Card); and (6) the Canada Border Services Agency (CBSA) pursuant to the Beyond the Border Entry/Exit Program. When a traveler enters, is admitted to, paroled into, or departs from the United States, his or her biographical information, photograph (when available), and crossing details (time and location) are maintained in accordance with the DHS/CBP-007 Border Crossing Information SORN.

DHS/CBP is updating the system location to inform the public that certain BCI information may be replicated from the operational system and maintained on DHS unclassified and classified networks to allow for

analysis and vetting consistent with existing DHS/CBP authorities and purposes and this published notice. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP-007 BCI SORN may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions.

The exemptions for the existing system of records notice published May 11, 2015 (80 FR 26937) continue to apply for this updated system of records for those categories of records listed in the previous System of Records Notice. A Final Rule exempting portions of this system from certain provisions of the Privacy Act was published on Feb. 3, 2010, and remains in effect (75 FR 5491); however, the Department of Homeland Security recently published a Notice of Proposed Rulemaking to clarify the exemptions for this system (80 FR 79487, Dec. 22, 2015) and a new Final Rule is forthcoming. Furthermore, to the extent certain categories of records are ingested from other systems, the exemptions applicable to the source systems will remain in effect.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the Federal Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP-007 Border Crossing Information (BCI) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

**SYSTEM OF RECORDS:**

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–007.

**SYSTEM NAME:**

DHS/CBP–007 Border Crossing Information (BCI).

**SECURITY CLASSIFICATION:**

Unclassified, Sensitive, For Official Use Only (FOUO), and Law Enforcement-Sensitive (LES). The data may be retained on classified networks, but this does not change the nature and character of the data until it is combined with classified information.

**SYSTEM LOCATION:**

DHS/CBP currently maintains records in the operational information technology (IT) system at DHS/CBP Headquarters in Washington, DC and at field offices. This computer database is located at DHS/CBP National Data Center (NDC) in Washington, DC. Computer terminals are located at customhouses, border ports of entry, airport inspection facilities under the jurisdiction of DHS/CBP, and other locations at which DHS/CBP authorized personnel may be posted to facilitate DHS's mission. Terminals may also be located at appropriate facilities for other participating government agencies. Records are replicated from the operational IT system and maintained on DHS unclassified and classified networks.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals with records stored in BCI include U.S. citizens, lawful permanent residents (LPR), and immigrant and non-immigrant aliens who lawfully cross the U.S. border by air, land, or sea, regardless of method of transportation or conveyance.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

DHS/CBP collects and stores the following records in the BCI system as border crossing information:

- Full name (last, first, and, if available, middle);
- Date of birth;
- Gender;
- Travel document type and number (e.g., passport information, permanent resident card, Trusted Traveler Program card);
- Issuing country or entity and expiration date;
- Photograph (when available);
- Country of citizenship;
- Tattoos;
- Scars;
- Marks;
- Palm prints;

- Digital fingerprints;
- Photographs;
- Digital iris scans;
- Radio Frequency Identification (RFID) tag number(s) (if land or sea border crossing);
- Date and time of crossing;
- Lane for clearance processing;
- Location of crossing;
- Secondary Examination Status; and
- For land border crossings only, license plate number or Vehicle Identification Number (VIN) (if no plate exists).

CBP maintains in BCI information derived from an associated APIS transmission (when applicable), including:

- Full name (last, first, and, if available, middle);
- Date of birth;
- Gender;
- Country of citizenship;
- Passport/alien registration number and country of issuance;
- Passport expiration date;
- Country of residence;
- Status on board the aircraft;
- Travel document type;
- United States destination address (for all private aircraft passengers and crew, and commercial air, rail, bus, and vessel passengers except for U.S. Citizens, LPRs, crew, and those in transit);
- Place of birth and address of permanent residence (commercial flight crew only);
- Pilot certificate number and country of issuance (flight crew only, if applicable);
- Passenger Name Record (PNR) locator number;
- Primary inspection lane;
- ID inspector;
- Records containing the results of comparisons of individuals to information maintained in CBP's law enforcement databases as well as information from the Terrorist Screening Database (TSDB);
- Information on individuals with outstanding wants or warrants; and
- Information from other government agencies regarding high risk parties.

CBP collects records under the Entry/Exit Program with Canada, such as border crossing data from the CBSA, including:

- Full name (last, first, and if available, middle);
- Date of Birth;
- Nationality (citizenship);
- Gender;
- Document Type;
- Document Number;
- Document Country of Issuance;
- Port of entry location (Port code);
- Date of entry; and

- Time of entry.

In addition, air and sea carriers or operators covered by the APIS rules and rail and bus carriers (to the extent voluntarily applicable) also transmit or provide the following information to CBP for retention in BCI:

- Airline carrier code;
- Flight number;
- Vessel name;
- Vessel country of registry/flag;
- International Maritime Organization number or other official number of the vessel;
- Voyage number;
- Date of arrival/departure;
- Foreign airport/port where the passengers and crew members began their air/sea transportation to the United States;
- For passengers and crew members destined for the United States:
  - The location where the passengers and crew members will undergo customs and immigration clearance by CBP.
  - For passengers and crew members who are transiting through (and crew on flights over flying) the United States and not clearing CBP:
    - The foreign airport/port of ultimate destination; and
    - Status on board (whether an individual is crew or non-crew).
    - For passengers and crew departing the United States:
      - Final foreign airport/port of arrival.

Other information also stored in this system of records includes:

  - Aircraft registration number provided by pilots of private aircraft;
  - Type of aircraft;
  - Call sign (if available);
  - CBP issued decal number (if available);
  - Place of last departure (e.g., ICAO airport code, when available);
  - Date and time of aircraft arrival;
  - Estimated time and location of crossing U.S. border or coastline;
  - Name of intended airport of first landing, if applicable;
  - Owner or lessee name (first, last, and middle, if available, or business entity name);
  - Owner or lessee contact information (address, city, state, zip code, country, telephone number, fax number, and email address, pilot, or private aircraft pilot name);
  - Pilot information (license number, street address (number and street, city state, zip code, country, telephone number, fax number, and email address));
  - Pilot license country of issuance;
  - Operator name (for individuals: last, first, and middle, if available; or name of business entity, if available);

- Operator street address (number and street, city, state, zip code, country, telephone number, fax number, and email address);

- Aircraft color(s);

- Complete itinerary (foreign airport landings within 24 hours prior to landing in the United States);

- 24-hour emergency point of contact information (*e.g.*, broker, dispatcher, repair shop, or other third party who is knowledgeable about this particular flight)

- Full name (last, first, and middle (if available)) and telephone number; and
  - Incident to the transmission of required information via eAPIS (for general aviation itineraries, pilot, and passenger manifests), records will also incorporate the pilot's email address.

To the extent private aircraft operators and carriers operating in the land border environment may transmit APIS, similar information may also be recorded in BCI by CBP with regard to such travel. CBP also collects the license plate number of the conveyance (or VIN number when no plate exists) in the land border environment for both arrival and departure (when departure information is available).

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for BCI is provided by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173, 116 Stat. 543 (2002)); the Aviation and Transportation Security Act of 2001 (Pub. L. 107–71, 115 Stat. 597); the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638 (2004)); the Immigration and Nationality Act, as amended (8 U.S.C. 1185 and 1354); and the Tariff Act of 1930, as amended (19 U.S.C. 1322–1683g, including 19 U.S.C. 66, 1433, 1454, 1485, 1624 and 2071).

#### **PURPOSE(S):**

DHS/CBP collects and maintains this information to vet and inspect persons arriving in or departing from the United States; to determine identity, citizenship, and admissibility; and to identify persons who: (1) May be (or are suspected of being) a terrorist or having affiliations to terrorist organizations; (2) have active warrants for criminal activity; (3) are currently inadmissible or have been previously removed from the United States; or (4) have been otherwise identified as potential security risks or raise a law enforcement concern. For immigrant and non-immigrant aliens, the information is also collected and maintained to ensure information related to a particular border crossing is available for providing any applicable benefits

related to immigration or other enforcement purposes. Lastly, DHS/CBP maintains information in BCI to retain a historical record of persons crossing the border to facilitate law enforcement, counterterrorism, and benefits processing.

DHS/CBP maintains a replica of some or all of the data in the operating system on DHS unclassified and classified networks to allow for analysis and vetting consistent with the above stated purposes and this published notice.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity

theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate federal, state, tribal, local, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, when DHS believes the information would assist enforcement of applicable civil or criminal laws.

I. To the CBSA for law enforcement and immigration purposes, as well as to facilitate cross-border travel when an individual enters the United States from Canada.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat (or potential threat) to national or international security for which the information may be relevant in countering the threat (or potential threat).

K. To a federal, state, tribal, or local agency, other appropriate entity or



individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, E.O., or other applicable national security directive.

L. To an organization or individual in either the public or private sector (foreign or domestic) when there is a reason to believe that the recipient is (or could become) the target of a particular terrorist activity or conspiracy, or when the information is relevant and necessary to the protection of life or property.

M. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purposes of protecting the vital interests of the data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease, to combat other significant public health threats, or to provide appropriate notice of any identified health threat or risk.

N. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings.

O. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

P. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS is aware of a need to use relevant data for purposes of testing new technology.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

DHS/CBP stores records in this system electronically in the operational IT system, including on DHS unclassified and classified networks, or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media, and CD-ROM.

**RETRIEVABILITY:**

DHS/CBP retrieves records by name or other personal identifiers listed in the categories of records, above.

**SAFEGUARDS:**

DHS/CBP safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is being stored. DHS/CBP limits access to BCI to those individuals who have a need to know the information for the performance of their official duties and who also have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

DHS/CBP is working with NARA to develop the appropriate retention schedule based on the information below. For persons DHS/CBP determines to be U.S. citizens and LPRs, information in BCI that is related to a particular border crossing is maintained for 15 years from the date when the traveler entered, was admitted to or paroled into, or departed the United States, at which time it is deleted from BCI. For non-immigrant aliens, the information will be maintained for 75 years from the date of admission or parole into or departure from the United States in order to ensure that the information related to a particular border crossing is available for providing any applicable benefits related to immigration or for other law enforcement purposes.

Information related to border crossings prior to a change in status will follow the 75 year retention period for non-immigrant aliens who become U.S. citizens or LPRs following a border crossing that leads to the creation of a record in BCI. All information regarding border crossing by such persons following their change in status will follow the 15 year retention period applicable to U.S. citizens and LPRs. For all travelers, however, BCI records linked to active law enforcement lookout records, DHS/CBP matches to

enforcement activities, or investigations or cases remain accessible for the life of the primary records of the law enforcement activities to which the BCI records may relate, to the extent retention for such purposes exceeds the normal retention period for such data in BCI.

Records replicated on the unclassified and classified networks for analysis and vetting will follow the same retention schedule.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Automated Systems, U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

**NOTIFICATION PROCEDURE:**

DHS/CBP allows persons (including foreign nationals) to seek administrative access under the Privacy Act to information maintained in BCI. However, the Secretary of DHS exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. Nonetheless, DHS/CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS Chief Freedom of Information Act (FOIA) Officer or CBP FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts." If an individual believes more than one Component maintains Privacy Act records that concern him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, 245 Murray Lane SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Although no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer,



<http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which Component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS Component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, CBP may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

In processing requests for access to information in this system, CBP will review the records in the operational system and coordinate with DHS to address access to records on the DHS unclassified and classified networks.

#### RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

#### CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

#### RECORD SOURCE CATEGORIES:

DHS/CBP collects information from individuals who arrive in, depart from, or transit through the United States. This system also collects information from carriers that operate vessels, vehicles, aircraft, or trains that enter or exit the United States, including private aircraft operators. Lastly, BCI receives border crossing information received from CBSA.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system that is *collected from a person* at the time of crossing and submitted by that person's air, sea, bus, or rail carriers if that person, or his or her agent, seeks access or amendment of such information.

The Privacy Act, however, requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement activities. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), exempted this system from the following provisions of the Privacy Act:

Sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS has exempted section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Additionally, this system contains records or information recompiled from or created from information contained in other systems of records that are exempt from certain provision of the Privacy Act. This system also contains accountings of disclosures made with respect to information maintained in the system. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2) and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

Dated: January 14, 2016.

**Karen L. Neuman,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2016-01331 Filed 1-22-16; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2576-15; DHS Docket No. USCIS-2014-0003]

**RIN 1615-ZB45**

### Extension of the Designation of Sudan for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Sudan for Temporary Protected Status (TPS) for 18 months, from May 3, 2016 through November 2, 2017.

The extension allows currently eligible TPS beneficiaries to retain TPS through November 2, 2017, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because the conditions in Sudan that prompted the 2013 TPS redesignation continue to be

met. Sudan continues to experience ongoing armed conflict and extraordinary and temporary conditions within the country that prevent its nationals from returning to Sudan in safety.

Through this Notice, DHS also sets forth procedures necessary for eligible nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Sudan and whose applications have been granted. Certain nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since January 9, 2013, and continuous physical presence in the United States since May 3, 2013).

For individuals who have already been granted TPS under Sudan's designation, the 60-day re-registration period runs from January 25, 2016 through March 25, 2016. USCIS will issue new EADs with a November 2, 2017 expiration date to eligible Sudan TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on May 2, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Sudan for 6 months, through November 2, 2016, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I-9) and the E-Verify processes.

**DATES:** The 18-month extension of the TPS designation of Sudan is effective May 3, 2016, and will remain in effect through November 2, 2017. The 60-day re-registration period runs from January 25, 2016 through March 25, 2016. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

#### FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application

process and additional information on eligibility, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>.

You can find specific information about Sudan's TPS extension by selecting "Sudan" from the menu on the left side of the TPS Web page.

- For questions concerning this FRN, you can also contact the U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <https://egov.uscis.gov/casestatus/landing.do> or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

- Further information will also be available at local USCIS offices upon publication of this Notice.

#### SUPPLEMENTARY INFORMATION:

##### Table of Abbreviations

BIA	Board of Immigration Appeals
DHS	Department of Homeland Security
DOS	Department of State
EAD	Employment Authorization Document
FNC	Final Nonconfirmation
Government	U.S. Government
GOS	Government of Sudan
IDP	Internally Displaced Person
IJ	Immigration Judge
INA	Immigration and Nationality Act
NGO	Non-Governmental Organizations
OCHA	UN Office for the Coordination of Humanitarian Affairs
OSC	U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAF	Sudanese Armed Forces
SAVE	USCIS Systematic Alien Verification for Entitlements Program
Secretary	Secretary of Homeland Security
SPLM–N	Sudan People's Liberation Movement–North
TNC	Tentative Nonconfirmation
TPS	Temporary Protected Status
TTY	Text Telephone
UN	United Nations
USCIS	U.S. Citizenship and Immigration Services
UNICEF	UN International Children's Emergency Fund

#### What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without

nationality who last habitually resided in the designated country.

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.

- The granting of TPS does not result in or lead to permanent resident status.

- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).

- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

#### When was Sudan designated for TPS?

On November 4, 1997, the Attorney General designated Sudan for TPS due to ongoing armed conflict and extraordinary and temporary conditions within Sudan. *See Designation of Sudan Under Temporary Protected Status*, 62 FR 59737 (Nov. 4, 1997). Following the initial designation, the Attorney General and, later, the Secretary have extended TPS and/or redesignated Sudan for TPS a total of 14 times. In 2013, the Secretary both extended Sudan's designation and redesignated Sudan for TPS for 18 months through November 2, 2014. *See Extension and Redesignation of Sudan for Temporary Protected Status*, 78 FR 1872 (Jan. 9, 2013). This announcement is the second extension of the TPS designation for Sudan since the 2013 extension and redesignation.

#### What authority does the Secretary have to extend the designation of Sudan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.<sup>1</sup> The Secretary may then grant TPS to eligible nationals

of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

#### Why is the Secretary extending the TPS designation for Sudan through November 2, 2017?

DHS and the Department of State (DOS) have reviewed conditions in Sudan. Based on the reviews and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the conditions supporting Sudan's designation for TPS continue to exist.

The political and humanitarian situation in Sudan continues to be volatile and dangerous with internal armed conflicts in Darfur and in the Two Areas (South Kordofan and Blue Nile states). Reports of violations and abuses of human rights and violations of international humanitarian law persist, with those reports indicating that such violations and abuses have been largely perpetrated by the Sudanese government forces and pro-government militias against civilians.

Since 2003, the Government of Sudan (GOS) and armed opposition groups have fought in Darfur. In 2014, the GOS deployed a new paramilitary force in Darfur known as the Rapid Support Forces, after which displacement in the region increased. This upsurge correlated with the GOS' declared "Decisive Summer Campaign" that began in April 2014, through which the GOS sought to eradicate all armed rebellion within the country. The campaign was renewed in December 2014 and has continued into 2015, with the GOS proclaiming expected

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

widespread civilian displacement, especially within the Two Areas.

In its 12th year, the Darfur conflict is widespread and unpredictable. Darfur has witnessed an increase in criminal activity and intertribal conflict. Clashes between the Sudanese Armed Forces (SAF) and armed opposition groups, as well as intertribal fighting, displaced approximately 430,000 people in 2014. The United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA) reported that an estimated 143,000 persons were displaced between January and May 2015, bringing the total number of internally displaced persons (IDPs) in the Darfur region to approximately 2.5 million.

In the Two Areas, the SAF continued to fight the Sudan People's Liberation Movement-North (SPLM-N) for control over towns, military strongholds, and supply routes. According to Amnesty International, Sudanese forces have employed indiscriminate aerial bombardment and shelling of villages in the region. The SAF reportedly has carried out sustained aerial bombardments in and around Kauda, a major town in Heiban County, as well as aerial bombardments and shelling in Um Dorein and Delami counties, destroying schools, clinics, hospitals, and other buildings, and forcing people to flee their homes. Reports indicated an estimated 1.7 million IDPs in both government and SPLM-N controlled territories, roughly half of the total population in both areas. In March 2015, OCHA reported that, due to the ongoing armed conflict, at least 250,000 Sudanese had fled from the Two Areas to South Sudan and Ethiopia.

A determination of the status of the disputed Abyei area remains elusive. The governments of Sudan and South Sudan withdrew their forces from Abyei in 2012. The UN Interim Security Force for Abyei maintains an uneasy peace, but the potential for a return to violence remains.

Reports of human rights violations and abuses in Sudan are widespread, including those involving extrajudicial and other unlawful killings. The GOS continued to abuse members of certain populations, including journalists, political opposition, civil society, and ethnic and religious minority groups.

Sudan's operating environment for non-governmental organizations (NGOs) remains challenging primarily because of restrictions or bans on NGO operations and the movements of their workers, particularly in the conflict-affected areas of Darfur and the Two Areas. The GOS' "Decisive Summer Campaign" has also eroded the existing

but limited health services in the Two Areas.

UN figures indicate that approximately 6.9 million people are in need of humanitarian assistance in Sudan. According to the UN International Children's Emergency Fund (UNICEF), Sudan continues to be one of the worst crises for children in the world today. There are 3.24 million children targeted for humanitarian assistance by the UN's Humanitarian Response Plan in 2015. UNICEF reported that approximately 2 million children are suffering from malnutrition, of which approximately 550,000 are suffering from severe acute malnutrition.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions that prompted the 2013 redesignation of Sudan for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be ongoing armed conflict in Sudan and, due to such conflict, requiring the return of Sudanese nationals (or aliens having no nationality who last habitually resided in Sudan) to Sudan would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Sudan that prevent Sudanese nationals (or aliens having no nationality who last habitually resided in Sudan) from returning to Sudan in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit Sudanese nationals (or aliens having no nationality who last habitually resided in Sudan) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Sudan for TPS should be extended for an 18-month period from May 3, 2016 through November 2, 2017. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 450 current Sudan TPS beneficiaries who are expected to file for re-registration under the extension.

#### **Notice of Extension of the TPS Designation of Sudan**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate

Government agencies, that the conditions that prompted the redesignation of TPS for Sudan in 2013 continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Sudan for 18 months, from May 3, 2016 through November 2, 2017. *See* INA section 244(b)(1)(A), (b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

**Jeh Charles Johnson,**  
*Secretary.*

#### **Required Application Forms and Application Fees To Register or Re-Register for TPS**

To register or re-register for TPS based on the designation of Sudan, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I-821).
  - If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I-821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at <http://www.uscis.gov/tps>.
  - If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I-821). *See* 8 CFR 244.17.
2. Application for Employment Authorization (Form I-765).
  - If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I-765) only if you are age 14 through 65. You do not need to pay the Application for Employment Authorization (Form I-765) fee if you are under the age of 14 or are 66 and older, applying for late initial registration and you want an EAD.
  - If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I-765), regardless of your age, if you want an EAD.
  - You do not pay the fee for the Application for Employment Authorization (Form I-765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application forms fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I-912) or submit a personal letter requesting a fee waiver with satisfactory

supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

**Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at <http://www.uscis.gov>. If necessary, you

may be required to visit an Application Support Center to have your biometrics captured.

**Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request**

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. See INA section 244(c)(3)(C); 8

U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at <http://www.uscis.gov/tps>.

**Note:** Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service .....	USCIS, Attn: TPS Sudan, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service .....	USCIS, Attn: TPS Sudan, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When submitting a re-registration and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA. To get additional information, including the email address of the appropriate Service Center, you may go to the USCIS TPS Web page at <http://www.uscis.gov/tps>.

**E-Filing**

You cannot electronically file your application when re-registering or submitting an initial registration for Sudan TPS. Please mail your application to the mailing address listed in Table 1.

**Supporting Documents**

The filing instructions on the Application for Temporary Protected

Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You must also submit two color passport-style photographs of yourself. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at [www.uscis.gov/tps](http://www.uscis.gov/tps) under “Sudan.”

*Do I need to submit additional supporting documentation?*

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

**Employment Authorization Document (EAD)**

*How can I obtain information on the status of my EAD request?*

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been

pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at <https://infopass.uscis.gov>. However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

*Am I eligible to receive an automatic 6-month extension of my current EAD through November 2, 2016?*

Provided that you currently have TPS under the designation of Sudan, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Sudan (or an alien having no nationality who last habitually resided in Sudan);
- Received an EAD under the last extension of TPS for Sudan; and
- Have an EAD with a marked expiration date of May 2, 2016, bearing the notation “A–12” or “C–19” on the face of the card under “Category.”

Although this Notice automatically extends your EAD through November 2, 2016, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

*When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the “Lists of Acceptable Documents” for Employment Eligibility Verification (Form I-9). You can find additional detailed information on the USCIS I-9 Central Web page at <http://www.uscis.gov/I-9Central>. Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I-9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under “List A.” You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I-9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of May 2, 2016, and states “A-12” or “C-19” under “Category,” it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I-9) through November 2, 2016 (see the subsection titled “*How do my employer and I complete the Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*” for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through November 2, 2016, based on your Temporary Protected Status. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment

authorization through November 2, 2016. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

*What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?*

Even though EADs with an expiration date of May 2, 2016, that state “A-12” or “C-19” under “Category” have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once May 2, 2016 is reached to meet its responsibilities for Employment Eligibility Verification (Form I-9). Your employer does not need to complete a new Employment Eligibility Verification (Form I-9) to reverify your employment authorization until November 2, 2016, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Employment Eligibility Verification (Form I-9) if your employer did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I-9) (see the subsection titled “*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*” for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I-9).

By November 2, 2016, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I-9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I-9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I-9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD,

which is November 2, 2016, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I-9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I-9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I-9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

*Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Sudanese citizenship or proof that I have re-registered for TPS?*

No. When completing Employment Eligibility Verification (Form I-9), including reverifying employment authorization, employers must accept any documentation that appears on the “Lists of Acceptable Documents” for Employment Eligibility Verification (Form I-9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the “Lists of Acceptable Documents.” Therefore, employers may not request proof of Sudanese citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I-9) for new hires or reverifying the employment authorization of current employees. Refer to the “Note to Employees” section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

*What happens after November 2, 2016 for purposes of employment authorization?*

After November 2, 2016, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will work to issue new EADs to eligible TPS re-registrants who request them. These new EADs should have an

expiration date of November 2, 2017 and can be presented to your employer for completion of Employment Eligibility Verification (Form I-9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I-9).

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I-9) for a new job before November 2, 2016, you and your employer should do the following:

1. For Section 1, you should:
  - a. Check "An alien authorized to work;"
  - b. Write the automatically extended EAD expiration date (November 2, 2016) in the first space; and
  - c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).
2. For Section 2, employers should record the:
  - a. Document title;
  - b. Issuing authority;
  - c. Document number; and
  - d. Automatically extended EAD expiration date (November 2, 2016).

By November 2, 2016, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I-9).

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I-9) as follows:

1. For Section 1, you should:
  - a. Draw a line through the expiration date in the first space;
  - b. Write "November 2, 2016" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:
 

- a. Draw a line through the expiration date written in Section 2;

b. Write "November 2, 2016" above the previous date;

c. Write "EAD Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By November 2, 2016, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?*

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I-9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I-9). By November 2, 2016, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair

Employment Practices (OSC) Employer Hotline, at 800-255-8155 (TTY 800-237-2515), which offers language interpretation in numerous languages, or email OSC at [oscrcrt@usdoj.gov](mailto:oscrcrt@usdoj.gov).

**Note to Employees**

For general questions about the employment eligibility verification process, you may call USCIS at 888-897-7781 (TTY 877-875-6028) or email [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I-9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I-9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I-9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker

Information Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I-9) and E-Verify procedures is available on the OSC Web site at <http://www.justice.gov/crt/about/osc/> and the USCIS Web site at <http://www.dhs.gov/E-verify>.

#### Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS.

Examples are:

- (1) Your unexpired EAD;
- (2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;
- (3) A copy of your Application for Temporary Protected Status Notice of Action (Form I-797) for this re-registration;
- (4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I-797), if you received one from USCIS; and/or
- (5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make

corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "How to Correct Your Records" from the menu on the right.

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2575-15; DHS Docket No. USCIS-2014-0004]

RIN 1615-ZB46

#### Extension and Redesignation of South Sudan for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of South Sudan for Temporary Protected Status (TPS) for 18 months, from May 3, 2016 through November 2, 2017, and redesignating South Sudan for TPS for 18 months, effective May 3, 2016 through November 2, 2017.

The extension allows currently eligible TPS beneficiaries to retain TPS through November 2, 2017, so long as they otherwise continue to meet the eligibility requirements for TPS. The redesignation of South Sudan allows additional individuals who have been continuously residing in the United States since January 25, 2016 to obtain TPS, if otherwise eligible. The Secretary determined that an extension of the current designation and a redesignation of South Sudan for TPS are warranted because the ongoing armed conflict and extraordinary and temporary conditions that prompted the 2014 TPS redesignation have persisted, and in some cases deteriorated, and would pose a serious threat to the personal safety of South Sudanese nationals if they were required to return to their country. Although the parties to the conflict signed a peace agreement in August 2015, violence persists in many parts of the country, and the implementation of the peace agreement is halting to date.

Through this Notice, DHS also sets forth procedures necessary for eligible

nationals of South Sudan (or aliens having no nationality who last habitually resided in South Sudan) either to: (1) Re-register under the extension if they already have TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS); or (2) submit an initial registration application under the redesignation and apply for an EAD.

For individuals who have already been granted TPS, the 60-day re-registration period runs from January 25, 2016 through March 25, 2016. USCIS will issue new EADs with a November 2, 2017, expiration date to eligible South Sudan TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on May 2, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of South Sudan for 6 months, through November 2, 2016, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I-9) and the E-Verify processes.

Under the redesignation, individuals who currently do not have TPS (or an initial TPS application pending) may submit an initial application during the 180-day initial registration period that runs from January 25, 2016 through July 25, 2016. In addition to demonstrating continuous residence in the United States since January 25, 2016 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since May 3, 2016, the effective date of this redesignation of South Sudan, before USCIS may grant them TPS.

TPS initial applications that were filed under South Sudan's 2011 designation or the 2013 or 2014 redesignations and remain pending on January 25, 2016 will be treated as initial applications under this redesignation. Individuals who have a pending initial South Sudan TPS application will not need to file a new Application for Temporary Protected Status (Form I-821). DHS provides additional instructions in this Notice for individuals whose TPS applications remain pending and who would like to obtain an EAD valid through November 2, 2017.



**DATES:** *Extension of Designation of South Sudan for TPS:* The 18-month extension of the TPS designation of South Sudan is effective May 3, 2016, and will remain in effect through November 2, 2017. The 60-day re-registration period runs from January 25, 2016 through March 25, 2016. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

*Redesignation of South Sudan for TPS:* The redesignation of South Sudan for TPS is effective May 3, 2016, and will remain in effect through November 2, 2017, a period of 18 months. The 180-day initial registration period for new applicants under the South Sudan TPS redesignation runs from January 25, 2016 through July 25, 2016.

**FOR FURTHER INFORMATION CONTACT:**

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>.

You can find specific information about this extension and redesignation of South Sudan for TPS by selecting “South Sudan” from the menu on the left side of the TPS Web page.

- For questions concerning this FRN, you can also contact the U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

- Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA	Board of Immigration Appeals
DHS	Department of Homeland Security
DOS	Department of State
EAD	Employment Authorization Document
FNC	Final Nonconfirmation
Government	U.S. Government
IJ	Immigration Judge
INA	Immigration and Nationality Act
OSC	U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE	USCIS Systematic Alien Verification for Entitlements Program

Secretary	Secretary of Homeland Security
TNC	Tentative Nonconfirmation
TPS	Temporary Protected Status
TTY	Text Telephone
UN	United Nations
USCIS	U.S. Citizenship and Immigration Services

**What is Temporary Protected Status (TPS)?**

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also be granted travel authorization as a matter of discretion.

- The granting of TPS does not result in or lead to permanent resident status.

- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).

- When the Secretary terminates a country’s TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

**When was South Sudan designated for TPS?**

On October 13, 2011, the Secretary designated South Sudan for TPS, effective November 3, 2011, based on an ongoing armed conflict and extraordinary and temporary conditions within South Sudan. *See Designation of Republic of South Sudan for Temporary Protected Status*, 76 FR 63629 (Oct. 13, 2011). Following the initial designation, the Secretary has extended and redesignated South Sudan for TPS two times. Most recently, in 2014, the Secretary both extended South Sudan’s designation and redesignated South Sudan for TPS for 18 months through May 2, 2016. *See Extension and Redesignation of South Sudan for Temporary Protected Status*, 79 FR 52019 (Sept. 2, 2014).

**What authority does the Secretary have to extend the designation of South Sudan for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary,

after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.<sup>1</sup> The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country’s TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**What is the Secretary’s authority to redesignate South Sudan for TPS?**

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA section 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that “the alien has been continuously physically present since the effective date of the most recent designation of the state”) (emphasis added). This is one of numerous instances in which the Secretary, and prior to the establishment of DHS, the Attorney General, has simultaneously extended a country’s TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Syria for Temporary Protected Status*, 80 FR 245 (Jan. 5, 2015); *Extension and Redesignation of Sudan for Temporary*

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS “shall be deemed to refer to the Secretary” of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).



*Protected Status*, 78 FR 1872 (Jan. 9, 2013); *Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, 62 FR 16608 (Apr. 7, 1997) (discussing legal authority for redesignation of a country for TPS).

When the Secretary designates or redesignates a country for TPS, he also has the discretion to establish the date from which TPS applicants must demonstrate that they have been “continuously resid[ing]” in the United States. See INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). This discretion permits the Secretary to tailor the “continuous residence” date to offer TPS to the group of eligible individuals that the Secretary deems appropriate.

The Secretary has determined that the “continuous residence” date for applicants for TPS under the redesignation of South Sudan shall be January 25, 2016. Initial applicants for TPS under this redesignation must also show they have been “continuously physically present” in the United States since May 3, 2016, which is the effective date of the Secretary’s redesignation of South Sudan. See INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the “continuous physical presence” requirement cannot be made until May 3, 2016. USCIS, however, will issue EADs, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

#### **Why is the Secretary extending the TPS designation for South Sudan and simultaneously redesignating South Sudan for TPS through November 2, 2017?**

DHS and the Department of State (DOS) have reviewed conditions in South Sudan. Based on the reviews and after consulting with DOS, the Secretary has determined that an 18-month extension and redesignation is warranted because the ongoing armed conflict and extraordinary and temporary conditions that prompted the September 2, 2014 redesignation have persisted, and in some cases deteriorated. In spite of a peace deal signed in August 2015, violence persists in many parts of South Sudan, and the peace agreement itself remains fragile. The current conditions support the expansion of TPS protection to eligible South Sudanese nationals who began residing in the United States between

September 2, 2014 and January 25, 2016.

South Sudan is in the midst of a crisis involving a cycle of ethnic violence, allegations of atrocities and a humanitarian disaster of devastating scale. The armed conflict between the Government of South Sudan and opposition groups, which has affected a significant portion of the country, has been defined by ethnic lines and has been marked by brutal violence against civilians. Despite a peace agreement signed in August 2015, the security situation remains uncertain and violence persists in many areas. The humanitarian situation continues to deteriorate, resulting in widespread displacement due to the violence; high rates of death, disease, and injuries; severe food insecurity with a major malnutrition crisis; and disrupted livelihoods.

Longstanding political tensions between President Salva Kiir Mayardit, an ethnic Dinka, and former vice president, Riek Machar Teny, an ethnic Nuer, sparked an outbreak of violence in Juba in December 2013. This outbreak of violence in Juba led to fighting between Nuer and Dinka elements within the regular Sudan People’s Liberation Army. Since December 2013, thousands of people have been killed, as fighting broadened and continued along ethnic lines. The violence has flared up again toward the end of April and into May 2015, and in September following the signing of the peace agreement.

South Sudan also remains embroiled in conflict along its border with Sudan. In 2015, Misseriya militias continued to attack Abyei, a disputed border area, sometimes with the backing of the Sudanese Armed Forces.

Both government and opposition forces are alleged to have committed atrocities, including against civilians. The United Nations (UN) and humanitarian actors report that during the 2015 offensive, there have been atrocities including those involving rape, the systematic murder of boys over the age of 10 and the elderly, the forced recruitment and kidnapping of children, and the wholesale destruction and burning of villages. The resulting insecurity in northern and central Unity state has forced relief organizations to withdraw staff, and as of mid-June 2015, has left more than 650,000 civilians in need of emergency support without access to humanitarian assistance.

The overall situation in South Sudan has continued to deteriorate since the civil conflict began in December 2013, with the security, rule of law and human rights situations remaining deeply compromised. South Sudan has

not held elections since becoming independent in July 2011. The peace agreement calls for a transitional government to take office and elections in 2018, although the transitional government is not yet in place. The economic situation in South Sudan further contributes to its inability to protect its citizens from the ongoing conflict. Since fighting began in December 2013, economic activity outside the capital city, which was weak at best before the crisis, has all but stopped.

Humanitarian access has been constrained by security incidents against aid staff. Humanitarian workers, both foreign and national, have been targeted and killed, with no reported prosecutions. For the month of March 2015, the UN reported 64 security incidents against humanitarian actors in South Sudan, and both international and South Sudanese non-governmental organizations continue to be targets of crime and violence. Due to ongoing hostilities in Unity state, all non-governmental organizations and UN agencies evacuated staff in May 2015, bringing relief efforts in the area to a halt. Consequently, over 300,000 civilians in need of emergency relief, including food aid and medical services were cut off from life-saving assistance. Violence in Unity state persists in spite of the peace agreement.

According to the UN, over half of the country’s 12 million people are in need of aid. The ongoing conflict has caused a continuous flow of internally displaced persons and refugees. The UN High Commissioner for Refugees estimates that as of November 2015, approximately 644,000 people have fled South Sudan as a direct result of the ongoing conflict and related food insecurity, in addition to more than 1.6 million South Sudanese who have been internally displaced. These figures are expected to grow even after the signing of the peace agreement. Estimates of the number of people in need of shelter for 2015 include an anticipated 1.95 million internally displaced persons and a projected 293,000 refugees.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions that prompted the 2014 redesignation of South Sudan for TPS continue to be met. See INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in South Sudan and, due to such conflict, requiring the return of South Sudanese nationals (or aliens having no nationality who last

habitually resided in South Sudan) to South Sudan would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).

- There continue to be extraordinary and temporary conditions in South Sudan that prevent South Sudanese nationals (or aliens having no nationality who last habitually resided in South Sudan) from returning to South Sudan in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

- It is not contrary to the national interest of the United States to permit South Sudanese (or aliens having no nationality who last habitually resided in South Sudan) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

- The designation of South Sudan for TPS should be extended for an 18-month period from May 3, 2016 through November 2, 2017. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

- Based on current country conditions, South Sudan should be simultaneously redesignated for TPS effective May 3, 2016 through November 2, 2017. *See* INA sections 244(b)(1)(A), (b)(1)(C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

- TPS applicants must demonstrate that they have continuously resided in the United States since January 25, 2016.

- The date by which TPS applicants must demonstrate that they have been continuously physically present in the United States is May 3, 2016, the

effective date of the redesignation of South Sudan for TPS.

- There are approximately 50 current South Sudan TPS beneficiaries who are expected to file for re-registration under the extension.

- It is estimated that an additional 25–150 nationals of South Sudan (and persons without nationality who last habitually resided in South Sudan) may be eligible for TPS under the redesignation of South Sudan. This estimate is based on the total number of South Sudanese nationals believed to be in the United States in a nonimmigrant status or without lawful immigration status.

**Notice of Extension of the TPS Designation of South Sudan**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the redesignation of TPS for South Sudan in 2014 not only continue to be met, but have significantly deteriorated. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am simultaneously extending the existing designation of TPS for South Sudan for 18 months, from May 3, 2016 through November 2, 2017, and redesignating South Sudan for TPS for the same 18-month period. *See* INA section 244(b)(1)(A), (b)(1)(C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2). I have also determined that eligible individuals must demonstrate that they have continuously resided in the United

States since January 25, 2016. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii).

**Jeh Charles Johnson,**  
*Secretary.*

**I am currently a South Sudan TPS beneficiary. What should I do?**

If you have been granted TPS under South Sudan’s designation, then you must re-register under the extension if you wish to maintain TPS benefits through November 2, 2017. You must use the Application for Temporary Protected Status (Form I–821) to re-register for TPS. The 60-day open re-registration period will run from January 25, 2016 through March 25, 2016.

**I have a pending initial TPS application filed during the South Sudan TPS registration period that ran from September 2, 2014 through March 2, 2015. What should I do?**

If your TPS application is still pending on January 25, 2016, then you do *not* need to file a new Application for Temporary Protected Status (Form I–821). Pending TPS applications will be treated as initial applications under this re-designation. Therefore, if your TPS application is approved, you will be granted TPS through November 2, 2017. If you have a pending TPS application *and* you wish to have an EAD valid through November 2, 2017, please refer to Table 1 to determine whether you should file a new Application for Employment Authorization (Form I–765).

TABLE 1—FORM AND EAD INFORMATION FOR PENDING TPS APPLICATIONS

If . . .	And . . .	Then . . .
You requested an EAD during the previous initial registration period for South Sudan TPS.	You received an EAD with Category C–19 or A–12.	You must file a new Application for Employment Authorization (Form I–765) with fee (or fee waiver request) if you wish to have a new EAD valid through November 2, 2017.
	You did not receive an EAD with Category C–19 or A–12.	You do not need to file a new Application for Employment Authorization (Form I–765). If your TPS application is approved, your Application for Employment Authorization (Form I–765) will be approved through November 2, 2017.
You did not request an EAD during the previous initial registration period for South Sudan TPS.	You wish to have an EAD valid through November 2, 2017.	You must file a new Application for Employment Authorization (Form I–765) with fee (or fee waiver request).
	You do not wish to have an EAD valid through November 2, 2017.	You do not need to file a new Application for Employment Authorization (Form I–765).

**I am not a TPS beneficiary, and I do not have a TPS application pending. What are the procedures for initial registration for TPS under the South Sudan redesignation?**

If you are not a South Sudan TPS beneficiary or do not have a pending TPS application with USCIS, you may submit your TPS application during the 180-day initial registration period that will run from January 25, 2016 through July 25, 2016.

**Required Application Forms and Application Fees To Register or Re-register for TPS**

To register or re-register for TPS based on the designation of South Sudan, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I-821).
    - If you are filing an initial application, you must pay the fee for the Application for Temporary Protected Status (Form I-821). See 8 CFR 244.2(f)(2) and 244.6.
    - If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I-821). See 8 CFR 244.17.
  2. Application for Employment Authorization (Form I-765).
    - If you are applying for initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I-765) only if you are age 14 through 65. You do not need to pay the Application for Employment Authorization (Form I-765) fee if you are under the age of 14 or are 66 and older, applying for late initial registration and you want an EAD.
    - If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I-765), regardless of your age, if you want an EAD.
    - You do not pay the fee for the Application for Employment Authorization (Form I-765) if you are not requesting an EAD, regardless of whether you are applying for initial registration or re-registration.
- You must submit both completed application forms together. If you are unable to pay for the application fee

and/or biometrics fee, you may complete a Request for Fee Waiver (Form I-912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Fees for the Application for Temporary Protected Status (Form I-821), the Application for Employment Authorization (Form I-765), and biometric services are also described in 8 CFR 103.7(b).

**Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I-912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at <http://www.uscis.gov>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

**Refiling an Initial TPS Application After Receiving a Denial of a Fee Waiver Request**

If you request a fee waiver when filing your initial TPS application package and your request is denied, you may re-file your application packet before the initial filing deadline of July 25, 2016. If you attempt to submit your application with a fee waiver request before that deadline, and receive your application back with the USCIS fee waiver denial, and there are fewer than 45 days before the filing deadline (or the deadline has passed), you may still re-file your application within the 45-day period after the date on the USCIS fee waiver denial notice. You must include the correct fees or file a new fee waiver request. Your application will not be rejected even if the filing deadline has passed, provided it is mailed within those 45 days and all other required information for the application is included. Please be aware that if you re-file your TPS application packet with a

new fee waiver request after the deadline and that your new fee waiver request is denied, you cannot refile again. **Note:** Alternatively, you may pay the TPS application fee and biometrics fee (if you are age 14 or older) but wait to request an EAD and pay the Application for Employment Authorization (Form I-765) application fee after USCIS grants your TPS application, if you are eligible.

**Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request**

You should re-register as soon as possible within the 60-day period so that USCIS can process your application and issue any EAD promptly. Filing early will also allow you time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and you are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you have established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if at all possible. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I-765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I-821) with the fee and the Application for Employment Authorization (Form I-765) without the fee and without requesting an EAD.

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service .....	USCIS, Attn: TPS South Sudan, P.O. Box 6943, Chicago, IL 60680-6943.
You are using a non-U.S. Postal Service delivery service .....	USCIS, Attn: TPS South Sudan, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603-5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When submitting a re-registration and/or requesting an EAD based on an IJ/BIA grant of TPS, Please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

### E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for South Sudan TPS. Please mail your application to the mailing address listed in Table 1.

### Supporting Documents

*What type of basic supporting documentation must I submit with my initial TPS application?*

To meet the basic eligibility requirements for TPS, you must submit evidence that you:

- Are a national of South Sudan or an alien having no nationality who last habitually resided in South Sudan. Documents may include a copy of your passport if available, other documentation issued by the Government of South Sudan showing your nationality (such as a national identity card or official travel documentation issued by the Government of South Sudan), and/or your birth certificate with English translation accompanied by photo identification. USCIS will also consider certain forms of secondary evidence supporting your South Sudan nationality. If the evidence presented is insufficient for USCIS to make a determination as to your nationality, USCIS may request additional evidence. If you cannot provide a passport, birth certificate with photo identification, or a national identity document with your photo or fingerprint, you must submit an affidavit showing proof of your unsuccessful efforts to obtain such documents and affirming that you are a national of South Sudan. However, please be aware that an interview with an immigration officer will be required if you do not present any documentary proof of identity or nationality or if USCIS otherwise requests a personal appearance. See 8 CFR 103.2(b)(9), 244.9(a)(1);

- Have continuously resided in the United States since January 25, 2016. See INA section 244(c)(1)(A)(ii); 8 U.S.C. 1254a(c)(1)(A)(ii); 8 CFR 244.9(a)(2); and

- Have been continuously physically present in the United States since May 3, 2016, the effective date of the redesignation of South Sudan for TPS. See INA sections 244(b)(2)(A), (c)(1)(A)(i); 8 U.S.C. 1254a(b)(2)(A), (c)(1)(A)(i).

You must also submit two color passport-style photographs of yourself. The filing instructions on the Application for Temporary Protected Status (Form I-821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying for TPS on the USCIS Web site at [www.uscis.gov/tps](http://www.uscis.gov/tps) under “South Sudan.”

*Do I need to submit additional supporting documentation when filing an initial TPS registration or reregistering for TPS?*

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I-821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

### Employment Authorization Document (EAD)

*How can I get information on the status of my EAD request?*

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online, available at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). If your Application for Employment Authorization (Form I-765) has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at <https://infopass.uscis.gov>. However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

*Am I eligible to receive an automatic 6-month extension of my current EAD through November 2, 2016?*

Provided that you currently have TPS under the designation of South Sudan, this Notice automatically extends your EAD by 6 months if you:

- Are a national of South Sudan (or an alien having no nationality who last habitually resided in South Sudan);
- Received an EAD under the last extension of TPS for South Sudan; and
- Have an EAD with a marked expiration date of May 2, 2016, bearing the notation “A-12” or “C-19” on the face of the card under “Category.”

Although this Notice automatically extends your EAD through November 2, 2016, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

*When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the “Lists of Acceptable Documents” for Employment Eligibility Verification (Form I-9). You can find additional detailed information on the USCIS I-9 Central Web page at <http://www.uscis.gov/I-9Central>. Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I-9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under “List A.” You may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged. If you present this receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of May 2, 2016, and states “A-12” or “C-19” under “Category,” it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I-9) through November 2, 2016 (see the subsection titled “How do my employer and I complete the Employment Eligibility Verification

(Form I-9) using an automatically extended EAD for a new job?" for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through November 2, 2016, based on your Temporary Protected Status. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through November 2, 2016. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

*What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?*

Even though EADs with an expiration date of May 2, 2016, that state "A-12" or "C-19" under "Category" have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once May 2, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I-9). Your employer does not need to complete a new Form I-9 to reverify your employment authorization until November 2, 2016, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code in order to record the updated expiration date on your Form I-9 if your employer did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I-9) (see the subsection titled "What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?" for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I-9).

By November 2, 2016, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment

Eligibility Verification (Form I-9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I-9 instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I-9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is November 2, 2016, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I-9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I-9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I-9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

*Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my South Sudanese citizenship or proof that I have re-registered for TPS?*

No. When completing Employment Eligibility Verification (Form I-9), including re verifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I-9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of South Sudanese citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I-9) for new hires or re verifying the employment authorization of current employees. Refer to the "Note to Employees" section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

*What happens after November 2, 2016, for purposes of employment authorization?*

After November 2, 2016, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will work to issue new EADs to eligible TPS re-registrants who request them. These new EADs should have an expiration date of November 2, 2017, and can be presented to your employer for completion of Employment Eligibility Verification (Form I-9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I-9).

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I-9) for a new job before November 2, 2016, you and your employer should do the following:

1. For Section 1, you should:
  - a. Check "An alien authorized to work;"
  - b. Write the automatically extended EAD expiration date (November 2, 2016) in the first space; and
  - c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).
2. For Section 2, employers should record the:
  - a. Document title;
  - b. Issuing authority;
  - c. Document number; and
  - d. Automatically extended EAD expiration date (November 2, 2016).

By November 2, 2016, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I-9).

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your

employer should correct your previously completed Employment Eligibility Verification (Form I-9) as follows:

1. For Section 1, you should:
  - a. Draw a line through the expiration date in the first space;
  - b. Write "November 2, 2016" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 1; and
  - d. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:
  - a. Draw a line through the expiration date written in Section 2;
  - b. Write "November 2, 2016" above the previous date;
  - c. Write "EAD Ext." in the margin of Section 2; and
  - d. Initial and date the correction in the margin of Section 2.

By November 2, 2016, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?*

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I-9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I-9). By November 2, 2016, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

#### Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment

eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or at *I-9Central@dhs.gov*. Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800-255-8155 (TTY 800-237-2515), which offers language interpretation in numerous languages, or email OSC at *oscrcrt@usdoj.gov*.

#### Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888-897-7781 (TTY 877-875-6028) or email at *I-9Central@dhs.gov*. Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I-9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I-9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I-9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because your case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify

your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I-9) and E-Verify procedures is available on the OSC Web site at <http://www.justice.gov/crt/about/osc/> and the USCIS Web site at <http://www.dhs.gov/E-verify>.

#### Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS.

Examples are:

- (1) Your unexpired EAD;
- (2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;
- (3) A copy of your Application for Temporary Protected Status Notice of Action (Form I-797) for this re-registration;
- (4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I-797), if you received one from USCIS; and/or
- (5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application

based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "How to Correct Your Records" from the menu on the right.

[FR Doc. 2016-01388 Filed 1-22-16; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5922-N-01]

### Alternative Requirements for the Family Unification Program (FUP)

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The Consolidated and Further Continuing Appropriations Act of 2015, authorizes the Secretary to carry out a demonstration testing the effectiveness of combining vouchers for homeless youth under Family Unification Program authorized under section 8(x) of the United States Housing Act of 1937 ("the Act") with assistance under the Family Self-Sufficiency (FSS) program authorized under section 23 of the Act. The Secretary was authorized to establish alternative requirements to those contained in section 8(x) of the Act to facilitate the demonstration. This notice provides an alternative requirement to facilitate the operation of this demonstration. Specifically, this notice extends the 18-month time limit to match the length of the FSS contract, typically five years. Implementation of this demonstration will be through a notice issued by the Office of Public and Indian Housing.

**DATES:** *Effective date:* January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ryan Jones, Office of Public Housing and Voucher Programs, Office of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-402-2677 (this is not a toll-free number). Hearing and speech-impaired persons may

access these numbers through TTY by call the Federal Relay Service as 800-877-8339 (this is a toll-free number).

### SUPPLEMENTARY INFORMATION:

The comprehensive document titled "Opening Doors: Federal Strategic Plan to Prevent and End Homelessness" sets the goal of ending homelessness for youth (along with families and children) by the year 2020. FUP is a vital tool in achieving this goal.

In a HUD study of the FUP program, a major barrier to greater youth participation was the time limit on the rental subsidy.<sup>1</sup> PHAs and public child welfare agencies (PCWAs) suggested the 18-month time limit is too short, noting that landlords generally prefer annual leases with full 12-month renewals. The limited time causes high turnover rates demanding greater staff resources and creating greater administrative costs. The 18-month restriction does not align with a standard academic term for youth enrolled in an education program. Finally, youth simply need more time to become self-sufficient and transition to independent living.

Implementation of this demonstration requires will be through a notice issued by the Office of Public and Indian Housing. Participation in the demonstration requires adherence to the requirements outlined in a Public and Indian Housing notice issued in supplement to this **Federal Register** notice and available at <http://portal.hud.gov/hudportal/documents/huddoc?id=16-01pihn.pdf>.

### Applicable Alternative Requirements

To facilitate the operation of a FUP demonstration, the Consolidated and Further Continuing Appropriations Act of 2015, authorizes the Secretary by **Federal Register** notice to establish alternative requirements to those contained in Section 8(x) of the 1937 Act. Under this authority, the Secretary hereby authorizes the following alternative requirement, which has the effect of modifying the FUP statute.

Waiver allowing the extension of the 18-month time limit for FUP assistance to match the length of the FSS contract for youth participating in the demonstration.

Participation in the demonstration requires adherence to the requirements outlined in a Public and Indian Housing notice issued in supplement to this **Federal Register** notice.

<sup>1</sup> The Family Unification Program: A Housing Resources for Youth Aging Out of Foster Care, published May 2014. This study is available at [http://www.huduser.gov/portal/youth\\_foster\\_care.html](http://www.huduser.gov/portal/youth_foster_care.html).

Dated: January 15, 2016.

**Lourdes Castro Ramírez,**

*Principal Deputy Assistant Secretary, Office of Public and Indian Housing.*

[FR Doc. 2016-01374 Filed 1-22-16; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5913-N-01]

### 60-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage Client Session Evaluation

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

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* March 25, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Brian Siebentist, Office of Policy and Grant Management, Office of Housing Counseling, at Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the



information collection described in section A.

### A. Overview of Information Collection

*Title of Information Collection:* Home Equity Conversion Mortgage Counseling Client Session Evaluation.

*OMB Approval Number:* 2505–0585.

*Type of Request:* Extension.

*Form Number:* HUD 92911.

*Description of the need for the information and proposed use:* Tool to determine quality of client counseling sessions as part of periodic agency performance reviews.

*Respondents:* Individuals or Household.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses:* 250.

*Frequency of Response:* 1.

*Average Hours per Response:* .06.

*Total Estimated Burdens:* 50.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: January 15, 2016.

**Janet M. Golrick,**

*Associate General Deputy Assistant Secretary for Housing Associate Deputy Federal Housing Commissioner.*

[FR Doc. 2016–01376 Filed 1–22–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R4–R–2015–N236];  
[FXRS12610400000S3–167–FF04R02000]

#### Theodore Roosevelt and Holt Collier National Wildlife Refuges, Mississippi Final Comprehensive Conservation Plan and Finding of No Significant Impact for the Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of the final Comprehensive Conservation plan (CCP) and finding of no significant impact for the environmental assessment for Theodore Roosevelt and Holt Collier National Wildlife Refuges (NWRs), Washington and Sharkey Counties, Mississippi. In the final CCP, we describe how we will manage the two refuges for the next 15 years.

**ADDRESSES:** You may obtain a copy of the CCP by downloading the document from our Internet Site at <http://southeast.fws.gov/planning> under “Final Documents.”

**FOR FURTHER INFORMATION CONTACT:** Mike Rich, Project Leader, at (662) 836–3004 (phone) or [mike\\_rich@fws.gov](mailto:mike_rich@fws.gov) (email).

#### SUPPLEMENTARY INFORMATION:

##### Introduction

With this notice, we complete the CCP process for Theodore Roosevelt and Holt Collier NWRs. We started the process through a notice in the **Federal Register** (78 FR 45953) on July 30, 2013. For more about the process, see that notice.

The Theodore Roosevelt NWR Complex (Complex) is comprised of seven refuges: Hillside (est. 1975), Holt Collier (est. 2004), Mathews Brake (est. 1980), Morgan Brake (est. 1977), Panther Swamp (est. 1978), Theodore Roosevelt (est. 2004), and Yazoo National Wildlife Refuge (est. 1936).

The Complex was originally known as the Yazoo National Wildlife Refuge Complex and then briefly named the Central Mississippi National Wildlife Refuge Complex. On January 23, 2004, section 145 of Public Law 108–199, the Consolidated Appropriations Act of 2004, was signed into law by then President George W. Bush. The Act renamed the Complex as the Theodore Roosevelt National Wildlife Refuge Complex. It designated the

geographically separate Bogue Phalia Unit of Yazoo NWR as Holt Collier NWR. The refuge consists of 2,233 acres with an approved acquisition boundary of 18,000 acres. The Service lists its purpose as being designated under the Fish and Wildlife Coordination Act (16 U.S.C. 664): It “shall be administered . . . for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon.”

The Act also directed the Secretary of the Interior to establish the 6,600-acre Theodore Roosevelt NWR. No additional land was purchased for the two new refuges, but rather they were assembled from disjunct Farm Service Agency (FSA, formerly known as Farmers Home Administration) lands already in Service possession. To date 1,674 acres have been acquired in the Theodore Roosevelt NWR. The Service lists both new refuges as being established “for conservation purposes.”

The habitat consists mainly of converted agricultural lands now reforested to trees more indicative of the native bottomland hardwood forest. Farmlands and open water also occur. The refuge is not open to the public. There are no public facilities located on either refuge.

#### Background

##### The CCP Process

The National Wildlife Refuge (NWR) System Improvement Act of 1997 (Improvement Act) requires us to develop a CCP for each national wildlife refuge. CCPs are developed to provide refuge managers with a 15-year plan for achieving refuges' purposes and contributing toward the mission of the NWR System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. CCPs describe a broad management direction for conserving wildlife and their habitats. They propose wildlife-dependent recreational opportunities to be made available to the public. These include opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review the CCP annually and revise it as needed in accordance with the Improvement Act.

#### Comments

We made the Draft CCP and Environmental Assessment available online for a 30-day public review and comment period via a **Federal Register** notice (80 FR 13420) on March 13, 2015. A total of seven comments were



received by mail, email or verbally at the April 2, 2015, public meeting in Rolling Fork, Mississippi. Comments supporting the plan and preferred alternative were received from the Mississippi Department of Wildlife, Fisheries and Parks, Safari Club International, and Mississippi Wildlife.

### CCP Alternatives, Including Our Preferred Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative B, Minimally Developed Refuges, selected for implementation. As these are newer refuges authorized by Congress in 2004, the focus of this plan is to develop them. Therefore, our efforts over the next 15 years will be focused on land acquisition to build-out the refuges to their approved acquisition boundaries. Passive habitat protection and the addition of new resource lands beneficial to wildlife will help preserve habitat in perpetuity and to lessen fragmentation. This plan has the objective of providing sanctuary to migratory species as a group, not just priority waterfowl species. White-tailed deer management would continue through the Holt Collier NWR hunt program and eventually at Theodore Roosevelt NWR. Integrated damage control of invasive and nuisance species would lessen the negative effects on the refuges' habitats.

Another primary focus of the plan is to create a visitor services program to enhance environmental education and outreach efforts substantially and to reach larger numbers of residents, students, educators, and visitors. It places priority on wildlife-dependent uses, such as hunting, fishing and wildlife observation. Priority public uses, such as hunting, are allowed at Holt Collier NWR. At a time when sufficient land is amassed and resources are available to allow for ample public use opportunities, Theodore Roosevelt NWR would be opened to hunting. Public use would be phased into both refuges. Compatibility determinations are updated for the priority public uses and for research and monitoring. For both refuges, some commercial uses would be allowed under a Commercial Special Use Permit, including commercial photography, firewood gathering, timber harvest for forest management, and trapping.

The Consolidated Appropriations Act of 2004 authorized construction of a Visitor Center to provide visitor services and to promote the Delta area's natural resources and cultural heritage. Funding was appropriated in 2009, in the amount of \$2.6 million for the building

of the Theodore Roosevelt NWR Visitor Center. On February 11, 2015, a total of 6.58 acres (originally proposed as approximately 5 acres) located off of Highway 61 in Sharkey County, Mississippi) was donated to the Service to construct a Visitor Center. A major focus of this plan and Service efforts will be to build and staff the Visitor Center. Since the location is secured for the Visitor Center, regular Service procedures will be followed for building design and construction. Staffing is proposed to run the Visitor Center, to provide environmental and interpretive programs, and to coordinate volunteers. Positions include a Park Ranger, Wildlife Refuge Manager and a Maintenance Worker.

This CCP assumes a modest growth of refuge resources over its 15-year implementation period, with three new positions as new funding is available. Current partnerships would be maintained and new ones would be sought. Daily operation of the refuges will be guided by this CCP and through the implementation of nine projects and six step-down management plans as detailed in the CCP.

### Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: November 10, 2015.

### Brett E. Hunter,

*Deputy Chief, National Wildlife Refuge System, Southeast Region.*

[FR Doc. 2016-01414 Filed 1-22-16; 8:45 am]

BILLING CODE 4333-15-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R4-R-2015-N235];  
[FXRS1265040000S3-123-FF04R02000]

### Cat Island National Wildlife Refuge, LA; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and finding of no significant impact for the environmental assessment for Cat Island National Wildlife Refuge (NWR) in West Feliciana Parish, Louisiana. In the final

CCP, we describe how we will manage this refuge for the next 15 years.

**ADDRESSES:** You may obtain a copy of the CCP by writing to: Lower Mississippi River NWR Complex, P.O. Box 217, Sibley, MS 39165. Alternatively, you may download the document from our Internet Site at <http://southeast.fws.gov/planning> under "Final Documents."

**FOR FURTHER INFORMATION CONTACT:** Jimmy Laurent, Project Leader, Lower Mississippi River NWR Complex, by telephone at (601) 442-6696 or by email at [jimmy\\_laurent@fws.gov](mailto:jimmy_laurent@fws.gov).

### SUPPLEMENTARY INFORMATION:

#### Introduction

With this notice, we finalize the CCP process for Cat Island NWR. We started the process through a notice in the **Federal Register** on November 25, 2013 (78 FR 70318). For more about the process, see that notice.

Cat Island NWR was established in October 2000, as the 526th refuge in the National Wildlife Refuge System. It is located in West Feliciana Parish, Louisiana, near the town of St. Francisville, 25 miles north of Baton Rouge. Acquisition has occurred in stages, beginning in 2000 when The Nature Conservancy (TNC) of Louisiana made the first purchase of about 9,500 acres of forested wetlands. That and subsequent acquisitions by TNC were purchased by the Service using both the Land and Water Conservation Fund and Migratory Bird Conservation Fund. Today, the refuge encompasses 10,473 acres. The congressionally approved acquisition boundary encloses 36,500 acres.

Cat Island NWR was created by Congress through Public Law 106-369, which states: "The purposes for which the Refuge is established and shall be managed are: (1) To conserve, restore, and manage habitats as necessary to contribute to the migratory bird population goals and habitat objective [sic] as established through the Lower Mississippi Valley Joint Venture; (2) to conserve, restore, and manage the significant aquatic resource values associated with the area's forested wetlands and to achieve the habitat objectives of the *Mississippi River Aquatic Resources Management Plan*; (3) to conserve, enhance, and restore the historic native bottomland community characteristics of the lower Mississippi alluvial valley and its associated fish, wildlife, and plant species; (4) to conserve, enhance, and restore habitat to maintain and assist in the recovery of endangered and threatened plants and animals; and (5) to encourage the use of

volunteers and facilitate partnerships among the United States Fish and Wildlife Service, local communities, conservation organizations, and other non-Federal entities to promote public awareness of the resources of the Refuge and the National Wildlife Refuge System and public participation in the conservation of those resources" (Cat Island NWR Establishment Act, 114 Stat. 1418, October 27, 2000).

## Background

### *The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

## Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 1, 2015 (80 FR 24958). Copies of the Draft CCP/EA were posted at refuge headquarters and also were available for download at <http://www.fws.gov/southeast/planning/CCP/cat-island.html>. Over 100 letters with links to the draft comprehensive conservation plan and environmental assessment were distributed to local landowners, the public, and local, State, and Federal agencies. Three respondents, consisting of the Humane Society of the United States, the Jena Band of Choctaw Indians, and local citizens, submitted comments on the Draft CCP/EA by mail or email.

## CCP Alternatives, Including Our Preferred Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative B selected for

implementation. This alternative will focus on managing the refuge's natural resources to enhance habitats for priority species including waterfowl and other migratory birds, threatened and endangered species, species of concern, and resident fish and wildlife. Additionally, wildlife surveys would be conducted using established protocols to establish baseline habitat conditions, estimate wildlife population indices, determine responses to management actions, and contribute to larger scale biological assessments. Invasive exotic and nuisance species would be actively managed to minimize their impacts on refuge resources. Refuge forests would be actively managed to enhance wildlife habitat. Aquatic habitats on the refuge would be inventoried and assessed, and where feasible, access to them would be improved for recreational anglers.

Refuge cultural resources would continue to be protected as they have been in the past. In addition, the refuge would seek funding to survey and catalog cultural resources on the refuge. Protection of cultural resources would be integrated into refuge planning at all levels, and management actions would be reviewed in order to avoid or mitigate impacts to cultural resources.

Under the preferred alternative, public use would be more actively managed by refuge staff. Hunting and fishing would continue to be managed and made available with the active partnership of Louisiana Department of Wildlife and Fisheries. More law enforcement personnel hours would be allocated by the Service for Cat Island NWR. New partnerships with organizations interested in promoting nonconsumptive refuge use would be sought, and existing ones strengthened. In particular, environmental education opportunities would be enhanced by active participation of Service personnel with local schools and nonprofit organizations.

Refuge infrastructure would be maintained as in the past. The refuge would seek to improve access via the main refuge road and various trails. Efforts would be made to provide access to the northeast section of the refuge, and access via Cat Island Road would be pursued. The refuge would hire or assign staff to the refuge. Staff may include one or more of the following: Refuge manager, volunteer coordinator, equipment operator, law enforcement officer, forester, and biologist. Any or all of these may be shared positions among refuges in the Lower Mississippi River Refuge Complex. Full staffing under this alternative is anticipated to be 1.5 to 2 full-time employees.

## Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: November 10, 2015.

**Brett E. Hunter,**

*Deputy Chief, National Wildlife Refuge System Southeast Region.*

[FR Doc. 2016-01417 Filed 1-22-16; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX16EE000101000]

### Agency Information Collection

### Activities: Request for Comment on Proposed Revisions to the United States Thoroughfare, Landmark and Postal Address Data Standard

**AGENCY:** U.S. Geological Survey (USGS), Department of the Interior.

**ACTION:** Notice; request for comments

**SUMMARY:** The Federal Geographic Data Committee (FGDC) is conducting a public review of proposed revisions to the United States Thoroughfare, Landmark and Postal Address Data Standard (Address Data Standard).

The primary purposes of the Address Data Standard are to develop content specifications for address information, provide classifications for different types of addresses, establish appropriate standards and measures for evaluation of address data quality, and support exchange of address data. The FGDC endorsed the Address Data Standard in 2011, and numerous federal, state and local government agencies have since used it to manage their address data. Over the last five years, users and the authors identified a number of desirable minor corrections to the Address Data Standard. Additionally, the U.S. Census Bureau, as the maintenance authority for the Standard, has proposed adding a new Map Position element.

Reviewers are requested to review and comment on the proposed revisions and/or submit additional comments on the Address Data Standard.

The draft revision of the standard may be downloaded from: <https://www.fgdc.gov/standards/projects/FGDC-standards-projects/street-address/AddressDataStandardRevised>.

The change log lists proposed changes identified since publication of the Address Data Standard in 2011. These changes are reflected in the version of the standard posted for the 2015 maintenance review and are subject to

the official public review and adjudication process. The change log may be downloaded from <https://www.fgdc.gov/standards/projects/FGDC-standards-projects/street-address/ChangeLog2011-2015>.

The proposal for the Map Position element may be downloaded from <https://www.fgdc.gov/standards/projects/FGDC-standards-projects/street-address/MapPositionProposal>.

**DATES:** Reviewers shall submit comments on the proposed revision of the United States Thoroughfare, Landmark and Postal Address Data Standard to [standards@fgdc.gov](mailto:standards@fgdc.gov) (subject line: Address Data Standard Revision) by April 25, 2016.

**ADDRESSES:** Reviewers shall submit comments on the United States Thoroughfare, Landmark and Postal Data Standard using the content template format at <http://www.fgdc.gov/standards/process/standards-directives/template.doc>. Instructions for completing the comment template are found in FGDC Standards Directive #2d, Standards Working Group Review Guidelines: Review Comment Template, <http://www.fgdc.gov/standards/process/standards-directives/directive-2d-standards-working-group-review-guidelines-review-comment-template>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Binder Maitra, FGDC Standards Coordinator, U.S. Geological Survey, Federal Geographic Data Committee, [jmaitra@fgdc.gov](mailto:jmaitra@fgdc.gov), 703-648-4627.

**SUPPLEMENTARY INFORMATION:** Proposed revisions to the FGDC-endorsed United States Thoroughfare, Landmark and Postal Data Standard may be categorized as follows:

1. Corrections to typographic and minor grammatical errors, which include misspellings, missing words, etc., in all sections and minor corrections to the .XSD definitional document (for XML data exchange) and SQL code examples found in Part 4: Address Data Quality, Part 5: Data Exchange, and the appendices.

2. Updating of all links and references (URLs, etc.) throughout the Standard to reflect newer versions of other standards, reference documents, etc.

3. A proposal from the U.S. Census Bureau to add a MapPosition element to Part 2: Data Content, to describe the position of an address point. MapPosition allows multiple coordinate positions to be associated with an address. It is a repeatable element consisting of the coordinates of the map representation of an address with a description of the position. Such descriptions could be "Front Door", "Parcel Centroid", "Building Centroid",

and "Driveway," amongst others. The MapPosition proposal may be downloaded from <https://www.fgdc.gov/standards/projects/FGDC-standards-projects/street-address/MapPositionProposal>.

Comments that concern specific issues/changes/additions may result in changes to the Address Data Standard. After FGDC endorsement of the revisions to the Address Data Standard, the updated Address Data Standard and a change log will be made available to the public on the FGDC Web site, [www.fgdc.gov](http://www.fgdc.gov). This log identifies the location of the change, the existing language, the change that is made, and an explanation of the change itself. Reviewers may obtain information about how comments were addressed upon request.

The FGDC coordinates the Federal government's development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. The authority for the FGDC is OMB Circular No. A-16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at <http://www.fgdc.gov>.

**Kenneth M. Shaffer,**

*Deputy Executive Director, Federal Geographic Data Committee, Core Science Systems, U.S. Geological Survey.*

[FR Doc. 2016-01337 Filed 1-22-16; 8:45 am]

**BILLING CODE 4338-11-P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[16XD4523WSIDS10100000\DWSN00000.00000\DP10020]

### Statement of Findings: Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act

**AGENCY:** Office of the Secretary, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior is publishing this notice in accordance with section 10808(d) of the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2009 (Pub. L. 111-11) (Settlement Act). Congress enacted the Settlement

Act as Title X, Subtitle C of the Omnibus Public Land Management Act of 2009. The publication of this notice causes the waivers and release of certain claims to become effective as required by the Settlement Act.

**DATES:** This notice is effective January 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Address all comments and requests for additional information to Catherine Wilson, Chair, Duck Valley Water Rights Settlement Implementation Team, Department of the Interior, Bureau of Indian Affairs, Western Region, 2600 N. Central Avenue, 4th Floor, Phoenix, AZ 85004. (602) 379-6789.

**SUPPLEMENTARY INFORMATION:** The Settlement Act was enacted to resolve the water right claims of the Shoshone-Paiute Tribes (Tribes) of the Duck Valley Reservation relative to the upstream water users in the East Fork of the Owyhee River in the State of Nevada (State). The non-federal settling parties submitted a signed Settlement Agreement (Agreement) to Congress prior to enactment of the Settlement Act. As described in section 10802, the purposes of the Settlement Act are:

(1) To resolve outstanding issues with respect to the East Fork of the Owyhee River in the State in such a manner as to provide important benefits to—(A) The United States; (B) the State; (C) the Tribes; and (D) the upstream water users;

(2) to achieve a fair, equitable, and final settlement of all claims of the Tribes, members of the Tribes, and the United States on behalf of the Tribes and members of Tribes to the waters of the East Fork of the Owyhee River in the State;

(3) to ratify and provide for the enforcement of the Agreement among the parties to the litigation;

(4) to resolve the Tribes' water-related claims for damages against the United States;

(5) to require the Secretary to perform all obligations of the Secretary under the Agreement and the Settlement Act; and

(6) to authorize the actions and appropriations necessary to meet the obligations of the United States under the Agreement and the Settlement Act.

### Statement of Findings

In accordance with section 10808(d) of the Settlement Act, I find as follows:

(1) The Agreement and the waivers and releases authorized and set forth in sections 10808(a) and (b) of the Settlement Act have been executed by the parties and the Secretary;

(2) the Fourth Judicial District Court, Elko County, Nevada, has issued a

judgment and decree consistent with the Agreement from which no further appeal can be taken; and

(3) the amounts authorized under sections 10807(b)(3) and (c)(3) of the Settlement Act have been appropriated.

Dated: January 19, 2016.

**Sally Jewell,**

*Secretary of the Interior.*

[FR Doc. 2016-01401 Filed 1-22-16; 8:45 am]

**BILLING CODE 4334-63-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[16X.LLAK941000.L1440000.ET0000;  
F-92350]

#### Notice of Application for Extension of Public Land Order No. 5645, and Opportunity for Public Meeting; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The General Services Administration (GSA) has filed an application with the Bureau of Land Management (BLM) requesting that the Assistant Secretary of the Interior for Land and Minerals Management extend the duration of the withdrawal created by Public Land Order (PLO) No. 5645 for an additional 20-year term. PLO No. 7336 extended PLO No. 5645, which withdrew approximately 10 acres of public land from surface entry and mining for the protection of the Poker Creek Border Station for an additional 20-year term. PLO No. 7336 also transferred administrative jurisdiction from the U.S. Customs Service to the GSA. The withdrawal extended by PLO No. 7336 will expire on July 18, 2018, unless further extended. This notice provides an opportunity for the public to comment on the withdrawal extension application and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by April 25, 2016.

**ADDRESSES:** Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West Seventh Avenue, No. 13, Anchorage, Alaska 99513-7504.

**FOR FURTHER INFORMATION CONTACT:** Renee Fencl, BLM Alaska State Office, 907-271-5067, email [rfencl@blm.gov](mailto:rfencl@blm.gov).

Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days

a week. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The GSA has filed an application requesting that the Assistant Secretary of the Interior for Land and Minerals Management extend the withdrawal created by PLO No. 5645 (43 FR 31006 (1978)), for an additional 20-year term. PLO No. 7336 (63 FR 30511, (1998)), extended PLO No. 5645, which withdrew public lands for the protection of the Poker Creek Border Station, from settlement, sale, location, or entry, under all of the general land laws, including the mining laws for a 20-year term.

PLO No. 5645 is incorporated herein by reference. A complete description, along with all other records pertaining to the extension, can be examined in the BLM Alaska State Office at the address shown above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the withdrawal extension application. All interested parties who desire a public meeting for the purpose of being heard on the withdrawal extension application must submit a written request to the BLM Alaska State Director. Upon determination by the authorized officer that a public meeting will be held, the BLM will publish a notice of the time and place in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, (16 U.S.C. 3120).

For a period until April 25, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address indicated above. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Erika Reed,**

*Acting Deputy State Director, Division of Lands and Cadastral Survey.*

[FR Doc. 2016-01390 Filed 1-22-16; 8:45 am]

**BILLING CODE 1410-JA-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-AKRO-ANIA-CAKR-DENA-GAAR-KOVA-LACL-WRST-20043: PPAKAKROR4]  
[PPMPRL1Y.LS0000]

#### Notice of Open Public Meetings and Teleconferences for the National Park Service Alaska Region Subsistence Resource Commission Program

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notices.

**SUMMARY:** As required by the Federal Advisory Committee Act (16 U.S.C. Appendix 1-16), the National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), the Cape Krusenstern National Monument SRC, the Denali National Park SRC, the Gates of the Arctic National Park SRC, the Kobuk Valley National Park SRC, the Lake Clark National Park SRC, and the Wrangell-St. Elias National Park SRC will hold public meetings to develop and continue work on NPS subsistence program recommendations, and other related regulatory proposals and resource management issues. The NPS SRC program is authorized under section 808 of the Alaska National Interest Lands Conservation Act, (16 U.S.C. 3118), title VIII.

*Aniakchak National Monument SRC Meeting/Teleconference Date and Location:* The Aniakchak National Monument SRC will meet from 2:00 p.m. to 7:30 p.m. or until business is completed on Wednesday, February 10, 2016, at Ray's Place in Port Heiden, AK. Should this meeting be postponed due to inclement weather, or lack of a quorum, the alternate meeting date is Thursday, February 11, 2016, from 2:00 p.m. to 7:30 p.m. or until business is completed. Teleconference participants must call the National Park Service office in King Salmon, AK at (907) 246-2154 or (907) 246-3305, by Thursday, February 4, 2016, prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact, Designated Federal Official Diane Chung, Superintendent, at (907) 442-2120 or via email at [diane\\_chung@nps.gov](mailto:diane_chung@nps.gov), or Linda Chisholm, Subsistence Coordinator, at (907) 246-2154 or via email at [linda\\_chisholm@nps.gov](mailto:linda_chisholm@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Cape Krusenstern National Monument SRC Meeting/*

*Teleconference Dates and Locations:* The Cape Krusenstern National Monument SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Tuesday, February 9, 2016, and from 9:00 a.m. to 12:00 p.m. or until business is completed on Wednesday, February 10, 2016, at the Northwest Arctic Heritage Center in Kotzebue, AK. Teleconference participants must contact Hannah Atkinson, Cultural Resource Specialist at the Cape Krusenstern National Monument office at (907) 442-4342 or via email at [hannah\\_atkinson@nps.gov](mailto:hannah_atkinson@nps.gov) by Monday, February 8, 2016, prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact Ken Adkisson, Subsistence Manager, at (907) 443-6104 or via email at [ken\\_adkisson@nps.gov](mailto:ken_adkisson@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Wrangell-St. Elias National Park SRC Meeting/Teleconference Dates and Locations:* The Wrangell-St. Elias National Park SRC will meet from 10:00 a.m. to 12:00 p.m. on Wednesday, February 10, 2016, by teleconference and in person at the Wrangell-St. Elias National Park and Preserve headquarters building in Copper Center Visitor Center (Mile 106.8 Richardson Highway). For teleconference information and/or to provide written comments, contact Barbara Cellarius, Subsistence Coordinator, at (907) 822-7236 or via email at [barbara\\_cellarius@nps.gov](mailto:barbara_cellarius@nps.gov) by 4:00 p.m. on Friday, February 5, 2016.

The Wrangell-St. Elias National Park SRC will meet on Wednesday, February 24, 2016, and Thursday, February 25, 2016, from 9:00 a.m. to 5:00 p.m. or until business is completed at the Gulkana Village Hall in Gulkana Community Hall in Gulkana, AK. For teleconference information and/or to provide written comments, contact Barbara Cellarius, Subsistence Coordinator, at (907) 822-7236 or via email at [barbara\\_cellarius@nps.gov](mailto:barbara_cellarius@nps.gov) by 4:00 p.m. on Friday, February 5, 2016.

For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Official Eric Veach, Acting Superintendent, at (907) 822-5234 or via email at [eric\\_veach@nps.gov](mailto:eric_veach@nps.gov), or Barbara Cellarius, Subsistence Coordinator, at (907) 822-7236 or via email at [barbara\\_cellarius@nps.gov](mailto:barbara_cellarius@nps.gov) or Clarence Summers, Subsistence

Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Lake Clark National Park SRC Meeting/Teleconference Date and Location:* The Lake Clark National Park SRC will meet from 11:00 a.m. to 2:30 p.m. or until business is completed on Wednesday, February 10, 2016, at the Community Hall in Iliamna, AK. Teleconference participants must call the National Park Service office at (907) 644-3648, by Monday, February 8, 2016, prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting, or if you are interested in applying for SRC membership, contact Designated Federal Official Margaret L. Goodro, Superintendent, at (907) 644-3627 or via email at [margaret\\_goodro@nps.gov](mailto:margaret_goodro@nps.gov), or Liza Rupp, Subsistence Manager, at (907) 644-3648 or via email at [liza\\_rupp@nps.gov](mailto:liza_rupp@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Kobuk Valley National Park SRC Meeting/Teleconference Dates and Location:* The Kobuk Valley National Park SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Thursday, February 11, 2016, and from 9:00 a.m. to 12:00 p.m. or until business is completed on Friday, February 12, 2016, at the Northwest Arctic Heritage Center in Kotzebue, AK. Teleconference participants must contact Hannah Atkinson, Cultural Resource Specialist at the National Park Service office at (907) 442-4342 or via email at [hannah\\_atkinson@nps.gov](mailto:hannah_atkinson@nps.gov) by Monday, February 8, 2016, prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact Ken Adkisson, Subsistence Manager, at (907) 443-6104 or via email at [ken\\_adkisson@nps.gov](mailto:ken_adkisson@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Gates of the Arctic National Park SRC Meeting/Teleconference Dates and Locations:* The Gates of the Arctic National Park SRC will meet from 1:30 p.m. to 2:30 p.m. on Wednesday, February 17, 2016, by teleconference. Teleconference participants must contact Marcy Okada, Subsistence Coordinator, at (907) 455-0639 or via email at [marcy\\_okada@nps.gov](mailto:marcy_okada@nps.gov) by Monday, February 8, 2016, prior to the meeting to receive teleconference passcode information.

The Gates of the Arctic National Park SRC will meet from 9:00 a.m. to 5:00 p.m. or until business is completed on Tuesday, April 26, 2016, and

Wednesday, April 27, 2016, at the Anaktuvuk Pass Community Center in Anaktuvuk Pass, AK. For more detailed information regarding the Gates of the Arctic National Park SRC meetings, or if you are interested in applying for SRC membership, contact Designated Federal Official Greg Dudgeon, Superintendent, at (907) 457-5752 or via email at [greg\\_dudgeon@nps.gov](mailto:greg_dudgeon@nps.gov), or Marcy Okada, Subsistence Coordinator, at (907) 455-0639 or via email at [marcy\\_okada@nps.gov](mailto:marcy_okada@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603, or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Denali National Park SRC Meeting Date and Location:* The Denali National Park SRC will meet from 10:00 a.m. to 5:00 p.m. or until business is completed on Tuesday, February 23, 2016, at the Murie Science and Learning Center, Denali National Park, AK. For more detailed information regarding this meeting, or if you are interested in applying for SRC membership, contact Amy Craver, Subsistence Manager, at (907) 683-9544 or via email at [amy\\_craver@nps.gov](mailto:amy_craver@nps.gov) or Clarence Summers, Subsistence Manager, at (907) 644-3603 or via email at [clarence\\_summers@nps.gov](mailto:clarence_summers@nps.gov).

*Proposed Meeting Agenda:* The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Reports
  - a. Ranger Update
  - b. Resource Manager's Report
  - c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

**SUPPLEMENTARY INFORMATION:** SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 19, 2016.

**Alma Ripps**

*Chief, Office of Policy.*

[FR Doc. 2016–01386 Filed 1–22–16; 8:45 am]

**BILLING CODE 4310–EE–P**

**LIBRARY OF CONGRESS**

**U.S. Copyright Office**

[Docket No. 2016–1]

**Notice of Intent To Audit**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Public Notice.

**SUMMARY:** The U.S. Copyright Office is announcing receipt of twelve notices of intent to audit certain 2012 and 2013 statements of account filed by cable operators and satellite carriers pursuant to the section 111 and 119 statutory licenses.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, Associate General Counsel, by email at [resm@loc.gov](mailto:resm@loc.gov) or by telephone at 202–707–8350; or Jason E. Sloan, Attorney-Advisor, by email at [jslo@loc.gov](mailto:jslo@loc.gov) or by telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 111 and 119 of the Copyright Act (“Act”), Title 17 of the United States Code, establish compulsory licenses under which cable operators and satellite carriers may, by complying with the license terms, retransmit copyrighted over-the-air broadcast programming. Among other requirements, cable and satellite licensees must file statements of account and deposit royalty fees with

the U.S. Copyright Office (“Office”) on a semi-annual basis.

The Satellite Television Extension and Localism Act of 2010, Pub. L. 111–175 (2010), amended the Act by directing the Register of Copyrights (“Register”) to issue regulations to allow copyright owners to audit the statements of account and royalty fees that cable operators and satellite carriers file with the Office. *See* 17 U.S.C. 119(b)(2) (directing the Register to “issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection”); 17 U.S.C. 111(d)(6) (directing the Register to “issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to [section 111] of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph [111(d)(6)(A)] is able to confirm the correctness of the calculations and royalty payments reported therein”). Following a lengthy rulemaking proceeding, the Office issued such regulations, adopting the audit process now set forth in 37 CFR 201.16. *See* 79 FR 68623 (Nov. 18, 2014). Section 201.16(c)(1) requires any copyright owner who intends to audit a statement of account to provide written notice to the Register no later than three years after the last day of the year in which the statement of account was filed with the Office. 37 CFR 201.16(c)(1). Such notice may be submitted by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners. *Id.* The notice must be received in the Office on or after December 1st and no later than December 31st. *Id.* The Office is required to publish a notice in the **Federal Register** announcing the receipt of the notice of intent to audit between January 1st and January 31st of the next calendar year. *Id.*

**II. Notices**

On December 31, 2015, the Office received the below notices of intent to audit statements of account. The notices were submitted jointly by the Office of the Commissioner of Baseball, National Football League, National Basketball Association, Women’s National Basketball Association, National Hockey League, and National Collegiate Athletics Association pursuant to 37 CFR 201.16(c):

1. Notice of intent to audit the statement of account filed by Verizon New York Inc. for the cable system serving Bethlehem, New York and the surrounding area (Licensing Division No. 63302) for the accounting period July 1–December 31, 2012.

2. Notice of intent to audit the statement of account filed by Time Warner Cable Northeast, LLC for the cable system serving Dewitt, New York and the surrounding area (Licensing Division No. 7857) for the accounting period July 1–December 31, 2013.

3. Notice of intent to audit the statement of account filed by Cequel Communications LLC d/b/a Suddenlink Communications for the cable system serving St. Joseph, Missouri and the surrounding area (Licensing Division No. 7850) for the accounting period January 1–June 30, 2013.

4. Notice of intent to audit the statement of account filed by MCC Missouri, LLC (Columbia, MO) for the cable system serving Columbia, Missouri and the surrounding area (Licensing Division No. 6388) for the accounting period July 1–December 31, 2012.

5. Notice of intent to audit the statement of account filed by DISH Network, LLC (Licensing Division No. USU600) for the accounting period July 1–December 31, 2012.

6. Notice of intent to audit the statement of account filed by Cox Communications Kansas LLC for the cable system serving Dodge City, Kansas and the surrounding area (Licensing Division No. 6293) for the accounting period January 1–June 30, 2013.

7. Notice of intent to audit the statement of account filed by Comcast of Boston Inc. for the cable system serving Boston, Massachusetts and the surrounding communities (Licensing Division No. 1240) for the accounting period July 1–December 31, 2013.

8. Notice of intent to audit the statement of account filed by CC Michigan LLC for the cable system serving Traverse City, Michigan and the surrounding area (Licensing Division No. 7566) for the accounting period January 1–June 30, 2013.

9. Notice of intent to audit the statement of account filed by Cablevision of Monmouth, LLC for the cable system serving Avon Borough, New Jersey and the surrounding area (Licensing Division No. 7823) for the accounting period July 1–December 31, 2012.

10. Notice of intent to audit the statement of account filed by Bright House Communications LLC for the cable system serving Orlando, Florida and the surrounding area (Licensing

Division No. 10444) for the accounting period January 1–June 30, 2013.

11. Notice of intent to audit the statement of account filed by Pacific Bell Telephone Company dba AT&T for the cable system serving San Francisco and the surrounding communities (Licensing Division No. 62796) for the accounting period July 1–December 31, 2013.

12. Notice of intent to audit the statement of account filed by DirecTV (Licensing Division No. USU500) for the accounting period July 1–December 31, 2013.

The notices of intent to audit and relevant statements of account are available for onsite viewing at the Copyright Office. Those who wish to inspect these documents can make arrangements to do so using the contact information above.

Dated: January 20, 2016.

**Jacqueline C. Charlesworth,**

*General Counsel and Associate Register of Copyrights, U.S. Copyright Office.*

[FR Doc. 2016–01396 Filed 1–22–16; 8:45 am]

**BILLING CODE 1410–30–P**

## MARINE MAMMAL COMMISSION

### Correction Notice: Notice of Public Meetings in Alaska Pursuant to the Government in the Sunshine Act and the Federal Advisory Committee Act

**AGENCY:** Marine Mammal Commission.

**ACTION:** Correction of notice.

**SUMMARY:** On January 15, 2016, the Marine Mammal Commission (Commission) announced in the **Federal Register** (81 FR 2243) plans to hold a series of public meetings in various locations in Alaska in February 2016. This notice corrects the location for the public meeting in Anchorage, AK. The public meeting in Anchorage, AK, will be held February 11, 2016, 8 a.m.–1 p.m. at the William A. Egan Civic and Convention Center, Space 2, Summit

Hall, Lower Level, 555 W. 5th Ave., Anchorage, AK 99501. The Anchorage meeting will also be accessible via webinar.

Information for accessing the webinar, instructions for informing the Commission of your intent to participate in the webinar, and updates to the agenda, will be posted at [www.mmc.gov](http://www.mmc.gov) at least one week before the Anchorage meeting. Because the number of participants to the webinar will be limited, it is important to notify the Commission of your intention to participate so that we can do our best to accommodate all interested members of the public.

Dated: January 20, 2016.

**Rebecca J. Lent,**

*Executive Director.*

[FR Doc. 2016–01397 Filed 1–21–16; 11:15 am]

**BILLING CODE 6820–31–P**

## NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

### Fingerprint Submission Requirements

**AGENCY:** National Crime Prevention and Privacy Compact Council.

**ACTION:** Notice of approval of a U.S. Department of the Interior, Bureau of Indian Affairs proposal requesting access to the Interstate Identification Index with delayed fingerprint submission.

**Authority:** 42 U.S.C. 14616.

**SUMMARY:** The National Crime Prevention and Privacy Compact Council (Compact Council) approves a Bureau of Indian Affairs (BIA) proposal requesting access to the Interstate Identification Index (III) System on a delayed fingerprint submission basis.

**FOR FURTHER INFORMATION CONTACT:** Gary S. Barron, FBI CJIS Division, 1000 Custer Hollow Road, Module D3, Clarksburg, WV 26306; Telephone (304) 625–2803; email [gary.barron@ic.fbi.gov](mailto:gary.barron@ic.fbi.gov); Fax number (304) 625–2868.

**SUPPLEMENTARY INFORMATION:** Title 28, Code of Federal Regulations (CFR), part 901, specifically § 901.3, gives authority to the Compact Council, established by the National Crime Prevention and Privacy Compact Act of 1998 (Compact), to approve proposals for delayed submission of fingerprints supporting requests for III records. The proposals must fully describe the emergency nature of the situation, the risk to the health and safety of those involved, and the reasons why contemporaneous fingerprint submission with the search request is not feasible. The BIA proposal makes such a request when conducting criminal history record checks on behalf of federally-recognized tribes, in connection with the placement of children with temporary custodians on an emergency basis. (See BIA's proposal, attached.) Federally-recognized tribes that receive funds under the Indian Self-Determination and Education Assistance Act (25, United States Code [U.S.C.], 450, et. seq) or the Tribally Controlled Schools Act (25 U.S.C. 2501, et. seq) are authorized access to criminal history record information pursuant to Public Law 101–630 (25 U.S.C. 3205 and 3207).

The BIA's proposal was submitted by letter dated February 11, 2015, and approved by the Compact Council on May 13, 2015, pursuant to 28 CFR 901.2 and 901.3. Access to the III System to conduct name-based criminal history record checks, followed by fingerprint submissions, provides a responsive and timely avenue to determine whether an applicant presents a risk to children during exigent circumstances when time is of the essence. Such name-based checks will be followed by submission of the applicant's fingerprints to the FBI within 15 calendar days.

Dated: December 10, 2015.

**Dawn A. Peck,**

*Compact Council Chairman.*

**BILLING CODE 4410–02–P**





## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

IN REPLY REFER TO:

February 11, 2015

Mrs. Dawn A. Peck  
Compact Council Chairman  
Manager  
Idaho State Police  
Suite 120  
700 South Stratford Drive  
Meridian, ID 83642-6251

Dear Chairman Peck,

The Bureau of Indian Affairs (BIA) on behalf of federally-recognized tribes requests approval under the Fingerprint Submission Requirements Rule (Title 28, Code of Federal Regulations, Sections 901.2 and 901.3), to access the Interstate Identification Index (III) System on a delayed fingerprint submission basis when conducting criminal history record checks of residents with whom children are to be temporarily placed during exigent circumstances. Federally-recognized tribes that receive funds under the Indian Self-Determination and Education Assistance Act (Title 25, United States Code (U.S.C.), § 450, et. seq) or the Tribally Controlled Schools Act (25 U.S.C. § 2501, et. seq) are authorized to access criminal history record information pursuant to Public Law (Pub. L.) 101-630 (25 U.S.C. §§ 3205 and 3207).

In the absence of state laws and procedures governing such background checks, the BIA will facilitate, on behalf of the federally-recognized tribes, access to the III system for the emergency placement of children. To carry out the requirements of the Council's rule, the BIA proposes the following conditions:

- Each resident in a home where the potential emergency placement is to be made must consent to a preliminary III name-based check to be followed with the submission of fingerprints to the FBI within 15 calendar days from the date that the name-base check was conducted.
- Should any resident on whom a name-based check was conducted fail to provide fingerprints when requested, the child will not be placed or will be immediately removed from the placement home. Alternatively, the child may be placed if the resident refusing to provide fingerprints agrees to leave the home during the child's stay.
- If an emergency placement is denied as a result of the name-based check of a resident and the resident contests the denial, the resident may within 15 calendar days of the denial submit fingerprints for a federal background check.

Similar to the Florida proposal, in which states have been approved to utilize Purpose Code X for the exigent placement of children pursuant to an approved Pub. L. 92-544 statute, the BIA



proposes to utilize the above-referenced federal statutory authority to conduct preliminary name-based checks of the III System to determine whether an applicant presents a risk to children during exigent circumstances when time is of the essence.

The BIA will work with the FBI CJIS Division to address system connectivity, audit requirements, and the fingerprint submission process.

Sincerely,



Darren Cruzan  
Director, BIA, Office of Justices Services

1- Mr. Gary S. Barron  
FBI Compact Officer  
FBI CJIS Division  
1000 Custer Hollow Road  
Module D-3  
Clarksburg, WV 26306

**NATIONAL LABOR RELATIONS  
BOARD**

**Restructuring of National Labor  
Relations Board's Headquarters'  
Offices**

**AGENCY:** National Labor Relations  
Board.

**ACTION:** Notice of Reorganization;  
Restructuring of National Labor  
Relations Board's Headquarters' Offices.

**Authority:** Sections 3, 4, 6, and 10 of the  
National Labor Relations Act, 29 U.S.C. Sec.  
3, 4, 6, and 10.

**SUMMARY:** This notice advises the public  
that the National Labor Relations Board  
is restructuring and realigning the

location and lines of authority of certain of its Headquarters' offices in the Division of Legal Counsel reporting to the Office of the General Counsel.

These administrative changes are being adopted in order to improve the delivery of services, and streamline, integrate and enhance management functions.

**DATES:** *Effective Date:* January 25, 2016.

**ADDRESSES:** National Labor Relations Board, 1015 Half Street SE., Room 5117, Washington, DC 20570.

**FOR FURTHER INFORMATION CONTACT:** William B. Cowen, Solicitor, National Labor Relations Board, 1015 Half Street SE., Room 5117, Washington, DC 20570. Telephone: (202) 273-2910 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** In 2013, the National Labor Relations Board centralized the services of several Headquarters' offices and restructured them into one independent Division of Legal Counsel with three branches—(1) Contempt, Compliance and Special Litigation, (2) Freedom of Information Act (FOIA) Branch, and (3) Ethics, Employment and Administrative Law. In addition, it housed a Lead Technology Counsel, who directly reports to the Division Head. When dealing with matters on behalf of the five-member Board or the various Board-side offices, the Division of Legal Counsel coordinates through the Office of the Solicitor. For further information regarding this restructuring please see the related **Federal Register** Notice published at 78 FR 44981-44982.

Experience operating under this new structure has demonstrated that a further restructuring is appropriate. Specifically, Labor Relations and Special Counsel do not fit as well as anticipated in a Division that is typically engaged in casehandling of Board matters and in ancillary litigation that may affect our statutory mission as the staff handles Agency collective bargaining and defense of Agency employee claims. Treating the Labor Relations and Special Counsel staff in a similar manner to the Agency's Office of Equal Employment Opportunity is deemed more appropriate. Further, while government and legal ethics staff performs some functions that assist with casehandling, it predominantly provides guidance that inures to the benefit of Agency employees, *e.g.*, outside employment, outside practice of law, Hatch Act violations, and conflicts of interest. Further, upon reflection, it is deemed more appropriate for the Designated Agency Ethics Official (DAEO) to report directly to the Agency

heads, rather than through an intermediary. Finally, in assessing the Agency's substantial litigation needs, it is deemed appropriate to create an E-Litigation Branch and hire sufficient staff to support the overwhelming e-litigation workload.

Accordingly, as of the effective date of this notice, the Ethics, Employment and Administrative Law Branch will cease to exist as a branch within the Division of Legal Counsel. Labor Relations and Special Counsel will move from the Division of Legal Counsel to directly report to the Office of the General Counsel and the Chairman as a new office entitled Special Counsel and Labor Relations Office, and Government and Legal Ethics will move from the Division of Legal Counsel to directly report to the Office of the General Counsel and the Chairman as a new office entitled Ethics Office. In addition, an E-Litigation Branch will be created in the Division of Legal Counsel, and the Lead Technology Counsel will continue to directly report to the Associate General Counsel of that Division, and will also supervise and manage a staff. Finally, the Associate General Counsel of the Division of Legal Counsel will act as the Chief FOIA Officer for the Agency.

These administrative changes are being adopted in order to improve the delivery of services, and streamline, integrate and enhance management functions. Because these administrative changes relate to the internal management of the Agency, pursuant to 5 U.S.C. 553, they are exempted from the notice and comment requirements of the Administrative Procedure Act.

Dated: Washington, DC, January 19, 2016.

By direction of the Board.

**William B. Cowen,**

*Solicitor.*

[FR Doc. 2016-01322 Filed 1-22-16; 8:45 am]

**BILLING CODE 7545-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-003, 50-247, 50-286, 72-51, 50-333, 72-12, 50-220, 50-410, 72-1036, 50-244, 72-67, 50-275, 50-323, 72-26, 50-361, 50-362, and 72-41; EA-14-137, EA-14-135, EA-14-136, EA-14-138, EA-14-139, EA-14-134, and EA-14-140; NRC-2016-0007]

**In the Matter of Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, and James A. Fitzpatrick Nuclear Power Plant; Exelon Generation Company, LLC, Nine Mile Point Nuclear Station, Units 1 and 2, and R.E. Ginna Nuclear Power Plant; Pacific Gas and Electric Company, Diablo Canyon Power Plant, Units 1 and 2; and Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3, including Independent Spent Fuel Storage Installations for All Facilities; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Confirmatory order; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting the attachment to a notice that was published in the **Federal Register** (FR) on January 15, 2016, regarding authorizing the licensees to transfer, receive, possess, transport, import, and use certain firearms and large-capacity ammunition feeding devices not previously permitted to be owned or possessed under Commission authority, notwithstanding certain local, State, or Federal firearms laws, including regulations that prohibit such actions, as reflected in the confirmatory orders for the nuclear plant facilities listed above. This action is necessary to correct an order number.

**DATES:** The correction is effective January 25, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0007 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0007. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). Orders EA-14-135, EA-14-136, EA-14-137, EA-14-138, EA-14-139, EA-14-134, and EA-14-140 are available in ADAMS under Accession Nos. ML15176A264, ML15176A028, ML15176A306, ML15176A256, ML15174A020, and ML15174A102, respectively.

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

**FOR FURTHER INFORMATION CONTACT:** Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1564, email: [Siva.Lingam@nrc.gov](mailto:Siva.Lingam@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In the FR on January 15, 2016, in FR Doc. 2016-00720, on page 2256, in the third column, in the title to the confirmatory order for Diablo Canyon Nuclear Power Plant, the order number "EA-14-140" is corrected to read order number "EA-14-134."

Dated at Rockville, Maryland, this 19th day of January 2016.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Branch Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2016-01420 Filed 1-22-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2016-0001]

### Sunshine Act Meeting Notice

**DATES:** January 25, February 1, 8, 15, 22, 29, 2016.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

### Week of January 25, 2016

There are no meetings scheduled for the week of January 25, 2016.

### Week of February 1, 2016—Tentative

There are no meetings scheduled for the week of February 1, 2016.

### Week of February 8, 2016—Tentative

There are no meetings scheduled for the week of February 8, 2016.

### Week of February 15, 2016—Tentative

There are no meetings scheduled for the week of February 15, 2016.

### Week of February 22, 2016—Tentative

*Tuesday, February 23, 2016*

9:30 a.m. Discussion of Management Issues (Closed Meeting—Ex. 2)

*Thursday, February 25, 2016*

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Material, Users Business Lines (Public Meeting), (Contact: Anita Gray: 301-415-7036).

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

### Week of February 29, 2016—Tentative

*Thursday, March 3, 2016*

9:30 a.m. Briefing on NRC International Activities (Closed Meeting—Ex. 1&9)

*Friday, March 4, 2016*

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Mark Banks: 301-415-3718)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

\* \* \* \* \*

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at [Denise.McGovern@nrc.gov](mailto:Denise.McGovern@nrc.gov).

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at [Kimberly.Meyer-Chambers@nrc.gov](mailto:Kimberly.Meyer-Chambers@nrc.gov). Determinations on requests for

reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or email [Brenda.Akstulewicz@nrc.gov](mailto:Brenda.Akstulewicz@nrc.gov) or [Patricia.Jimenez@nrc.gov](mailto:Patricia.Jimenez@nrc.gov).

Dated: January 20, 2016.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2016-01408 Filed 1-21-16; 11:15 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. T2016-1; Order No. 3038]

### Income Tax Review

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the calculation of the assumed Federal income tax on competitive products income for fiscal year (FY) 2015. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 24, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction  
II. Notice of Commission Action  
III. Ordering Paragraphs

### I. Introduction

In accordance with 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.*, the Postal Service filed its calculation of the assumed Federal income tax on competitive products income for fiscal year (FY) 2015.<sup>1</sup> The calculation details

<sup>1</sup> United States Postal Service Notice of Submission of the Calculation of the FY 2015

the FY 2015 competitive product revenue and expenses, the net competitive products income before tax, and the assumed Federal income tax on that income.

## II. Notice of Commission Action

In accordance with 39 CFR 3060.42, the Commission establishes Docket No. T2016-1 to review the calculation of the assumed Federal income tax and supporting documentation.

The Commission invites comments on whether the Postal Service's filing in this docket is consistent with the policies of 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.* Comments are due no later than March 24, 2016. The Postal Service's filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Jennaca D. Upperman to serve as Public Representative in this docket.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. T2016-1 to consider the calculation of the assumed Federal income tax on competitive products for FY 2015.

2. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than March 24, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**  
Secretary.

[FR Doc. 2016-01335 Filed 1-22-16; 8:45 am]

**BILLING CODE 7710-FW-P**

Assumed Federal Income Tax on Competitive Products, January 19, 2016. The Postal Service also filed a motion for late acceptance of its submission. Motion for Late Acceptance of the Postal Service Notice of Submission of the Calculation of the FY 2015 Assumed Federal Income Tax on Competitive Products, January 19, 2016 (Motion). The Motion is granted.

## SECURITIES AND EXCHANGE COMMISSION

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies

**ACTION:** Notice.

**SUMMARY:** The Securities and Exchange Commission ("Commission") has submitted the sponsored information collection request (ICR) titled, "Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies," to the Office of Management and Budget (OMB) for review and clearance under the emergency processing procedures in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) ("PRA") and 5 CFR 1320.13. OMB approval has been requested by January 19, 2016. In addition, this notice solicits comment on the three-year extension of the same information collection under 5 CFR 1320.12.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain>.

OMB Control Numbers 3235-0065 (Form S-1) and 3235-0258 (Form F-1) Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") is requesting that OMB authorize emergency processing of the submission of collection of information for "Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation

by Reference on Form S-1 for Smaller Reporting Companies." This request should also serve to notify the public that the Commission is seeking PRA approval from OMB on an emergency basis for the collections of information associated with the interim final rule amendments to Form S-1 and Form F-1 adopted by the Commission on January 13, 2016<sup>1</sup> to implement Sections 71003 and 84001 of the Fixing America's Surface Transportation ("FAST") Act, which was enacted on December 4, 2015.<sup>2</sup> In addition, the Commission is providing notice of the three-year extension under 5 CFR 1320.12.

As adopted, the amendments implement Sections 71003 and 84001 of the FAST Act, which require that the Commission revise Forms S-1 and F-1, OMB Control Numbers, 3235-0065 (Form S-1) and 3235-0258 (Form F-1), to permit emerging growth companies to omit financial information for certain historical periods and revise Form S-1 to permit forward incorporation by reference for smaller reporting companies.

Form S-1 (17 CFR 239.11) is the form used by domestic issuers to register the offer and sale of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) when no other form is authorized or prescribed, and Form F-1 (17 CFR 239.31) is the corresponding form used by foreign private issuers. Item 512 of Regulation S-K (17 CFR 229.512) describes the undertakings that an issuer must include in a registration statement.

The amendments revise Form S-1 and Form F-1 to make them conform to the requirements in Sections 71003 and 84001 of the FAST Act. Section 71003 of the FAST Act allows an emerging growth company that is filing a registration statement (or submitting the registration statement for confidential review) on Form S-1 or Form F-1 to omit financial information for historical periods otherwise required by Regulation S-X if it reasonably believes the omitted information will not be required to be included in the filing at the time of the contemplated offering, so long as the issuer amends the registration statement prior to distributing a preliminary prospectus to include all financial information required by Regulation S-X at the time of the amendment. The amendments revise the general instructions to Form S-1 and Form F-1 to reflect this self-executing change, as directed by Section 71003.

<sup>1</sup> See Release No. 33-10003 [81 FR 2743].

<sup>2</sup> Public Law 114-94.

Section 84001 of the FAST Act requires the Commission to revise Form S-1 to permit a smaller reporting company to incorporate by reference into its registration statement any documents filed by the issuer subsequent to the effective date of the registration statement. The amendments add a new paragraph to Item 12 of Form S-1 and make a conforming change to Item 512(a) of Regulation S-K to effect this provision.

The Commission, for good cause, found that notice and comment were unnecessary because the amendments merely conform the specified forms to the requirements of a newly enacted statute, the FAST Act. The amendments revised the Commission's forms to make them consistent with the provisions of the FAST Act pertaining to simplified disclosure requirements for emerging growth companies and forward incorporation by reference for smaller reporting companies on Form S-1 and therefore did not involve the exercise of Commission discretion. Section 71003 of the FAST Act was effective 30 days after enactment, and Section 84001 required the Commission to revise Form S-1 within 45 days of enactment. The Commission also found there was good cause for the amendments to take effect on January 19, 2016 because without the amendments the Commission's applicable forms did not conform to the requirements of Sections 71003 and 84001 of the FAST Act. Additionally, the Commission found that the amendments relieve restrictions in the Commission's forms.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is

approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6. The SEC obtains OMB approval for this information collection under OMB ICR Reference Numbers 201409-3235-039 (Form S-1) and 201407-3235-008 (Form F-1).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 15 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Numbers 3235-0065 (Form S-1) and 3235-0258 (Form F-1). The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

For purposes of the PRA, we estimate the total annual decrease in the paperwork burden for all affected issuers to comply with our collection of information requirements to be approximately 70,214 hours of company personnel time and the reduction in cost to be approximately \$84,256,400 for the services of outside professionals. These estimates include the time and cost of preparing and reviewing disclosure, filing documents, and retaining records. We estimate that 25% of the burden of preparation is carried by the issuer internally and is reflected in hours, and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour.<sup>3</sup> Our methodologies for deriving the above estimates are discussed below.

**1. Omission of Financial Information for Historical Periods by Emerging Growth Companies**

For purposes of the PRA, we estimate that the amendment to allow emerging growth companies to omit financial information for historical periods that the issuer reasonably believes will not be required to be included in the Form S-1 or F-1 at the time of the contemplated offering would reduce incrementally the annual paperwork burden by approximately 17,089 hours of issuer personnel time and by a cost of approximately \$20,506,400 for the services of outside professionals. The estimate reflects the reduction in disclosure preparation time resulting from the omission of one year of audited financial statements<sup>4</sup> multiplied by the average number of Forms S-1 and F-1 filed by emerging growth companies over a three-year period.<sup>5</sup>

**TABLE 1—REVISED PRA BURDEN UNDER THE AMENDMENT PERMITTING EMERGING GROWTH COMPANIES TO OMIT FINANCIAL INFORMATION FOR CERTAIN HISTORICAL PERIODS**

	Number of responses	Incremental burden hours <sup>6</sup> /form	Total incremental burden hours	25% company	75% professional	Professional costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * 0.25	E = (C) * 0.75	(F) = (E) * \$400
Form S-1 .....	401	(155)	(62,155)	(15,539)	(46,616)	\$(18,646,400)
Form F-1 .....	40	(155)	(6,200)	(1,550)	(4,650)	\$(1,860,000)

<sup>3</sup> Consistent with other recent rulemakings, we estimate an average hourly rate of \$400 for hiring outside professionals to assist issuers in preparing disclosures and conducting registered offerings.

<sup>4</sup> We estimated the audit fee for emerging growth companies by using the median audit fee of \$46,300 for smaller reporting companies. See John Pakaluk, *Audit Fees for Smaller Reporting Companies*, AUDIT ANALYTICS (Feb. 26, 2015), <http://www.auditanalytcs.com/blog/audit-fees-for-smaller-reporting-companies>.

<sup>5</sup> The number of responses equals the average number of Forms S-1 or Form F-1, respectively, filed by emerging growth companies (EGCs) during a three-year period. In 2012, EGCs filed 295 Forms S-1; in 2013, EGCs filed 404 Forms S-1; and in 2014, EGCs filed 504 Forms S-1. In 2012, EGCs

filed 25 Forms F-1; in 2013, EGCs filed 31 Forms F-1; and in 2014, EGCs filed 65 Forms F-1.

<sup>6</sup> We estimate that \$46,300 divided by \$400, or 116 hours, represents the cost of services of outside professionals, or 75% of the burden, and we estimate that the reduction in burden hours for the issuer equals 39 hours, or 25% of the burden. These estimates were rounded up to nearest whole hour.

TABLE 1—REVISED PRA BURDEN UNDER THE AMENDMENT PERMITTING EMERGING GROWTH COMPANIES TO OMIT FINANCIAL INFORMATION FOR CERTAIN HISTORICAL PERIODS—Continued

	Number of responses	Incremental burden hours <sup>6</sup> /form	Total incremental burden hours	25% company	75% professional	Professional costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * 0.25	E = (C) * 0.75	(F) = (E) * \$400
Total .....	.....	.....	(68,355)	(17,089)	.....	\$(20,506,400)

**2. Forward Incorporation by Reference on Form S-1 by Smaller Reporting Companies**

For purposes of the PRA, we estimate that all smaller reporting companies will take advantage of the election to forward incorporate by reference. We estimate that the amendments to permit smaller reporting companies to incorporate by reference into the prospectus contained in the registration statement on Form S-1 all documents subsequently filed by the issuer with the Commission after the effective date of

the registration statement would reduce incrementally the annual paperwork burden by approximately 53,125 hours of issuer personnel time and by a cost of approximately \$63,750,000 for the services of outside professionals. The estimate reflects the decrease in disclosure preparation time by eliminating the need to file certain post-effective amendments when that information is disclosed in Exchange Act filings after the effectiveness of the Form S-1. We estimate that forward incorporation by reference would

reduce the paperwork burden in Form S-1 for smaller reporting companies by 212,500 hours on the assumption that the burden to complete a Form S-1 that incorporates by reference would be the same as the burden currently imposed by Form S-3 (472 hours). Therefore, the amount of time eliminated for each Form S-1 that incorporates by reference would be 500 hours (972 hours for a Form S-1 that does not incorporate information by reference minus 472 hours for a Form S-1 that does incorporate information by reference).

TABLE 2—REVISED PRA BURDEN UNDER THE AMENDMENT PERMITTING SMALLER REPORTING COMPANIES TO FORWARD INCORPORATE BY REFERENCE ON FORM S-1

	Number of responses <sup>7</sup>	Incremental burden hours/ Form	Total incremental burden hours	25% company	75% professional	Professional costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * 0.25	E = (C) * 0.75	(F) = (E) * \$400
Form S-1 .....	425	(500)	(212,500)	(53,125)	(159,375)	\$(63,750,000)

*Title of Collection:* Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies.

*OMB Control Numbers:* 3235-0065 (Form S-1) and 3235-0258 (Form F-1).

*Type of Review:* Emergency.

*Requested Duration of Authorization:* 6 Months.

Dated: January 19, 2016.

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-01304 Filed 1-22-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76929; File No. SR-Phlx-2016-03]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Nonsubstantive, Clarifying Amendments to Several Rules Relating to the Clearing of Exchange Options Transactions**

January 19, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 5, 2016, NASDAQ OMX PHLX LLC (“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 the Substance of the Proposed Rule Change**

The Exchange proposes to make nonsubstantive, clarifying amendments to several rules relating to clearing of Exchange options transactions.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

<sup>7</sup> The number of responses equals the average number of Forms S-1 filed by smaller reporting companies (SRCs) during a three-year period. In 2012, SRCs filed 394 Forms S-1; in 2013, SRCs filed 432 Forms S-1; and in 2014, SRCs filed 448 Forms S-1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).  
<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange proposes to make minor nonsubstantive amendments to four rules relating to options clearing responsibilities of members. The changes are intended to correct minor drafting errors, and to update and improve readability of the rules. The Exchange is also proposing to extend applicability of a rule concerning violations of The Options Clearing Corporation ("OCC") rules to off-floor transactions as well as to on-floor transactions.

Phlx Rule 1046, Clearing Arrangements, currently provides that a member or member organization conducting an options business must either be: (i) A clearing member of OCC; or (ii) have a clearing arrangement with an Exchange member organization that is a clearing member of OCC. The Exchange is revising the rule to simply state that a member or member organization conducting an options business must be a Clearing Member or have a clearing arrangement with a Clearing Member. The revision simply makes use of the existing defined term "Clearing Member"<sup>3</sup> to improve readability. No change in meaning is intended.

Phlx Rule 1050, Violation Of By-Laws And Rules Of Options Clearing Corporation, currently provides for Exchange penalties in the event a member, member organization or director of a member organization that is a corporation "shall be adjudged guilty in a proceeding under Article XVIII of the by-laws of a violation of any provision of the rules of the Options Clearing Corporation with respect to the reporting, clearance or settlement of any transaction on the options trading floor of this Corporation. . . ." The Exchange is deleting the reference to a proceeding under Article XVIII of the by-laws, which the Exchange deleted in

<sup>3</sup> Exchange Rule 1000(b)(3) defines "Clearing Member" as "a member organization which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the rules of the Options Clearing Corporation."

2011,<sup>4</sup> and is replacing it with a more general and accurate reference to "an Exchange disciplinary proceeding." The Exchange is also replacing the reference to "any transaction on the options trading floor of this Corporation" with a reference to "any Exchange options transaction" in view of today's electronic options trading which is not limited to the trading floor and the fact that the Exchange is not otherwise referred to in the rulebook as "this Corporation." The Exchange did not amend Rule 1050 when it introduced off-floor trading, but is doing so now because whether a transaction takes place on-floor or off-floor has no bearing on the significance of any violation of the OCC rules. The Exchange has determined that there is no reason for off-floor transactions to be excluded from a requirement that transactions must be conducted in accordance with OCC rules. The new rule should ensure that off-floor transactions as well as on-floor transactions are conducted in a manner consistent with OCC rules.

Phlx Rule 1052, Responsibility Of Clearing Options Members For Exchange Options Transactions, currently provides for the clearing of transactions of non-Clearing Members by a "member organization which is a clearing member of the Options Clearing Corporation. . . ." The Exchange again is replacing this quoted language with the more succinct defined term "Clearing Member."<sup>5</sup> The word "Options" is deleted from the rule's title as superfluous.

Finally, Rule 1054, Verification Of Trades And Reconciliation Of Uncompared Trades, imposes certain trade verification and reconciliation obligations on any "member organization which is a clearing member of the Options Clearing Corporation." Once again the Exchange is replacing the cumbersome language in quotation marks with the succinct, defined term "Clearing Member." The change is made simply to improve readability.

<sup>4</sup> See Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) (SR-Phlx-2011-13) (a rule proposal to, among other things, amend the Limited Liability Company Agreement and By-Laws to substantially conform to The NASDAQ Stock Market's Second Amended Limited Liability Company Agreement and By-Laws).

<sup>5</sup> Rule 1052 currently provides that every member organization which is a clearing member of the Options Clearing Corporation shall be responsible for the clearance of the Exchange options transactions of such member organization and of each member or member organization who gives up the name of such clearing member in an Exchange options transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange options transactions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> 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, by improving the accuracy and readability of the amended rules.

With respect to Rules 1046, 1052 and 1054, employing the defined term "Clearing Member" rather than "a clearing member of the Options Clearing Corporation" shortens the rule and makes it more readable. With respect to Rule 1050, deletion of a reference to a nonexistent provision of the Exchange's bylaws and replacing it with a general reference to the Exchange's disciplinary proceedings should make the rule more understandable. Additionally with respect to Rule 1050, extending the applicability of the rule to off-floor transactions as well as to on-floor transactions should incentivize those who engage in off-floor transactions to comply with OCC rules, which is in the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the clarifying amendments proposed herein will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act inasmuch as they simply improve the accuracy and readability of the rules. Additionally, Rule 1050, as amended, will apply to members transacting off the trading floor as well as those transacting on the trading floor, which should reduce a burden on competition on members who transact primarily on the trading floor and also on members of other markets whose rules require compliance with OCC rules in connection with transactions not occurring on a trading floor.

*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.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2016-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

[rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016-03, and should be submitted on or before February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-01307 Filed 1-22-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76931; File No. SR-FINRA-2016-002]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Alternative Trading System Volume and Trading Information

January 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 8, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") 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. FINRA has designated the proposed rule change as

constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to (i) delete from the FINRA rulebook Rule 4552, which requires each alternative trading system ("ATS") that has filed a Form ATS with the SEC to report to FINRA weekly volume information and number of trades regarding equity securities transactions within the ATS; (ii) amend Rules 6110 and 6610 to add provisions regarding FINRA's publication of ATS volume and trade count information for equity securities, including information similar to what is currently reported by ATSS pursuant to Rule 4552 as well as information regarding ATS block transactions; and (iii) amend Rules 6183 and 6625 to require ATSS seeking an exemption from FINRA trade reporting rules to provide FINRA with a link to a publicly-available Web site that displays their weekly equity volume information in a format substantially similar to that used by FINRA.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, 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

##### (i) Background

On January 17, 2014, the SEC approved a proposed rule change to (i) adopt Rule 4552 (Alternative Trading

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).



Systems—Trading Information for Securities Executed Within the Alternative Trading System) to require ATSs<sup>4</sup> to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS (“ATS Data”) and to publish the ATS Data on a delayed basis on FINRA’s Web site;<sup>5</sup> and (ii) amend Rules 6160, 6170, 6480, and 6720 (“MPID Rules”) to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA (“MPID Requirement”).<sup>6</sup> The implementation date for the reporting requirements under Rule 4552 was May 12, 2014, and FINRA began publishing the ATS Data for equity securities on its Web site on June 2, 2014.<sup>7</sup> The MPID Requirement was implemented on February 2, 2015.<sup>8</sup> As the SEC noted in its order approving Rule 4552 and the MPID Requirement, FINRA’s response to comments received on that proposal included a commitment by FINRA to evaluate the continued need for self-reporting under Rule 4552 after the MPID Requirement was in place and to “eliminate the self-reporting requirement for ATSs subject to FINRA trade reporting requirements if the MPID [R]equirement is implemented and operating as

anticipated.”<sup>9</sup> FINRA has conducted this evaluation, and the proposed rule change eliminates the self-reporting requirement in Rule 4552 for ATSs in light of the successful implementation of the MPID Requirement.<sup>10</sup>

Rule 4552 requires individual ATSs to submit weekly reports to FINRA regarding equity security volume information within the ATS, including share volume and number of trades for both NMS stocks and OTC Equity Securities.<sup>11</sup> This information must be reported to FINRA on a security-by-security basis within seven business days after the end of each calendar week.<sup>12</sup> The first reports pursuant to Rule 4552 were due to FINRA by May 28, 2014, covering the week of May 12 through 16, 2014.<sup>13</sup> After FINRA began receiving the self-reported data from ATSs, FINRA began publishing on its Web site, on a delayed basis, the reported information for each equity security for each ATS with appropriate disclosures that the published volume numbers are based on ATS-submitted reports and not on reports produced or validated by FINRA.<sup>14</sup> FINRA currently makes this data available on its Web site through weekly reports listing aggregate volume and number of trades by security for each ATS within the designated time period.<sup>15</sup> Aggregate reported information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility<sup>16</sup> is published on a two-week

delayed basis.<sup>17</sup> FINRA publishes the information on all other NMS stocks and OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis.<sup>18</sup>

Rule 4552 also specifies how an ATS should calculate its volume to ensure consistency and to avoid potential over-counting and requires that, “[w]hen calculating and reporting the volume of securities traded and the number of trades, an alternative trading system shall include only those trades executed within the alternative trading system. If two orders are crossed by the alternative trading system, the volume shall include only the number of shares crossed as a single trade (e.g., crossing a buy order of 1,000 shares with a sell order of 1,000 shares would be calculated as a single trade of 1,000 shares of volume).”<sup>19</sup> Thus, for example, an ATS only reports trades executed within the ATS (not orders routed out of the ATS) and only reports the volume of each executed trade once (not separate or double counting for the buy and sell side of the trade). Supplementary Material .01 to Rule 4552 provides further guidance on how to calculate volume for reporting purposes and notes that “[i]f an ATS routes an order to another member firm or other execution venue for handling or execution where that initial order matches against interest resident at the other venue, then the ATS would not not [sic] . . . include such volume for reporting purposes.”

In addition to the reporting requirements under Rule 4552, the MPID Rules generally require that a member operating an ATS obtain for each such ATS a single, unique MPID that is designated for exclusive use for reporting each ATS’s transactions.<sup>20</sup> Members that operate multiple ATSs or engage in other lines of business requiring the use of MPIDs are required

<sup>4</sup> Regulation ATS defines an “alternative trading system” as “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” 17 CFR 242.300(a). Rule 4552 applies to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission. See Rule 4552(a).

<sup>5</sup> FINRA subsequently filed a proposed rule change to limit the reporting requirements in Rule 4552 to equity securities and exclude TRACE-Reportable Securities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

<sup>6</sup> See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving File No. SR-FINRA-2013-042) (“ATS Approval Order”). The MPID Requirement was subsequently amended to permit the use of two MPIDs by a single ATS provided each MPID is used only to report to either the Trade Reporting and Compliance Engine (“TRACE”) or one or more of FINRA’s equity reporting facilities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

<sup>7</sup> See *Regulatory Notice* 14-07 (February 2014).

<sup>8</sup> See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-042).

<sup>9</sup> ATS Approval Order, *supra* note 6, 79 FR at 4215-16.

<sup>10</sup> FINRA and the SEC also noted that certain ATSs exempt from FINRA’s trade reporting rules (“Exempt ATSs”) may need to continue reporting because Exempt ATSs would not be using a separate MPID to report their volume due to the exemption. See ATS Approval Order, *supra* note 6, 79 FR at 4216 n.34. As discussed in more detail below, rather than require Exempt ATSs to continue to self-report volume information pursuant to Rule 4552, FINRA has determined to require any ATS that wishes to avail itself of the trade reporting exemption to provide FINRA with a link to this information on a publicly-available Web site. FINRA will include a link to this information on its ATS Web site so that it is readily accessible to investors and the public.

<sup>11</sup> See Rule 4552(a) and (d)(4).

<sup>12</sup> See Rule 4552(a).

<sup>13</sup> See *Regulatory Notice* 14-07 (February 2014).

<sup>14</sup> See Rule 4552(b).

<sup>15</sup> The volume information is available at [www.finra.org/ats](http://www.finra.org/ats).

<sup>16</sup> Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain exchange-traded products. See NMS Plan to Address Extraordinary Market Volatility. FINRA makes changes to the Tier 1 NMS stocks in accordance with the Indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes places in June.

<sup>17</sup> See Rule 4552(b)(1). Thus, for example, a typical reporting scenario (*i.e.*, no federal holidays) requires ATSs to report the information for a given week by the second Tuesday following the week. FINRA publishes the information regarding Tier 1 NMS stocks no earlier than the following Monday. Information on all other equity securities subject to FINRA trade reporting requirements is published two weeks following the publication of information for the Tier 1 NMS stocks.

<sup>18</sup> See Rule 4552(b)(2).

<sup>19</sup> See Rule 4552(c).

<sup>20</sup> See Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants); Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants); Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). As noted above, an ATS is permitted to use two separate MPIDs if one MPID is used exclusively for reporting transactions to TRACE and the other MPID is used exclusively for reporting transactions to the equity trade reporting facilities. See Rule 6160(d); Rule 6170(e); Rule 6480(d).

to obtain and use multiple MPIDs, and if a firm operates multiple ATSS, each ATS must have its own MPID. Firms are required to notify FINRA before changing the usage of the MPID in any way (e.g., repurposing an MPID from reflecting ATS activity to other trading activity at the firm). After an ATS is provided its MPID, any reporting by the ATS—either reporting trades to a FINRA TRF, the Alternative Display Facility, the OTC Reporting Facility, TRACE, or reporting orders to the Order Audit Trail System (“OATS”)—must include the MPID assigned to the particular ATS, and the member must use the separate MPID to report all transactions executed within the ATS to the appropriate reporting facility. Finally, the MPID Rules prohibit a member from using an MPID assigned to an ATS to report any transaction that is not executed within the ATS and require members to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under the rules are restricted to trades executed within the ATS.

#### (ii) MPID Requirement Implementation and Evaluation

Under FINRA’s trade reporting rules, orders that are crossed by an ATS are reported to the appropriate FINRA trade reporting facility by the ATS.<sup>21</sup> The MPID Requirement—which requires ATSS to use a single, unique MPID when reporting trades within the ATS to an equity trade reporting facility—became effective on February 2, 2015. Since that time, FINRA has been able to calculate the trading volume for ATSS, other than Exempt ATSS, through the trade reports submitted using the ATS’s MPID. FINRA has been comparing the information reported by ATSS pursuant to Rule 4552 to information generated by FINRA from trade reports since the MPID Requirement was implemented.

For most weeks since the implementation of the MPID Requirement, over 75% of ATSS have exact matches between self-reported data and trade reporting data, and there has been a 99.99% overall match rate between self-reported ATS volume and trade reporting volume for ATSS that submit trade reports on the same basis that they calculate volume information pursuant to Rule 4552.<sup>22</sup> Where

<sup>21</sup> See Securities Exchange Act Release No. 58903 (November 5, 2008), 73 FR 67905, at 67906 (November 17, 2008) (Order Approving File No. SR-FINRA-2008-011) (“Under the proposed rule change, an [ATS] . . . would be the executing party and would have the reporting obligation where the transaction is executed on the ATS.”); see also *Regulatory Notice* 09-08 (January 2009).

<sup>22</sup> The 99.99% match rate excludes three ATSS that trade equity securities and, under current

differences between the self-reported data and the trade reporting data have been detected by FINRA staff, these differences have almost always been errors in the self-reporting of data by ATSS rather than errors in calculating volume based on trade reporting data. For example, FINRA has found errors such as ATSS including cancelled or reversed trades in the calculations or double-counting certain volume.

Based on this comparison over the past several months, FINRA believes that, going forward, disseminating ATS volume information based on trade reporting data, rather than self-reported data, will provide a more accurate calculation of ATS volume. Consequently, the proposed rule change replaces the ATS reporting obligations in Rule 4552 with a dissemination provision in Rule 6110 (for NMS stocks) and Rule 6610 (for OTC Equity Securities). The information disseminated by FINRA under the Rules will be substantially the same as that currently disseminated under Rule 4552; however, with the exception of Exempt ATSS, the obligation to calculate the information will shift from the ATSS to FINRA. As discussed below and noted above, however, some of the data calculations will change for ATSS that match orders using an Exempt ATS and ATSS that otherwise have unique trade reporting situations that result in trade reporting data not aligning with the ATS’s current calculation methodology under Rule 4552.

#### (iii) Exempt ATSS

By shifting ATS volume calculations from self-reported ATS data to trade reporting data, FINRA will not have transaction information for Exempt ATSS because they do not report trades to FINRA under existing exemptive rules.<sup>23</sup> Because FINRA believes this information will remain important to investors and to the public, Exempt ATSS that wish to continue to have an exemption from the trade reporting requirements must continue to calculate their volume in the same manner they currently do under Rule 4552; however, rather than report the information to FINRA, the proposed rule change moves the requirement, including all of the

guidance or exemptions, will not match: One is an Exempt ATS; one ATS reports trades to a FINRA facility but excludes trades that are matched on an Exempt ATS pursuant to the guidance on volume calculation in Supplementary Material .01 to Rule 4552; and one ATS matches orders but routes some of those matched orders for execution to a third party broker-dealer that executes and reports the trade to FINRA. In each of these three unique circumstances, the trade reports will not match the data reported pursuant to Rule 4552.

<sup>23</sup> See Rules 6183 and 6625.

calculation requirements and guidance, into Rules 6183 and 6625 and requires Exempt ATSS to provide FINRA with a link to the information. The information at that link must be publicly available at no charge and must appear in a substantially similar format as the ATS volume information that FINRA makes available. Supplementary Material .01 to the rules makes clear that, in order for data posted at the link to be in a “substantially similar format” under the rule, the data must include the same data elements for the same timeframes, be accessible in the same manner as FINRA makes data available (e.g., downloadable), and include data for the same time periods (including current and historical data). FINRA will use the link provided by the Exempt ATS and make the link available on its public Web site so that investors and other members of the public can freely and readily access Exempt ATS volume information.

Because the amendments to Rules 6183 and 6625 incorporate the calculation provisions from Rule 4552, the calculation of Exempt ATS volume information will not change as a result of the proposed rule change; however, the information will be published by the Exempt ATS with a link from FINRA’s Web site rather than be reported to FINRA and displayed directly on FINRA’s Web site. By shifting the basis of ATS Data from self-reported data to trade reporting data, the calculations, and thus the displayed data, will change primarily for those ATSS that currently exclude transactions involving Exempt ATSS from their reports under Rule 4552. These ATSS report trades to FINRA using their ATS MPID (including those trades that are matched through an Exempt ATS); consequently, those trades involving Exempt ATSS that are currently excluded pursuant to Supplementary Material .01 to Rule 4552 will be included in the volume calculations once the calculations are based on trade reporting data.<sup>24</sup>

#### (iv) ATS Block Data

With the implementation of the MPID Requirement, FINRA now has access to trade-by-trade reporting data from ATSS. The MPID Requirement also allows FINRA to aggregate and categorize ATS trading data in additional ways, and FINRA has been considering additional data that may be useful to investors and the public, particularly with respect to larger-sized, or “block,” trades.

<sup>24</sup> This category of trades will also be included in the Exempt ATS’s volume calculations. FINRA will note this potential double-counting on its Web site to ensure users of the ATS data are aware of this double-counting.

Following discussions with numerous ATSs, broker-dealers, and FINRA committees, the proposed rule change also provides that FINRA will publish on its public Web site monthly aggregate ATS block trading statistics, with the specific elements to be determined from time to time by FINRA in its discretion as stated in a *Regulatory Notice* or other equivalent publication, for each ATS.<sup>25</sup> FINRA believes that these statistics would prove beneficial to firms and the general public and provide interested parties with more detailed information on ATS trading activities, thus enhancing transparency in the over-the-counter market, and the proposed rule change would provide FINRA with a limited ability to change or refine the data fields for ATS block trades to respond to user needs or improve the usefulness of the data.

Although FINRA will announce in a *Regulatory Notice* the specific elements that will be published, the rule provides that the statistics regarding ATS block trades will be aggregated across all NMS stocks (*i.e.*, there will be no security-by-security block data),<sup>26</sup> will be for a minimum time period of one month of trading,<sup>27</sup> and will be published no earlier than one month following the end of the month for which trading was aggregated. Rather than strictly define a block transaction, FINRA concluded it would be most beneficial to provide firms and the public with information on block transactions using share-based thresholds, dollar-based thresholds, and thresholds that include both shares and dollar amount. Initially, FINRA anticipates that the ATS block data elements listed below will be published under Rule 6110; however, FINRA will formally announce the elements in a *Regulatory Notice*.<sup>28</sup> FINRA currently

anticipates that the thresholds for block trades will be the following:

- 10,000 or more shares
- \$200,000 or more in dollar value
- 10,000 or more shares and \$200,000 or more in dollar value
- 2,000 to 9,999 shares
- \$100,000 to \$199,999 in dollar value
- 2,000 to 9,999 shares and \$100,000 to \$199,999 in dollar value

For each of these thresholds, FINRA intends to publish trade count and volume information for each ATS aggregated across all NMS stocks. As a convenience for users, FINRA also anticipates calculating and displaying the average trade size and each ATS's rank as well as block market share (*i.e.*, the proportion of each ATS's block trading volume in relation to total block trading by all ATSs) and block business share (*i.e.*, the proportion of a particular ATS's overall trading volume that was done as block trades) and rankings of those metrics.<sup>29</sup>

FINRA believes that ATS block trading data will be helpful for firms to inform their routing decisions and that FINRA's data, because it would be based on the trade reports submitted by the ATSs, would be more accurate and complete than existing sources of this information. In addition, FINRA believes that monthly aggregated data across all NMS stocks published on a one-month delayed basis will avoid any potential information leakage concerns.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the deletion of Rule 4552, the amendments to Rules 6183 and 6625, and the publication of ATS volume and trade count information (except for ATS block data) pursuant to the amendments to Rules 6110 and 6610 will be February 9, 2016. Consequently, ATSs will be required to calculate their volume information pursuant to Rule 4552 through January 31, 2016, and will have until February 9, 2016, to report this data to FINRA.<sup>30</sup>

provide an opportunity for comment by any interested parties. As noted above, for trades executed on an ATS, the ATS is required to report the trade using its MPID. Consequently, the publication by FINRA of ATS block data will not impose any additional obligations on ATSs.

<sup>29</sup> Both the block business share and the rankings would be determined using the data FINRA is proposing to make publicly available; thus, these metrics would be calculated and provided by FINRA merely as a service to users to enable them to determine this information more readily. Monthly total ATS share volume and trades are calculated in order to derive the block business share, so those values and their market share and ranking would also be published as a service to users.

<sup>30</sup> As discussed above, ATSs exempt from FINRA trade reporting requirements will continue to calculate their volume using the same calculation

FINRA will begin calculating ATS volume data based on trade reports beginning February 1, 2016. FINRA will announce the implementation date for these amendments no later than seven days following the filing of the proposed rule change for immediate effectiveness. FINRA will announce the implementation date for the publication of ATS block data in a *Regulatory Notice* to be published no later than 90 days following publication of the Commission's notice of the filing of the proposed rule change for immediate effectiveness in the **Federal Register**. The implementation date for the publication of ATS block data will be no later than 180 days after publication of the *Regulatory Notice*.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>31</sup> 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 weekly ATS volume statistics have significantly enhanced transparency and understanding into trading activity on ATSs in the over-the-counter market. FINRA believes that, with the successful implementation of the MPID Requirement, transitioning the source of this information from self-reported data to trade reporting data enhances the reliability of the data while also reducing the reporting and compliance burden on firms and ATSs. FINRA believes that the proposal to publish ATS block trading data will provide additional transparency into ATS activity and enhance market participants' and investors' understanding of the over-the-counter market.

### 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.

FINRA notes that the publication of ATS block trading information as

methodology after Rule 4552 is removed from the FINRA rulebook pursuant to amended Rules 6183 and 6625. As with all ATSs, however, the reporting requirements of Rule 4552 will no longer apply beginning with the trading week of February 1, 2016. Instead, ATSs continuing to rely on the exemption will begin providing FINRA with a link to their data on the same timeframe as FINRA posts the data for other ATSs.

<sup>31</sup> 15 U.S.C. 78o-3(b)(6).

<sup>25</sup> FINRA notes that announcement of the specific elements in a *Regulatory Notice* or other equivalent publication is similar to the manner in which FINRA announces the data elements and fields included in Historic TRACE Data. See Rules 7730(d) and (f)(4); see also *Regulatory Notice* 10-14 (March 2010).

<sup>26</sup> The proposed rule change does not include OTC Equity Securities in the initial dissemination phase for block trades, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining thresholds that are appropriate across this class of securities. However, FINRA intends to reassess whether, in the future, the publication of block data should be expanded to include trades in OTC Equity Securities or some subset thereof.

<sup>27</sup> All monthly information will be calculated using calendar months. Because the reports will be based on aggregated monthly data rather than weekly data and includes all NMS stocks, Tier 1 and Tier 2 NMS stocks will not be treated differently for purposes of block trading statistics.

<sup>28</sup> FINRA anticipates that any changes to the elements or the addition of any new elements will be published well in advance of implementation to

described above would not impose any additional reporting requirements on ATSs because the data will be derived solely from trade reports submitted to the FINRA equity trade reporting facilities. FINRA believes that the proposal will have minimal to no impact on firms from a systems development perspective while significantly benefiting the marketplace as a whole. Thus, the proposal will provide additional transparency into ATS trading activity by enabling market participants and investors to have a better understanding of ATS block trading volume at no required cost to firms or ATSs.

The proposed rule change would expand the benefits of FINRA's ATS transparency program by providing additional transparency on monthly aggregate block trading on ATSs. The additional information may help market participants and investors to enhance their understanding of trading activity on ATSs and inform routing decisions based on this information. As discussed above, the proposal to publish ATS block trading volume would not impose any additional reporting requirements on firms, and as a result would have no direct impact on firms. Some firms may choose to incur costs to verify the information FINRA publishes, but these costs are voluntary and are also likely to be minimal.

### 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. As noted above, however, FINRA received written comments on the proposed rule change to adopt Rule 4552 and the MPID Requirement, many of which requested that FINRA eliminate Rule 4552 once the MPID Requirement was implemented and functioning as intended.<sup>32</sup> The current proposed rule change addresses this concern expressed by earlier commenters by eliminating the reporting requirements in Rule 4552.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-002 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2016-002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2016-002, and should be submitted on or before February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-01308 Filed 1-22-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Vadda Energy Corp.; Order of Suspension of Trading

January 21, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vadda Energy Corp. (CIK No. 1082492), a Florida corporation with its principal place of business listed as Flower Mound, Texas with stock quoted on OTC Link (previously 'Pink Sheets') operated by OTC Markets Group Inc. ('OTC Link') under the ticker symbol VDDA, because it has not filed any periodic reports since it filed its registration statement on September 30, 2013. On October 9, 2015, a delinquency letter was sent by the Division of Corporation Finance to Vadda Energy requesting compliance with its periodic filing obligations, and Vadda Energy received the delinquency letter on October 15, 2015, but failed to cure its delinquencies.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on January 21, 2016, through 11:59 p.m. EST on February 3, 2016.

<sup>32</sup> See ATS Approval Order, *supra* note 6, 79 FR at 4215.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016-01431 Filed 1-21-16; 11:15 am]

BILLING CODE 8011-01-P

## SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0347]

### Escalate Capital Partners SBIC III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners SBIC III, L.P., 300 W. 6th Street, Suite 2230, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which constitute Conflicts of Interest of the Small Business Administration (“SBA”) Rules and Regulations (13 CFR part 107). Escalate Capital Partners SBIC III, L.P. proposes to provide debt financing to Everspring, Inc., 1007 Church Street, Suite 420, Evanston, IL 60201. UTIMCO, an Associate of Escalate Capital Partners SBIC III, L.P., holds an indirect ownership interest in Everspring, Inc. of greater than 10 percent. Therefore, Everspring, Inc. is an Associate of Escalate Capital Partners SBIC III, L.P.

The financing is brought within the purview of § 107.730(a) of the Regulations because Everspring, Inc. is an Associate of Escalate Capital Partners SBIC III, L.P. Therefore this transaction requires a prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Mark L. Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016-01412 Filed 1-22-16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF STATE

[Public Notice: 9422]

### Re-Consideration Concerning the Scope of Authorizations in a Presidential Permit Issued to Plains LPG Services, L.P. in May 2014 for Existing Pipeline Facilities on the Border of the United States and Canada Under the St. Clair River

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** On May 23, 2014, the Department of State (Department) issued two Presidential Permits to Plains LPG Services, L.P. (Plains LPG) based on Plains LPG’s acquisition of six existing pipelines under the St. Clair River and one existing pipeline under the Detroit River. Plains LPG had applied for new permits reflecting its ownership of the pipeline facilities, but it did not seek any change or expansion of the previous authorizations for the pipelines’ use. The Presidential Permits issued in 2014 were intended to mirror previous authorizations from the 1970s, but the Department’s records were incomplete, particularly with regard to the six pipelines under the St. Clair River in the vicinity of Marysville, Michigan. While Plains LPG’s application asserted that the appropriate authorization was for the transport of any “liquefied hydrocarbons,” the Department issued one permit in 2014 for all of the St. Clair facilities authorizing the transport of “light liquid hydrocarbons,” which reflected the Department’s understanding of how the St. Clair pipelines were actually used in the 1970s and more recently.

After the new permits were issued, Plains LPG provided new information that alters the Department’s understanding of the historic authorization for two of the six St. Clair pipelines. These two pipelines were constructed in 1918; they have an outer diameter of eight inches and have subsequently been fitted with five-inch diameter liners. Specifically, Plains LPG provided the Department with copies of correspondence from 1971 between the Department and Dome Petroleum Corp. (the previous owner). In that correspondence Dome informed the Department that it had acquired the two St. Clair pipelines and that it planned to use them to transport “crude and other liquid hydrocarbons.” The Department wrote back to Dome acknowledging the letter and the company’s plans. The 1918 Presidential Permit had authorized the transport of crude oil.

In light of this additional information, the Department is revisiting Plains

LPG’s 2012 application and considering whether to issue a new permit for these two St. Clair pipelines that would authorize the transport of crude and other liquid hydrocarbons, superseding the authorization in the 2014 Presidential Permit for the transport of only light liquid hydrocarbons. The Department published in the **Federal Register** a Notification of Receipt of Application for a Presidential Permit on December 5, 2012 (**Federal Register** Citation 77 FR 72430) and solicited public comment on the application for a 30-day period, during which time it received one public comment requesting the Department ensure the pipelines are maintained and operated under government environmental and safety oversight required by law. The Department notes that it is not reconsidering the scope of authorization for use of the other four Plains LPG pipelines under the St. Clair River, or the Plains LPG facilities under the Detroit River.

Plains LPG is a Texas limited partnership with its principal place of business at 333 Clay Street, Suite 1600, Houston, Texas 77002. Plains LPG is a subsidiary of Plains All American Pipeline, L.P., a publicly traded master limited partnership organized under the laws of the State of Delaware and headquartered in Houston, Texas.

The Department’s consideration of the Presidential Permit for the St. Clair pipeline facilities is pursuant to E.O. 13337, which delegates to the Secretary of State the President’s authority to receive applications for permits for the construction, connection, operation, or maintenance of a range of facilities at the borders of the United States, including pipelines for liquid petroleum products, and to issue or deny such Presidential Permits upon a national interest determination. The Department also is soliciting the views of concerned federal agencies. Consistent with E.O. 13337, the Department will determine whether issuance of a new Presidential Permit for two of the St. Clair Pipeline border facilities, as discussed in this notice, would serve the U.S. national interest.

**DATES:** Interested parties are invited to submit comments within 30 days of the publication date of this notice on <http://www.regulations.gov> with regard to whether issuing a new Presidential Permit for two of the St. Clair pipelines authorizing the transport of crude and other liquid hydrocarbons would serve the national interest. To submit a comment, go to <http://www.regulations.gov>, enter the title of

this Notice into the search field and follow the prompts.

Comments are not private. They will be posted on the site. The comments will not be edited to remove identifying or contact information, and the State Department cautions against including any information that one does not want publicly disclosed. The State Department requests that any party soliciting or aggregating comments received from other persons for submission to the State Department inform those persons that the State Department will not edit their comments to remove identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA) Department of State 2201 C St. NW., Ste 4428, Washington, DC 20520, Attn: Sydney Kaufman, Tel: 202-647-2041. Email: [kaufmans@state.gov](mailto:kaufmans@state.gov).

**SUPPLEMENTARY INFORMATION:** Additional information concerning the St. Clair pipeline facilities can be found at <http://www.state.gov/e/enr/applicant/applicants/index.htm>. Documents related to the Department of State's review of the application for a Presidential Permit can be found at <http://www.state.gov/e/enr/applicant>.

Dated: January 15, 2016.

**Chris Davy,**

*Deputy Director, Energy Resources Bureau, Energy Diplomacy, Bureau of Energy Resources, U.S. Department of State.*

[FR Doc. 2016-01419 Filed 1-22-16; 8:45 am]

**BILLING CODE 4710-AE-P**

## DEPARTMENT OF STATE

[Public Notice: 9422]

### Sanctions Lifting Actions Taken Pursuant to the Joint Comprehensive Plan of Action

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** To comply with the Presidential Memorandum entitled "Preparing for the Implementation of the Joint Comprehensive Plan of Action of July 14, 2015" issued on October 18, 2015 and to give effect to the United States commitment under Section 4.8.1 of Annex II and Section 17.3 of Annex V of the Joint Comprehensive Plan of Action (JCPOA), the Secretary of State has taken action pursuant to Section 9(b) of the Iran Sanctions Act of 1996 (Pub. L. 104-172) (50 U.S.C. 1701 note) ("ISA"), as amended, to discontinue the imposition of sanctions on the following individuals and entities sanctioned

under section 5(a) of ISA: Dimitris Cambis, FAL Oil Company Limited, Ferland Company Limited, Impire Shipping, Kuo Oil Pte. Ltd, Naftiran Intertrade Company, Petrochemical Commercial Company International, Petr leos de Venezuela S.A., Royal Oyster Group, Speedy Ship, and Zhuhai Zhenrong Company and the following entities sanctioned under Section 212 of the Iran Threat Reduction and Syria Human Rights Act of 2012: Bimeh Markazi—Central Insurance of Iran and Kish Protection and Indemnity. The Secretary of State has also taken action to discontinue the imposition of sanctions under E. O. 13622 (July 30, 2012), as amended, on the following entities: Jam Petrochemical Company and Niksima Food and Beverage JLT. Finally, the Secretary of State has taken action pursuant to Section 1244(i) of the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Pub. L. 112-239, 22 U.S.C. 8801 *et seq.*) ("IFCA") to waive the imposition of sanctions under Section 1244(c)(1) of IFCA with respect to the following entities: the National Iranian Oil Company, the National Iranian Tanker Company, the Islamic Republic of Iran Shipping Lines, and South Shipping Line Iran, and under Section 1244(d)(1) of IFCA with respect to Goldentex FZE. The Department of the Treasury's Office of Foreign Assets Control will take action to remove these entities from its list of Specially Designated Nationals and Blocked Persons (SDN List) and/or the Non-SDN ISA List, as appropriate, as of the effective date.

**DATES:** *Effective:* These actions were effective on January 16, 2016 (Implementation Day), when the Secretary of State confirmed that Iran had implemented the nuclear-related measures specified in Sections 15.1-15.11 of Annex V of the JCPOA, as verified by the International Atomic Energy Agency.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Office of Sanctions Policy and Implementation, Department of State, Telephone: (202) 647-7489.

**SUPPLEMENTARY INFORMATION:** Relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice.

The following constitutes a list, as of the effective date of these actions, of persons on whom sanctions are imposed under ISA. The particular sanctions imposed on an individual person are identified in the relevant **Federal Register** Notice.

—Sytrol (see Public Notice 8040, 77 FR 59034, September 25, 2012)

Dated: January 19, 2016.

**Kurt Tong,**

*Acting Assistant Secretary for Economic and Business Affairs.*

[FR Doc. 2016-01404 Filed 1-22-16; 8:45 am]

**BILLING CODE 4710-AE-P**

## DEPARTMENT OF STATE

[Public Notice: 9419]

### Culturally Significant Objects Imported for Exhibition Determinations: "China's First Emperor and His Terracotta Warriors" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "China's First Emperor and His Terracotta Warriors," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Field Museum of Natural History, Chicago, Illinois, from on about March 4, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

Dated: January 15, 2016.

**Mark Taplin,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2016-01311 Filed 1-22-16; 8:45 am]

**BILLING CODE 4710-05-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to revise a previously approved information collection. Part A of subtitle VII of the Revised title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. This revision addresses requirements from the Enhanced Flight Vision Systems (EFVS) Rule, RIN 2120-AJ94.

**DATES:** Written comments should be submitted by March 25, 2016.

**ADDRESSES:** Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP-110, 950 L'Enfant Plaza SW., Washington, DC 20024.

**PUBLIC COMMENTS INVITED:** You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson by email at: [Ronda.Thompson@faa.gov](mailto:Ronda.Thompson@faa.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120-0005.  
*Title:* General Operating and Flight Rules.

*Form Numbers:* None.

*Type of Review:* Revision of an information collection.

*Background:* The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) part 91, General Operating and Flight Rules, are authorized by part A of subtitle VII of

the Revised title 49 U.S.C. FAR part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR part 91 are necessary for FAA to assure compliance with these provisions.

*Respondents:* Approximately 21,200 airmen, state or local governments, and businesses.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* .5 hour.

*Estimated Total Annual Burden:* 235,183 hours.

Issued in Washington, DC, on January 14, 2016.

**Ronda Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP-110.*

[FR Doc. 2016-01312 Filed 1-22-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Notice of Termination of Interim Approval IA-5**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) is incorporated in our regulations, approved by FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. This notice terminates the Interim Approval for Use of Clearview Font for Positive Contrast Legends on Guide Signs (IA-5), issued September 2, 2004, as authorized by Section 1A.10 of the MUTCD, and discontinues the provisional use of an alternative lettering style in traffic control device applications. The result of this termination rescinds the use of letter styles other than the FHWA Standard Alphabets on traffic control devices, except as provided otherwise in the MUTCD. Existing signs that use the provisional letter style and comply with the Interim Approval are unaffected by this action and may remain as long as they are in serviceable condition. This

action does not create a mandate for the removal or installation of any sign. This action does not amend any provision of the MUTCD.

**DATES:** Effective 30 days after publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, contact Mr. Kevin Sylvester, MUTCD Team Leader, FHWA Office of Transportation Operations, (202) 366-2161, or via email at [Kevin.Sylvester@dot.gov](mailto:Kevin.Sylvester@dot.gov). For legal questions, please contact Mr. William Winne, Office of the Chief Counsel, (202) 366-1397, or via email at [William.Winne@dot.gov](mailto:William.Winne@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Background**

Numerous research efforts have taken place over the last 15 years with the goal of improving the legibility of highway signs. One area of focus has been on guide signs. As a result of some early studies,<sup>1</sup> FHWA issued an Interim Approval allowing provisional use of an alternative lettering style known as Clearview™ for signs in positive contrast color orientations (lighter legend on darker background).<sup>2</sup> Although the research supported only one series of this lettering style, the Interim Approval was written in a way that would authorize narrower letter forms, to correspond to the system of the FHWA Standard Alphabets, in anticipation of successful future research evaluations. However, subsequent evaluations showed no benefit to the narrower letter forms and degraded sign legibility when compared to the corresponding FHWA Standard Alphabet series.<sup>3</sup> Additionally, tests of alternative lettering in negative contrast color orientations (dark legend on lighter background, such as for regulatory and warning signs) showed no improvement and significantly degraded legibility of the sign.<sup>4</sup>

<sup>1</sup> Carlson, P.J., *Evaluation of Clearview Alphabet with Microprismatic Retroreflective Sheetings*, Report No. FHWA/TX-02/4049-1. Texas Transportation Institute, August 2001, resubmitted October 2001.

<sup>2</sup> Interim Approval 5 can be accessed at the following Web address: [http://mutcd.fhwa.dot.gov/res-ia\\_clearview\\_font.htm](http://mutcd.fhwa.dot.gov/res-ia_clearview_font.htm).

<sup>3</sup> Chrysler, S.T., P.J. Carlson, and H.G. Hawkins. *Nighttime Legibility of Ground-Mounted Traffic Signs as a Function of Font, Color, and Retroreflective Sheeting Type*, Report No. FHWA/TX-03/1796-2. Texas Transportation Institute, September 2002.

<sup>4</sup> Holick, A., S.T. Chrysler, E. Park, and P.J. Carlson. *Evaluation of the Clearview™ Font for Negative Contrast Traffic Signs*, Report No. FHWA/



Ultimately, the consistent finding among all the research evaluations is that the brightness of the retroreflective sheeting is the primary factor in nighttime legibility.

The presence and availability of two separate letter styles with differing criteria have resulted in significant confusion and inconsistency in highway sign design, fabrication processes, and application. Although the terms of FHWA's 2004 Interim Approval are explicit, misunderstandings and misapplications of the provisional letter style have resulted. Inconsistent sign design practices are becoming more common and may have coincided with the provisional allowance of an alternative lettering style due to a lack of consistent implementation and inaccurate presumptions that lesser sign design criteria, such as reduced interline and edge spacing, are broadly acceptable. Additionally, many agencies believed that the alternative lettering style should be used in all applications and that all lettering should be displayed in upper and lowercase lettering, regardless of the type of message. There is also considerable confusion that the requirement of the MUTCD to display destination and street names in upper and lowercase lettering equates to the use of the provisional lettering style rather than the Standard Alphabets. In actuality, there is no interdependency between letter style and case.

#### **Purpose of This Notification**

Uniformity in the display of traffic control devices is central to the underlying foundation of the MUTCD. As such, FHWA establishes the criteria therein with uniformity in mind. This uniformity extends not only to the

content of the message displayed, but also to the format and appearance of the display itself. Although seldom specifically identifiable by the motorist, non-uniformity of a sign display or sequence of signs might exhibit itself in less direct ways, such as diminished legibility requiring additional glance time directed toward a sign or group of signs instead of toward the traffic on the road.

The FHWA is committed to exploring solutions that can significantly contribute to enhanced road user safety and are readily and feasibly implemented. In this particular case, there is no benefit of the alternative method that cannot be similarly achieved within the established practice. In many cases, the established practice actually demonstrated benefits that the alternative could not achieve. The FHWA believes that devoting further resources to the development of an alternative will not yield dramatically different results that would warrant an institutional change.

#### **Conclusion**

Based on these findings, FHWA does not intend to pursue further consideration, development, or support of an alternative letter style. Accordingly, FHWA discontinues further implementation of an alternative letter style and terminates and rescinds the Interim Approval for new signing installations, except as otherwise provided in the MUTCD. Existing signs that use the provisional letter style and comply with the Interim Approval are unaffected by this action and may remain as long as they are in serviceable condition. This action does not create a mandate for the removal or installation of any sign. This action does not amend any provision of the MUTCD.

**Authority:** 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.85.

Issued on: January 15, 2016.

**Gregory G. Nadeau,**  
*Administrator, Federal Highway  
Administration.*

[FR Doc. 2016-01383 Filed 1-22-16; 8:45 am]

**BILLING CODE 4910-22-P**

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **National Research Advisory Council, Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, March 2, 2016, in Room 730 at 810 Vermont Ave. NW., Washington, DC. The meeting will convene at 9:00 a.m. and end at 3:30 p.m., and is open to the public. Anyone attending must show a valid photo ID to building security and be escorted to the meeting. Please allow 15 minutes before the meeting begins for this process.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, or needing further information may contact Pauline Cilladi-Rehrer, Designated Federal Officer, ORD (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443-5607, or by email at [pauline.cilladi-rehrer@va.gov](mailto:pauline.cilladi-rehrer@va.gov) at least 5 days prior to the meeting date.

Dated: January 19, 2016.

**Rebecca Schiller,**  
*Advisory Committee Management Officer.*

[FR Doc. 2016-01297 Filed 1-22-16; 8:45 am]

**BILLING CODE 8320-01-P**





# FEDERAL REGISTER

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Part II

Department of Energy

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10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Pumps; Final Rule

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 431****[Docket No. EERE-2013-BT-TP-0055]****RIN 1905-AD50****Energy Conservation Program: Test Procedure for Pumps****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

**SUMMARY:** On April 1, 2015, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NPR) to establish new definitions and a new test procedure for pumps. That proposed rulemaking serves as the basis for this final rule. This final rule establishes a new test procedure for pumps, as well as associated definitions and parameters that establish the scope of applicability of the test procedure. Specifically, the pumps test procedure adopted in this final rule incorporates by reference the test procedure from the Hydraulic Institute (HI)—standard 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing”—with several clarifications and modifications, related to measuring the hydraulic power, shaft power, and electric input power of pumps, inclusive of electric motors and any continuous or non-continuous controls. The new pumps test procedure will be used to determine the constant load pump energy index (PEI<sub>CL</sub>) for pumps sold without continuous or non-continuous controls and the variable load pump energy index (PEI<sub>VL</sub>) for pumps sold with continuous or non-continuous controls. The final rule incorporates certain recommendations made by the commercial and industrial pumps (CIP) Working Group, which was established under the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC), as well as comments submitted by interested parties in response to the April 2015 pumps test procedure NPR.

**DATES:** The effective date of this rule is February 24, 2016. Compliance with the final rule will be mandatory for representations of PEI<sub>CL</sub>, PEI<sub>VL</sub>, the constant load pump energy rating (PER<sub>CL</sub>), and the variable load pump energy rating (PER<sub>VL</sub>) made on or after July 25, 2016. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 24, 2016.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts,

comments, and other supporting documents/materials, is available for review at [regulations.gov](http://regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: [https://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/44](https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/44). This Web page contains a link to the docket for this document on the [regulations.gov](http://regulations.gov) site. The [www.regulations.gov](http://www.regulations.gov) Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: [pumps@ee.doe.gov](mailto:pumps@ee.doe.gov).

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington DC 20585–0121. Telephone: (202) 287–6111. Email: [Jennifer.Tiedeman@hq.doe.gov](mailto:Jennifer.Tiedeman@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into 10 CFR part 431 the following industry standards:

(1) FM Class Number 1319, “Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type),” approved January 2015.

Copies of FM Class Number 1319 can be obtained from: FM Global, 1151 Boston-Providence Turnpike, P.O. Box 9102, Norwood, MA 02062, (781) 762–4300, or by visiting [www.fmglobal.com](http://www.fmglobal.com).

(2) American National Standards Institute (ANSI)/HI 1.1–1.2–2014 (“ANSI/HI 1.1–1.2–2014”), “American National Standard for Rotodynamic Centrifugal Pumps for Nomenclature and Definitions,” approved October 30, 2014, sections 1.1, “Types and nomenclature,” and 1.2.9, “Rotodynamic pump icons.”

(3) ANSI/HI 2.1–2.2–2014 (“ANSI/HI 2.1–2.2–2014”), “American National Standard for Rotodynamic Vertical Pumps of Radial, Mixed, and Axial Flow Types for Nomenclature and Definitions,” approved April 8, 2014, section 2.1, “Types and nomenclature.”

(4) HI 40.6–2014, (“HI 40.6–2014”) “Methods for Rotodynamic Pump Efficiency Testing,” (except for section 40.6.5.3, “Test report;” Appendix A, section A.7, “Testing at temperatures exceeding 30 °C (86 °F);” and Appendix B, “Reporting of test results (normative);”) copyright 2014.

Copies of ANSI/HI 1.1–1.2–2014, ANSI/HI 2.1–2.2–2014, and HI 40.6–2014 can be obtained from: the Hydraulic Institute at 6 Campus Drive, First Floor North, Parsippany, NJ 07054–4406, (973) 267–9700, or by visiting [www.pumps.org](http://www.pumps.org).

(5) National Fire Protection Association (NFPA) 20–2016, “Standard for the Installation of Stationary Pumps for Fire Protection,” 2016 Edition, approved June 15, 2015.

Copies of NFPA 20–2016 can be obtained from: the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, (617) 770–3000, or by visiting [www.nfpa.org](http://www.nfpa.org).

(6) UL 488, (“ANSI/UL 448–2013”), “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” 10th Edition, June 8, 2007, including revisions through July 12, 2013.

Copies of ANSI/UL448–2013 can be obtained from: UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or by visiting <http://ul.com>.

This material is also available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L’Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or at <http://energy.gov/eere/buildings/appliance-and-equipment-standards-program>.

See section IV.N. for additional information about these standards.

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## I. Authority and Background

Pumps are included in the list of “covered equipment” for which the U.S. Department of Energy (DOE) is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(A)) However, there are not currently any Federal energy conservation standards or test procedures for pumps. The following sections discuss DOE's authority to establish test procedures for pumps and relevant background information regarding DOE's consideration of test procedures for this equipment.

### A. Authority

The Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, as amended by Public Law 95–619, Title IV, Sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment under Title III, Part C (42 U.S.C. 6311–6317, as

codified)<sup>1 2</sup> Included among the various types of industrial equipment addressed by EPCA are pumps, the subject of this document. (42 U.S.C. 6311(1)(A))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, (42 U.S.C. 6295(s) and 6316(a)(1)), and (2) making representations about the efficiency of that equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

DOE is authorized to prescribe energy conservation standards and corresponding test procedures for statutorily covered equipment such as pumps. While DOE is currently evaluating whether to establish energy conservation standards for pumps (Docket No. EERE–2011–BT–STD–0031), DOE must first establish a test procedure that measures the energy use, energy efficiency, or estimated operating costs of such equipment. *See, generally*, 42 U.S.C. 6295(r) and 6316(a).

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, before prescribing any final test procedures, DOE must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)(1)–(2))

In this final rule, DOE is establishing a test procedure for pumps concurrent with its ongoing energy conservation standards rulemaking for this equipment (*See* Docket No. EERE–2011–BT–STD–0031). As discussed further in section I.B, DOE published a notice of

proposed rulemaking (NOPR) on April 1, 2015 presenting and requesting public comment on DOE's proposals related to pumps definitions, metric, and test procedure requirements (April 2015 pump test procedure NOPR). 80 FR 17586.

The pumps test procedure adopted in this final rule includes methods required to (1) measure the performance of the covered equipment and (2) use the measured results to calculate a pump energy index (PEI<sub>CL</sub> for pumps sold without continuous or non-continuous controls or PEI<sub>VL</sub> for pumps sold with continuous or non-continuous controls) to represent the power consumption of the pump, inclusive of a motor and any continuous or non-continuous controls, normalized with respect to the performance of a minimally compliant pump. In this final rule, DOE is also establishing the specific styles and characteristics of pumps to which the test procedure applies.

Manufacturers will be required to make all representations of pump efficiency, overall (wire-to-water) efficiency, bowl efficiency, driver power input, pump power input (brake or shaft horsepower), and/or pump power output (hydraulic horsepower) using methods that will generate values consistent with the DOE test procedure beginning 180 days after the publication date of this final rule in the **Federal Register**. Manufacturers also will be required to use the new test procedure and metric when making representations regarding the PEI<sub>CL</sub>, PEI<sub>VL</sub>, PER<sub>CL</sub>, or PER<sub>VL</sub> of covered equipment 180 days after the publication date of any applicable energy conservation standards final rule in the **Federal Register**. However, DOE notes that certification of compliance with any energy conservation standards for pumps would not be required until the compliance date of any final rule establishing such energy conservation standards. *See* 42 U.S.C. 6314(d) and Docket No. EERE–2011–BT–STD–0031.

### B. Background

DOE does not currently regulate pumps. In 2011, DOE issued a Request for Information (RFI) to gather data and information related to pumps in anticipation of initiating rulemakings to formally consider test procedures and energy conservation standards for this equipment. 76 FR 34192 (June 13, 2011). In February 2013, DOE published a Notice of Public Meeting and Availability of the Framework document to initiate an energy conservation standard rulemaking for pumps (78 FR 7304 Feb. 1, 2013) and

<sup>1</sup> For editorial reasons, Part C was codified as Part A–1 in the U.S. Code.

<sup>2</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

held a public meeting to discuss the Framework document (the “pumps Framework public meeting”).

Following the pumps Framework public meeting, DOE convened a Commercial and Industrial Pumps Working Group (“CIP Working Group” or, in context, “Working Group”) through the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC) to negotiate standards and test procedures for pumps as an alternative to the traditional notice and comment rulemaking process that DOE had already begun. (Docket No. EERE–2013–BT–NOC–0039)<sup>3</sup> The CIP Working Group commenced negotiations at an open meeting on December 18 and 19, 2013, and held six additional meetings and two webinars to discuss definitions, metrics, test procedures, and standard levels for pumps.<sup>4</sup> The CIP Working Group concluded its negotiations on June 19, 2014, with a consensus vote to approve a term sheet containing recommendations to DOE on appropriate standard levels for pumps as well as recommendations addressing issues related to the metric and test procedure for pumps (“Working Group recommendations”).<sup>5</sup> Subsequently, ASRAC voted unanimously to approve the Working Group recommendations during a July 7, 2014 webinar.

Following approval of the Working Group recommendations, DOE published a NOPR implementing the recommendations of the CIP Working Group<sup>6</sup> and proposing a new test procedure for pumps, as well as associated definitions and parameters to establish the applicability of the test procedure (April 2015 pump test procedure NOPR). 80 FR 17586 (April 1, 2015). On April 29, 2015, DOE held a

public meeting to discuss and request public comment on the April 2015 pumps test procedure NOPR (April 2015 NOPR public meeting).

DOE’s test procedure for pumps, adopted in this final rule, reflects certain recommendations of the CIP Working Group, as well as input from interested parties received in response to the April 2015 pumps test procedure NOPR. Provisions of this final rule that are directly pertinent to any of the 14 approved Working Group recommendations will be specified with a citation to the specific recommendation number (for example: Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #X at p. Y). Additionally, in developing the provisions of this final rule, DOE also has referenced discussions from the CIP Working Group meetings regarding potential actions or comments that may not have been formally approved as part of the Working Group recommendations. These references to discussions or suggestions of the CIP Working Group not found in the Working Group recommendations will have a citation to meeting transcripts (for example: Docket No. EERE–2013–BT–NOC–0039, No. X at p. Y).

Finally, in this final rule, DOE responds to all comments received from interested parties in response to the proposals presented in the April 2015 pumps test procedure NOPR, either during the April 2015 NOPR public meeting or in subsequent written comments. In response to the April 2015 pumps test procedure NOPR, DOE received eight written comments in addition to the verbal comments made by interested parties during the April 2015 NOPR public meeting. The commenters included: Wilo USA, LLC (Wilo); the Hydraulic Institute (HI); the National Electrical Manufacturers Association (NEMA); the Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Northwest Energy Efficiency Alliance (NEEA), and Northwest Power and Conservation Council (NPCC), collectively referred to herein as the energy efficiency advocates (EEAs); the Air-Conditioning, Heating, & Refrigeration Institute (AHRI); the Association of Pool & Spa Professionals (APSP); Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCG), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E), collectively referred to herein as the CA IOUs. DOE will identify comments received in response to the April 2015 pumps test procedure NOPR by the commenter, the number of document as

listed in the docket maintained at [www.regulations.gov](http://www.regulations.gov) (Docket No. EERE–2013–BT–TP–0055), and the page number of that document where the comment appears (for example: HI, No. 8 at p. 4). If a comment was made verbally during the NOPR public meeting, DOE will also specifically identify those as being located in the NOPR public meeting transcript (for example: HI, NOPR public meeting transcript, No. 7 at p. 235). This final rule also contains comments submitted in response to the pumps energy conservation standards rulemaking (Docket No. EERE–2011–BT–STD–0031) and such comments will be identified with that docket number.

## II. Summary of the Final Rule

In this final rule, DOE is establishing a new subpart Y to part 431 of Title 10 of the Code of Federal Regulations that contains definitions and a test procedure applicable to pumps. This final rule also contains sampling plans for pumps for the purposes of making representations regarding the energy consumption of applicable pumps and demonstrating compliance with any energy conservation standards that DOE adopts.

DOE notes that equipment meeting the pump definition is already covered equipment. In this final rule, DOE is establishing definitions for the term pump, certain pump components, and several categories and configurations of pumps. While the range of equipment included in DOE’s definition of pump is broad, the test procedure established by this rulemaking is limited to a specific scope of pumps, as described in section III.A of this final rule; specifically certain kinds of rotodynamic pumps<sup>7</sup> for which standards are being considered in DOE’s energy conservation standards rulemaking. (Docket No. EERE–2011–BT–STD–0031)

DOE’s approach adopted in this final rule establishes a new metric, the pump energy index (PEI), to rate the energy performance of pumps subject to this test procedure. The test procedure contains methods for determining constant load pump energy index (PEI<sub>CL</sub>) for pumps sold without continuous or non-continuous controls and the variable load pump energy index (PEI<sub>VL</sub>) for pumps sold with either

<sup>7</sup> A rotodynamic (or centrifugal) pump is a kinetic machine that continuously imparts energy to the pumped fluid by means of a rotating impeller, propeller, or rotor. This kind of pump is in contrast to positive-displacement pumps, which have an expanding cavity on the suction side and a decreasing cavity on the discharge side that move a constant volume of fluid for each cycle of operation.

<sup>3</sup> Information on the ASRAC, the CIP Working Group, and meeting dates is available at <http://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>.

<sup>4</sup> Details of the negotiation sessions can be found in the public meeting transcripts that are posted to the docket for the Working Group (<http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-NOC-0039>).

<sup>5</sup> The term sheet containing the Working Group recommendations is available in the CIP Working Group’s docket. (Docket No. EERE–2013–BT–NOC–0039, No. 92) The ground rules of the CIP Working Group define consensus as no more than two negative votes. (Docket No. EERE–2013–BT–NOC–0039, No. 18 at p. 2) Concurrence was assumed if a voting member was absent, and overt dissent was only evidenced by a negative vote. Abstention was not construed as a negative vote.

<sup>6</sup> DOE’s proposals in the April 2015 pumps test procedure NOPR reflect the intent of the CIP Working Group recommendations. However, DOE proposed some slight modifications and significant additional detail to ensure the technical integrity, accuracy, repeatability, and enforceability of the pumps test procedure and scope.

continuous or non-continuous controls. Both PEI<sub>CL</sub> and PEI<sub>VL</sub> describe the weighted average performance of the rated pump at specific load points, normalized with respect to the performance of a minimally compliant pump without controls.

The test procedure contains methods to determine the appropriate index for all equipment for which this test procedure applies using either calculation-based methods and/or testing-based methods. While both methods include some amount of testing and some amount of calculation, the terms “calculation-based” and “testing-based” are used to distinguish between methods in which the input power to the pump is determined either by (a) measuring the bare pump shaft input power<sup>8</sup> and calculating efficiency, or losses, of the motor and any continuous control<sup>9</sup> (*i.e.*, calculation-based method) or (b) measuring the input power to the driver,<sup>10</sup> or motor, and any continuous or non-continuous controls<sup>11</sup> for a given pump directly (*i.e.*, testing-based method). For both the testing-based and calculation-based approaches, the test procedure for pumps established in this final rule is based on the test methods contained in HI Standard 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing,” (“HI 40.6–2014”), with slight modifications as noted in section III.C.2.

The test procedure also prescribes the specific categories and configurations of pumps to which the calculation-based and testing-based methods are applicable. As discussed further in section III.E.2, the testing-based methods are applicable to all pumps that are subject to the test procedure, while the calculation-based methods are only applicable to (1) pumps sold with neither a motor nor controls (*i.e.*, “bare pump,” discussed later in section III.A.1.a), (2) pumps sold with motors that are subject to DOE’s energy conservation standards for electric

motors<sup>12</sup> (with or without continuous controls), and (3) pumps sold with submersible motors (with or without continuous controls).

Regardless of the metric (*i.e.*, PEI<sub>CL</sub> versus PEI<sub>VL</sub>) or test method (*i.e.*, calculation-based versus testing-based), the results for the given pump are divided by the calculated input power to the motor for a hypothetical pump that serves an identical hydraulic load and minimally complies with any energy conservation standards that DOE may set as a result of the ongoing standards rulemaking. (Docket No. EERE–2011–BT–STD–0031) This normalized metric results in a value that is indexed to the standard (*i.e.*, a value of 1.0 for a pump that is minimally compliant, and a value less than 1.0 for a pump that is less consumptive than the maximum the standard allows).

This final rule also establishes requirements regarding the sampling plan and representations for covered pumps at subpart B of part 429 of Title 10 of the Code of Federal Regulations. The sampling plan requirements are similar to those for several other types of commercial equipment and are appropriate for pumps based on the expected range of measurement uncertainty and manufacturing tolerances for this equipment. For those pumps addressed by this test procedure, DOE is also specifying the energy consumption or energy efficiency representations that may be made, in addition to the regulated metric (PEI<sub>CL</sub> or PEI<sub>VL</sub>).

Beginning on the compliance date for any energy conservation standards that DOE may set, all pumps within the scope of those energy conservation standards would be required to be tested in accordance with subpart Y of part 431 and must have their testing performed in a manner consistent with the applicable sampling requirements. Manufacturers must make all representations of pump efficiency,

overall (wire-to-water) efficiency, bowl efficiency, driver power input, pump power input (brake or shaft horsepower), and/or pump power output (hydraulic horsepower) using methods that will generate values consistent with the DOE test procedure beginning 180 days after the publication date of this final rule in the **Federal Register**. Similarly, all representations regarding PEI<sub>CL</sub>, PEI<sub>VL</sub>, PER<sub>CL</sub>, or PER<sub>VL</sub> would be required to be made based on values consistent with the adopted pump test procedure 180 days after the publication date of any final rule establishing energy conservation standards for those pumps that are addressed by the test procedure. *See* 42 U.S.C. 6314(d). DOE understands that manufacturers of pumps likely have historical test data (*e.g.*, existing pump curves) which were developed with methods consistent with the DOE test procedure being adopted in this final rule. DOE notes that it does not expect manufacturers to regenerate all of the historical test data unless the rating resulting from the historical methods, which is based on the same methodology being adopted in this final rule, would no longer be valid.

**III. Discussion**

This final rule places a new test procedure for pumps and related definitions in a new subpart Y of part 431, and adds new sampling plans and reporting requirements for this equipment in a new section 429.59 of 10 CFR part 429. Subpart Y contains definitions, materials incorporated by reference, and the test procedure for certain categories and configurations of pumps established as a result of this rulemaking, as well as any energy conservation standards for pumps resulting from the ongoing energy conservation standard rulemaking, as shown in Table III.1. (Docket No. EERE–2011–BT–STD–0031)

**TABLE III.1—SUMMARY OF RELEVANT PROVISIONS ADDRESSED IN THIS FINAL RULE, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION**

Location	Proposal	Summary of additions	Applicable preamble discussion
10 CFR 429.59* .....	Sampling Plan .....	Number of pumps to be tested to rate a pump basic model and calculation of rating.	Section III.G.

<sup>8</sup>The term “pump shaft input power” is referred to as “pump power input” in HI 40.6–2014. The term “pump shaft input power” is used synonymously with that term in this document.

<sup>9</sup>DOE notes that for non-continuous controls, as defined in section III.E.1.c, PEI<sub>VL</sub> can only be determined using a “testing-based” method. If a calculation-based method is desired, the pump would instead be rated as a pump sold with a motor

and without speed controls using the PEI<sub>CL</sub> metric. See section III.E.1.c for further discussion.

<sup>10</sup>The input power to the driver is referred to as “driver power input” in HI 40.6–2014. The term “input power to the driver” is used synonymously with that term in this document.

<sup>11</sup>In the case wherein a pump is sold with a motor equipped with either continuous or non-continuous controls and is rated using the testing-based method, the input power to the pump would

be determined as the input power to the continuous or non-continuous control. See section III.E.2.c.

<sup>12</sup>All references to “motors that are subject to the DOE’s energy conservation standards for electric motors” refer to those motors that are subject to the energy conservation standards for electric motors at 431.25(g) (as established in the May 2014 medium electric motor energy conservation standard final rule. 79 FR 30933 (May 29, 2014)). See section III.D.1 and III.E.1 for more discussion.

TABLE III.1—SUMMARY OF RELEVANT PROVISIONS ADDRESSED IN THIS FINAL RULE, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION—Continued

Location	Proposal	Summary of additions	Applicable preamble discussion
10 CFR 431.461 .....	Purpose and Scope .....	Scope of pump regulations, as well as the proposed test procedure and associated energy conservation standards.	Section III.A.
10 CFR 431.462 .....	Definitions .....	Definitions pertinent to establishing equipment classes and testing applicable classes of pumps.	Section III.A.
10 CFR 431.463 .....	Incorporation by Reference	Description of industry standards incorporated by reference in the DOE test procedure or related definitions.	Sections III.A and III.C.
10 CFR 431.464 and Appendix A to Subpart Y of Part 431.	Test Procedure .....	Instructions for determining the PEI <sub>CL</sub> or PEI <sub>VL</sub> for applicable classes of pumps.	Sections III.B, III.C, III.D, and III.E.
10 CFR 431.466 .....	Energy Conservation Standards.	Energy conservation standard for applicable classes of pumps, in terms of PEI and associated C-Value.	Section III.A and Docket EERE-2011-BT-STD-0031.

\* **Note:** DOE is also making minor modifications to 10 CFR 429.2; 429.11(a) and (b); 429.12(b)(13); 429.70; 429.72; 429.102; and 429.134 to apply the general sampling requirements established in these sections to the equipment-specific sampling requirements for pumps at 10 CFR 429.59.

The following sections discuss DOE's new provisions regarding testing and sampling requirements for pumps, including:

- (1) Scope,
- (2) rating metric,
- (3) determination of pump performance,
- (4) determination of motor efficiency,
- (5) test methods for different combinations of bare pumps, drivers and controls,
- (6) representations, and
- (7) sampling plans.

These sections also present any pertinent comments DOE received in response to the April 2015 pumps test procedure NOPR or the parallel pumps energy conservation standards rulemaking (Docket No. EERE-2011-BT-STD-0031), as well as DOE's responses to those comments and the resulting changes to the test procedure as proposed in the NOPR.

*A. Scope*

The term "pump" is listed as a type of covered equipment under EPCA; however, that term is undefined. See 42 U.S.C. 6311(1)(A). In the April 2015 pumps test procedure NOPR, consistent with recommendations from the CIP Working Group (Docket No. EERE-2013-BT-NOC-0039, No. 92, Recommendations #4 and 6-8 at pp. 2-4), DOE proposed definitions for the term pump, as covered equipment, and related components of pumps. 80 FR 17586, 17591 (April 1, 2015). In addition, DOE proposed to define which pumps would need to be tested using the test procedure established in this rulemaking by applying three criteria: (1) The equipment category; (2) the application; and (3) applicable

performance specifications—i.e., horsepower (hp), flow rate, head, design temperature, and speed restrictions. *Id.*

In response to DOE's proposed definitions and scope of the test procedure for pumps, HI commented that it detected no inconsistencies with the scope of the pump test procedure and energy conservation standard rulemakings. (HI, No. 8 at p. 4)

DOE's criteria for establishing which pumps will be subject to the test procedure, including any additional comments received by interested parties on those particular topics, are discussed in sections III.A.1 through III.A.6, respectively.

1. Definitions Related to the Scope of Covered Pumps

To help explain the scope for this rule and the manner in which both the procedure and related standards will be applied to different pump configurations and categories of pumps, the aforementioned definitions for pump, certain pump components, and other specific pump characteristics, are discussed in the following subsections.

a. Pumps and Related Components

As part of its collective efforts to help DOE craft an appropriate regulatory approach to pumps, the CIP Working Group made a series of recommendations regarding a variety of potential definitions that would define "pump," the covered equipment. In particular, the Working Group offered a definition for "pump" along with the related terms "bare pump," "mechanical equipment," "driver," and "controls." (Docket No. EERE-2013-BT-NOC-0039, No. 92, Recommendations #1 and 2 at pp. 1-2)

Accordingly, in the April 2015 pumps test procedure NOPR, DOE proposed adopting these recommended definitions with slight modification. 80 FR 17586, 17591 (April 1, 2015). Specifically, in the April 2015 pumps test procedure NOPR, DOE proposed the following terms:

- *Pump* means equipment that is designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes at least a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls.

- *Bare pump* means a pump excluding mechanical equipment, driver, and controls.

- *Mechanical equipment* means any component of a pump that transfers energy from a driver to the bare pump.

- *Driver* means the machine providing mechanical input to drive a bare pump directly or through the use of mechanical equipment. Examples include, but are not limited to, an electric motor, internal combustion engine, or gas/steam turbine.

- *Control* means any device that can be used to operate the driver. Examples include, but are not limited to, continuous or non-continuous controls, schedule-based controls, on/off switches, and float switches.

80 FR 17586, 17591-92 (April 1, 2015).

HI expressed agreement with the proposed definitions, except for the text "entrained gases" in the proposed definition for pump. HI indicated that the text "entrained gasses" should be changed to "dissolved gasses" because pumps within scope are not designed to pump entrained gas, and small amounts

of entrained gas would result in a loss of performance and efficiency. (HI, No. 8 at p. 4)

DOE understands that, whereas dissolved gases are in solution and would not appear as bubbles in the pumped liquid, entrained gases are not in solution and would appear as bubbles in the pumped liquid. In addition, DOE agrees that pumps within the scope of this rulemaking are not designed to pump entrained gas. This has been acknowledged through the definition of “clean water pump,” as described in section III.A.3 of this final rule, which specifies that the total gas content of the water must not exceed the saturation volume.<sup>13</sup> However, the definition for “pump” applies in general to all pumps, which are covered under EPCA (see 42 U.S.C. 6311(1)(A)), and is broader than the scope of this rulemaking. Changing the language in the definition of “pump” from “dissolved gasses” to “entrained gasses” would suggest that DOE’s coverage of pumps was limited. In addition, such a change would limit DOE’s coverage to a subset of the pumps intended by the Working Group and proposed in the NOPR. Therefore, DOE declines to make the requested change.

DOE did not receive comments on other aspects of the “pump” definition or on the other terms discussed in this section. As such, DOE is adopting definitions for the terms “pump,” “bare pump,” “mechanical equipment,” “driver,” and “control” as proposed in the April 2015 pumps test procedure NOPR without further changes.

#### b. Definition of Categories of Controls

The definition of “control” established in this final rule is broad. DOE acknowledges the definition may include many different kinds of electronic or mechanical devices that can “control the driver” of a pump (e.g., continuous or non-continuous controls, timers, and on/off switches). These various controls may use a variety of mechanisms to control the pump for operational reasons, which may or may not result in reduced energy consumption.

In the April 2015 pumps test procedure NOPR, DOE proposed specific test methods for pumps that are sold with motors that are paired with controls that adjust the speed of the driver, as DOE determined that these were the most common type of controls that reduced energy consumption in the field. Similarly, DOE proposed that such

pumps equipped with speed controls could apply the PEI<sub>VL</sub> metric. 80 FR 17586, 17592–93 (April 1, 2015). Additionally, DOE proposed that pumps sold with motors and controls other than speed controls<sup>14</sup> would be subject to the appropriate bare pump and motor test procedures and rated using PEI<sub>CL</sub>. *Id.*

To explicitly establish the kinds of controls that may apply the PEI<sub>VL</sub> metric under the test procedure, DOE proposed to define the terms “continuous control” and “non-continuous control” (see sections III.B and III.E for further discussion of the PEI<sub>VL</sub> rating metric and its applicability to pumps with controls, respectively):

- *Continuous control* means a control that adjusts the speed of the pump driver continuously over the driver operating speed range in response to incremental changes in the required pump flow, head, or power output.<sup>15</sup> As an example, variable speed drives (VSDs), including variable frequency drives and electronically commutated motors (ECMs), meet the definition for continuous controls.

- *Non-continuous control* means a control that adjusts the speed of a driver to one of a discrete number of non-continuous preset operating speeds, and does not respond to incremental reductions in the required pump flow, head, or power output. As an example, multi-speed motors such as two-speed motors meet the definition for non-continuous controls.

80 FR 17586, 17592–93 (April 1, 2015).

DOE requested comment on the proposed definitions of “continuous control” and “non-continuous control.” DOE also requested comment on the likelihood of a pump with continuous or non-continuous controls being distributed in commerce, but never being paired with any sensor or feedback mechanisms that would enable energy savings. In response, HI commented that it agrees with the proposed definitions for continuous control and non-continuous control, and that it does not have data on pumps with speed controls being distributed in commerce without any sensor or feedback mechanisms. (HI, No. 8 at p. 4)

During the public meeting, Regal Beloit requested a clarification related to DOE’s definitions of continuous control and non-continuous control.

Specifically, Regal Beloit requested clarification regarding whether pumps sold with multi-pole motors and “single-speed controls, which would be considered multi-speed,” would be classified as pumps sold with non-continuous controls. (Regal Beloit, NOPR public meeting transcript, No. 7 at p. 98). With respect to Regal Beloit’s use of the term “single-speed controls,” DOE believes that Regal Beloit is referring to “multi-speed” permanent split capacitor (PSC) motors, which are PSC motors that are offered with two or more discrete speed options. Depending on the specific model, speeds may be adjusted manually with a switch or automatically with a type of control logic. Similarly, multi-pole motors are induction motors that are offered with two or more discrete speed options. Again, speeds may be adjusted manually with a switch or automatically with a type of control logic.

In this final rule, DOE clarifies that, to the extent multi-pole motors and multi-speed PSC motors control the driver speed discretely (via manual switch or control logic) in response to incremental reductions in the required flow, head, or pump power output, such motors would meet the definition of non-continuous controls and would be tested in accordance with the applicable test procedure for pumps sold with motors and non-continuous controls (see section III.E). DOE also clarifies in this final rule that any control that can achieve the specified load points on the reference system curve (see section III.E.2.c) meets DOE’s definition of continuous control, as it can achieve the specific flow rate and head values specified by the reference system curve in the test procedure.

CA IOUs asked during the April 2015 NOPR public meeting whether DOE would consider differentiating between two-speed and multi-speed motors, and stated that if more discrete speeds are available there is more opportunity to match the pump and motor to the load. (CA IOUs, NOPR public meeting transcript, No. 7 at pp. 98–99) DOE believes that in this context, CA IOUs is referring to “multi-speed motors” as motors with more than two discrete speeds.

DOE believes the definition of non-continuous control adequately covers all motors with two or more discrete speeds that are sold with any control mechanism that controls the motor speed discretely (e.g., manual switch or control logic). Furthermore, the test procedure for pumps sold with motors and non-continuous controls, as proposed in the April 2015 pumps test procedure NOPR, contains provisions

<sup>13</sup> In general, entrained gasses, or gas bubbles, will only form when the total gas content of the water is above the saturation volume of the liquid. Otherwise, gases are more likely to stay dissolved in the liquid and not generate gas bubbles.

<sup>14</sup> Here and throughout this final rule, DOE uses the term “speed controls” to refer to continuous and non-continuous controls, as defined in section III.A.1.b of this document.

<sup>15</sup> HI–40.6, as incorporated by reference, defines pump power output as “the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power.”

that will typically allow motors with three or more speeds to achieve a lower (less consumptive) PEI<sub>VL</sub> rating than motors with only two speeds. This procedure is outlined in detail in section III.E.2.c. Consequently, DOE believes that motors with differing numbers of discrete speed options are already differentiated in the proposed test procedure and has determined that it is not necessary to further differentiate between two-speed and multi-speed motors.

After considering HI's agreement with the proposed definitions and the questions raised by Regal Beloit and CA IOUs, DOE is adopting, in this final rule, the definitions for continuous and non-continuous controls, as proposed in the April 2015 pumps test procedure NOPR.

### c. Definition of Basic Model

In the course of regulating consumer products and commercial and industrial equipment, DOE has developed the concept of a "basic model" to determine the specific product or equipment configuration(s) to which the regulations would apply. For the purposes of applying pumps regulations, DOE proposed to define what constitutes a basic model of pump.

In the April 2015 pumps test procedure NOPR, DOE defined a basic model in a manner similar to the definitions used for other commercial and industrial equipment, with the exception of two pump-specific issues. Specifically, DOE proposed to define basic model as it applies to pumps to include all units of a given covered equipment type (or class thereof) manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; except that:

(1) Variation in the number of stages particular radially split, multi-stage vertical in-line casing diffuser (RSV)<sup>16</sup> and vertical turbine submersible (VTS) pump units are sold with would not result in different basic models; and

(2) pump models for which the bare pump differs in impeller diameter, or impeller trim, may be considered a single basic model.

80 FR 17586, 17593 and 17641 (April 1, 2015).

The first modification to the basic model definition applies to variation in

<sup>16</sup> The acronym RSV abbreviates "radially split vertical," which is a key characteristic of the radially split, multi-stage vertical in-line casing diffuser equipment category.

the number of stages for multi-stage bare pumps,<sup>17</sup> which DOE believes will significantly reduce testing burden and is consistent with DOE's proposed test procedure provision that such pumps be tested with a specific number of stages, as discussed in section III.C.2.c. DOE did not receive any comments on the exception to the general basic model definition that different stage versions of multi-stage pumps would be treated as the same basic model and, as such, is adopting this pump-specific provision as proposed, with minor wording revisions for clarity.

The second modification to the typical basic model definition proposed in the April 2015 pumps test procedure NOPR was that a trimmed impeller, though it may impact efficiency, would not be a basis for requiring different bare pump models to be rated as unique basic models.<sup>18</sup> DOE also proposed to base the certified rating for a given pump basic model on that model's full impeller diameter—specifically, all PEI and PER representations for the members of a basic model would be based upon the full impeller model. 80 FR 17586, 17593–94 (April 1, 2015). This proposal is consistent with the Working Group recommendation that the rating of a given pump basic model should be based on testing at full impeller diameter only and that DOE not require testing at reduced impeller diameters. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #7 at p. 3)

Relevant to this proposed requirement, DOE proposed to define the term "full impeller" as it pertains to the rating of pump models in accordance with the test procedure. Specifically, DOE proposed to define full impeller as the maximum diameter impeller with which the pump is distributed in commerce in the United States or the maximum impeller diameter represented in the manufacturer's literature, whichever is larger. For pumps that may only be sold with a trimmed impeller due to a custom application, DOE proposed to define the full impeller as the maximum diameter impeller with which the pump is distributed in commerce. 80 FR 17586, 17593–94 (April 1, 2015)

Under DOE's proposed definition of "full impeller," manufacturers would also be able to represent a model with

<sup>17</sup> The implications of the resulting variation in motor selection for pumps sold with motors or motors and controls is discussed in section III.A.1.d.

<sup>18</sup> The implications of the resulting variation in motor selection for pumps sold with motors or motors and controls is discussed in section III.A.1.d.

a trimmed impeller as less consumptive than one with a full impeller. To do so, they would treat that trimmed impeller model as a different basic model and test a representative number of units at the maximum diameter distributed in commerce of that trimmed basic model listing. In such a case, the impeller trim with which the pump is rated would become the "full impeller diameter." In these cases, manufacturers could elect to (1) group individual pump units with bare pumps that vary only in impeller diameter into a single basic model or (2) establish separate basic models (with unique ratings) for any number of unique impeller trims, provided that the PEI rating associated with any individual model were based on the maximum diameter impeller for that basic model and that basic model is compliant with any energy conservation standards established as part of the parallel pumps energy conservation standards rulemaking. (Docket No. EERE–2011–BT–STD–0031; 80 FR 17586, 17593–94 (April 1, 2015)).

DOE noted that, while manufacturers would be able to group pump models with various impeller trims under one basic model with the same certified PEI rating based on the full impeller diameter, all representations of PEI and PER for any individual model would be (1) based on testing of the model with the full impeller diameter in the basic model and (2) rated using method A.1, "bare pump with default motor efficiency and default motor part load loss curve" (explained further in section III.E), regardless of the actual impeller size used with a given pump. *Id.*

At the April 2015 NOPR public meeting, interested parties representing HI<sup>19</sup> expressed concern regarding the option to consider pumps with trimmed impellers as separate basic models. Specifically, one HI representative from Patterson Pump Company noted that the premise was contrary to the Working Group's agreement that all representations for PEI would be done using full impeller diameter, not trimmed impeller diameter. Another HI representative from Xylem (Mark Handzel) stated that reporting is greatly simplified if only reported for full impeller diameter. (HI, NOPR public meeting transcript, No. 7 at pp. 29, 32). The CA IOUs responded that the Working Group had only agreed to what was going to be required for reporting on a mandatory basis, and that its

<sup>19</sup> Several interested parties identified themselves as representing HI at the April 2015 NOPR public meeting, including Bob Barbour from TACO, Inc.; HI representatives from Xylem (Mark Handzel and Raul Ruzicka), and Al Huber from Patterson Pump Company.



preference was to maintain the flexibility for manufacturers to voluntarily report the information for pumps with trimmed impellers. (CA IOUs, NOPR public meeting transcript, No. 7 at pp. 34, 36) Furthermore, in its written comments, HI agreed with the proposed definition of the term “basic model,” which allows manufacturers the option of rating pumps with trimmed impellers as a single basic model or separate basic models. (HI, No. 8 at p. 4) HI also agreed with DOE’s proposed definition of full impeller and the proposal that all pump models be rated in a full impeller configuration only. (HI, No. 8 at p. 5)

In response, DOE reaffirms that only reporting PEI at full impeller diameter will be mandatory. Given that some interested parties stated that they prefer maintaining the option of rating pumps with trimmed impellers as separate basic models, and HI did not indicate concern with this option in the written comments, DOE is maintaining the option to rate pumps with trimmed impellers as separate basic models in this final rule. Furthermore, DOE notes that in the case a manufacturer chooses to rate pumps with trimmed impellers as separate basic models, the full impeller definition is still applicable and all representations regarding the PEI and PER must be based on the “full impeller” diameter for that basic model.

Upon further review of the proposed definition for “full impeller,” DOE has determined that the language within the definition is duplicative, and therefore, potentially confusing. Specifically, in the proposed definition, DOE referred to both distribution in commerce and representations in manufacturer literature. However, DOE notes that 42 U.S.C. 4291(16) defines distribution in commerce as meaning “to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.” This definition encompasses making advertising materials such as representations in manufacturer literature. Accordingly, DOE has revised the definition for full impeller diameter as set forth in the regulatory text of this rule (10 CFR 431.62).

#### d. Basic Models of Pumps Sold With Motors or Motors and Speed Controls

In the April 2015 pumps test procedure NOPR, DOE noted that, for pumps sold with motors and pumps sold with motors and continuous or non-continuous controls, pump manufacturers may pair a given pump with several different motors that have different performance characteristics. 80

FR 17586, 17594 (April 1, 2015). Under the definition of basic model proposed in the April 2015 pumps test procedure NOPR and discussed in section III.A.1.c, each unique pump and motor pairing represents a unique basic model. However, DOE noted that, consistent with DOE’s practice with other products and equipment, pump manufacturers may elect to group similar individual pump models within the same equipment class into the same basic model to reduce testing burden, provided all representations regarding the energy use of pumps within that basic model are identical and based on the most consumptive unit. See 76 FR 12422, 12423 (March 7, 2011). In addition, consistent with DOE’s treatment of variation in the number of stages for multi-stage RSV and VTS pumps and impeller trim, in the April 2015 pump test procedure NOPR, DOE proposed that variation in motor sizing as a result of different impeller trims or different number of stages for multi-stage pumps would not serve as a basis for differentiating basic models. 80 FR 17586, 17593 (April 1, 2015)

In response, HI recommended that DOE clarify the definition of “basic model,” stating that “pump manufacturers may pair a given pump with several different motors with different performance characteristics, and can include all combinations under one basic model as long as the representations regarding the energy use is based on the most consumptive unit for each given pole speed, given clean water with a specific gravity of 1.0 . . . [A]s variation in impeller trim of the bare pump does not constitute a characteristic that would differentiate basic models, variation in motor sizing as a result of different impeller trims would also not serve as a basis for differentiating basic models.” (HI, No. 8 at p. 5)

In general, DOE agrees with HI’s interpretation. DOE agrees with HI that pump manufacturers may pair a given pump with several different motors with different performance characteristics, and can include all combinations under one basic model if the certification of energy use and all representations made by the manufacturer, are based on the most consumptive bare pump/motor combination for each basic model and are determined in accordance with the DOE test procedure and applicable sampling plans. Furthermore, because variation in impeller trim of the bare pump is not a basis for requiring models to be rated as unique basic models, DOE agrees that variation in the horsepower rating of the paired motor as a result of different impeller trims within a basic

model would also not necessarily be a basis for requiring units to be rated as unique basic models. Similarly since RSV and VTS pumps may be sold with varying numbers of stages, the horsepower rating of the paired motor may also vary correspondingly. DOE notes that this variation in motor horsepower does not necessarily constitute a characteristic that will define separate basic models.

However, variation in motor sizing (*i.e.*, horsepower rating) may also be associated with variation in motor efficiency, which is a performance characteristic; typically larger motors are more efficient than smaller motors. For this reason, in response to HI, DOE clarifies that in order to group pumps sold with motors (or motors and controls) into a single basic model (in contrast to grouping bare pumps with variations in impeller trim into a single basic model, as discussed in the previous section), each motor offered in a pump included in that basic model must have motor efficiency rated at the Federal minimum (*see* the appropriate table for NEMA Design B motors at 10 CFR 431.25)<sup>20</sup> or the same number of bands above the Federal minimum for each respective motor horsepower (*see* Table 3 of Appendix A to Subpart Y of Part 431.)<sup>21</sup> For example, the Federal minimum for a NEMA Design B 5 HP, 2-pole, enclosed motor in 10 CFR 431.25 is 88.5. A manufacturer is rating the pump and motor combination with a 90.2 percent efficient motor. In Table 3 of Appendix A to Subpart Y of Part 431, 90.2 is two bands above 88.5. Therefore, for a NEMA Design B 3 HP, 2-pole enclosed motor, in order to be considered as the same basic model, the manufacturer cannot distribute it with a motor with an efficiency less than 88.5 percent, which in Table 3 is two bands above the Federal minimum. If the manufacturer wishes to rate it with a less efficient motor, it must be rated as a separate basic model. This approach will ensure that the PEI and PER representations for the entire basic model will be representative of the performance across various impeller trims and motor horsepower. DOE has added this clarification to the definition of basic model.

DOE did not receive any other comments from interested parties regarding basic models for pumps sold

<sup>20</sup> For submersible motors, refer to the default motor efficiency values in this test procedure, shown in Table 2 of Appendix A to Subpart Y of Part 431, with further discussion in section III.D.1.b.

<sup>21</sup> *See* section III.D.1.b for further discussion of Table 3.

with motors or motors and speed controls.

## 2. Equipment Categories

In the April 2015 pumps test procedure NOPR, DOE proposed that the test procedure be applicable to the following pump equipment categories: end suction close-coupled (ESCC), end suction frame mounted (ESFM), in-line (IL), RSV, and VTS pumps. 80 FR 17586, 17594–95 (April 1, 2015). DOE also proposed that the test procedure would not be applicable to certain categories of pumps, including circulators, dedicated purpose pool pumps, axial/mixed flow pumps, and positive displacement pumps. *Id.* at 17597. These proposals were based on the recommendation of the Working Group. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #4, 5A, 5B, and 6 at p. 2) DOE also noted that, while intended to be consistent with this test procedure, the scope of any energy conservation standards proposed for pumps would be discussed as part of a separate rulemaking. *Id.*

DOE requested comment on the proposed applicability of the test procedure to the five pump equipment categories noted above, namely ESCC, ESFM, IL, RSV, and VTS pumps. HI commented that it agrees that the proposed test procedure was applicable to the five pump equipment categories noted. (HI, No. 8 at p. 5) HI also agreed that circulators and pool pumps should be handled under two separate rulemakings. (HI, No. 8 at p. 7) No other interested parties provided comments on the scope of applicability of the proposed test procedure. As the amendments DOE is making to the proposed test procedure provisions do not significantly change the test methods or approach specified in the pump test procedure, and receiving no dissenting comments, DOE adopts its proposal that the test procedure provisions established in this final rule are applicable to the same scope of pumps discussed in the April 2015 pumps test procedure NOPR. 80 FR 17586, 17591–17601 (April 1, 2015).

The specific definitions and specifications DOE proposed to establish the scope of the test procedure, and any comments DOE received on those definitions, are discussed in the subsequent sections III.A.2.a, III.A.2.b, III.A.2.c, and III.A.2.d. The final equipment category definitions DOE is adopting in this final rule are presented in section III.A.2.e.

### a. Definitions of Pump Equipment Categories

As noted, in the April 2015 pumps test procedure NOPR, DOE proposed specific definitions for the five categories of pumps (*i.e.*, ESCC, ESFM, IL, RSV, and VTS) to establish the pumps to which the proposed test procedure is applicable. 80 FR 17586, 17595–96 and 17641–42 (April 1, 2015). To assist in defining these five pump categories, DOE also proposed the following definitions for several specific characteristics of the five pumps categories for which the test procedure is applicable—namely rotodynamic pump, single-axis flow pump, and end suction pump:

- *Rotodynamic pump* means a pump in which energy is continuously imparted to the pumped fluid by means of a rotating impeller, propeller, or rotor.
- *Single axis flow pump* means a pump in which the liquid inlet of the bare pump is on the same axis as the liquid discharge of the bare pump.
- *End suction pump* means a rotodynamic pump that is single-stage and in which the liquid enters the bare pump in a direction parallel to the impeller shaft and on the end opposite the bare pump's driver-end.

*Id.*

Based on these three definitions involving general pump characteristics, DOE proposed to define the following five pump equipment categories to which the test procedure applies as follows:

- (1) *End suction frame mounted (ESFM) pump* means an end suction pump wherein:
  - (a) the bare pump has its own impeller shaft and bearings and so does not rely on the motor shaft to serve as the impeller shaft;
  - (b) the pump requires attachment to a rigid foundation to function as designed and cannot function as designed when supported only by the supply and discharge piping to which it is connected; and
  - (c) the pump does not include a basket strainer.

Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature OH0 and OH1, as described in ANSI/HI 1.1–1.2–2014.

- (2) *End suction close-coupled (ESCC) pump* means an end suction pump in which:

- (a) the motor shaft also serves as the impeller shaft for the bare pump;
- (b) the pump requires attachment to a rigid foundation to function as designed and cannot function as designed when supported only by the supply and

discharge piping to which it is connected; and

- (c) the pump does not include a basket strainer.

Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature OH7, as described in ANSI/HI 1.1–1.2–2014.

- (3) *In-line (IL) pump* means a single-stage, single axis flow, rotodynamic pump in which:

- (a) liquid is discharged through a volute in a plane perpendicular to the impeller shaft; and

- (b) the pump requires attachment to a rigid foundation to function as designed and cannot function as designed when supported only by the supply and discharge piping to which it is connected.

Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature OH3, OH4, or OH5, as described in ANSI/HI 1.1–1.2–2014.

- (4) *Radially split, multi-stage, vertical, in-line, diffuser casing (RSV) pump* means a vertically suspended, multi-stage, single axis flow, rotodynamic pump in which:

- (a) liquid is discharged in a plane perpendicular to the impeller shaft;
- (b) each stage (or bowl) consists of an impeller and diffuser; and

- (c) no external part of such a pump is designed to be submerged in the pumped liquid.

Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature VS8, as described in the ANSI/HI 2.1–2.2–2008).

- (5) *Vertical turbine submersible (VTS) pump* means a single-stage or multi-stage rotodynamic pump that is designed to be operated with the motor and stage(s) (or bowl(s)) fully submerged in the pumped liquid, and in which:

- (a) each stage of this pump consists of an impeller and diffuser and

- (b) liquid enters and exits each stage of the bare pump in a direction parallel to the impeller shaft.

Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature VS0, as described in ANSI/HI 2.1–2.2–2008.

*Id.*

In the April 2015 pumps test procedure NOPR, DOE requested comment on the proposed equipment category definitions and related terminology. Comments DOE received on these definitions and DOE's responses to those comments are discussed in the following subsections. DOE notes that comments regarding the exclusion of circulators and dedicated-purpose pool pumps, which are addressed in sections III.A.2.b and

III.A.2.c of this final rule, are also pertinent to the definitions of the ESCC, ESFM, IL, RSV, and VTS equipment categories and are also discussed in this section.

#### HI Nomenclature

DOE noted that any references to HI nomenclature in ANSI/HI 1.1–1.2–2014 or ANSI/HI 2.1–2.2–2008 were incorporated into the definitions of the aforementioned pump equipment categories as examples only and clarified that, in cases where there is a conflict between the description provided in ANSI/HI 1.1–1.2–2014 or ANSI/HI 2.1–2.2–2008, as applicable, and DOE's definitions established at 10 CFR 431.462, the language in the regulatory text would prevail. *Id.*

DOE requested comment on whether the references to ANSI/HI nomenclature are necessary as part of the equipment definitions in the regulatory text; whether such references would be likely to cause confusion due to inconsistencies; and whether discussing the ANSI/HI nomenclature in this preamble would provide sufficient reference material for manufacturers when determining the appropriate equipment category for their pump models. At the April 2015 NOPR public meeting, an HI representative from Xylem (Mark Handzel) advocated the use of ANSI/HI nomenclature without new DOE nomenclature. (HI, NOPR public meeting transcript, No. 7 at p. 63) In written comments, HI indicated that it affirms the importance of any pump rulemaking using ANSI/HI designations and nomenclature, citing common usage by U.S. pump manufacturers, distributors, engineering consulting firms, and pump users. (HI, No. 8 at p. 6) HI also commented that all references to ANSI/HI 2.1–2.2–2008 should be changed to ANSI/HI 2.1–2.2–2014 because the latter is the current version. (HI, No. 8 at p. 13) The EEAs commented that they support the proposed definitions for the pump types to which the proposed test procedures would be applicable; they also indicated that they believe this approach would both limit the risk that a manufacturer could make a small change to a pump design in order to avoid having to meet the pump efficiency standards and help to provide clarity to manufacturers. (EEAs, No. 10 at p. 1)

After reviewing the comments, DOE is maintaining its definitions for the pump equipment categories presented in the April 2015 pumps test procedure NOPR, which references the ANSI/HI nomenclature as illustrative only. DOE believes that this approach strikes the best balance between the needs of the

industry and the ability of DOE to enforce its regulations for pumps appropriately. DOE reiterates that the scope of the rulemaking is not limited to pumps meeting the ANSI/HI nomenclature referenced in the definitions and that any pump model meeting one of the DOE equipment category definitions is considered to be part of that equipment category, whether or not the pump is considered by the industry to be part of one of the referenced ANSI/HI nomenclature subgroups or a different subgroup.

Further, in preparing this final rule, DOE reviewed the ANSI/HI nomenclature to ensure that all applicable categories of pumps that would meet DOE's proposed equipment definitions were listed. Upon review, DOE noticed that the styles of pumps identified as OH2, OH3A, OH5A, and OH6 in ANSI/HI 1.1–1.2–2014 may be considered by some parties to meet ESCC, ESFM, or IL pump definitions because they share some similar characteristics with those categories of pumps. DOE wishes to clarify that the styles of pumps generally considered to be OH2, OH3A, OH5A, and OH6 are covered equipment in that they meet the definition of "pump," but are not subject to the test procedure established in this final rule, since they do not fall within the specific scope of pumps to which the test procedure is applicable. Specifically, DOE determined that OH3A and OH5A are not within the scope of this rule because they do not meet the definition of end-suction pump (*i.e.*, liquid does not enter pump in a direction parallel to the impeller shaft due to inlet adapter) and do not meet the definition of IL pump (*i.e.*, the flow inlet and outlet are on the same plane but not on the same axis). In addition, DOE believes that the majority of these OH3A and OH5A pumps are non-clogging and thus would also be excluded because they do not meet DOE's definition of clean water pump, as discussed further in section III.A.3.

Regarding OH6 pumps, DOE notes that such pumps include a high speed integral gear such that the impeller shaft will rotate faster than the driver. While these pumps meet the definition of IL pumps, they are excluded from the scope of pumps subject to this test procedure because they operate at impeller speeds greater than the nominal speed limitations discussed in section III.A.4 and III.C.2.c. In addition, the impellers and drivers of OH6 pumps rotate at different speeds and, thus, would be excluded based on DOE's revised specifications regarding the impeller and driver rotating speeds of pumps addressed by this test procedure

(see section III.A.4). Similarly, DOE notes that OH2 pumps would meet the definition of an ESFM pump, but would be excluded because such pumps are designed specifically for pumping hydrocarbon fluids, as noted by the American Petroleum Institute Standard 610 certification and, as such, are not clean water pumps. For these reasons, DOE is not referencing OH2, OH3A, OH5A, or OH6 nomenclature in the definitions of ESCC, ESFM, IL, RSV, and VTS established in this rulemaking.

Finally, DOE notes that in April 2014, HI released an updated version of ANSI/HI 2.1–2.2, ANSI/HI 2.1–2.2–2014. DOE reviewed ANSI/HI 2.1–2.2–2014 and found the documents to be substantially the same as ANSI/HI 2.1–2.2–2008, with the exception of the addition of a new definition and description for pipe length, more detailed characteristics identified on some of the figures, and slight reorganization of the sections to improve document flow. DOE notes that none of these minor changes affect the content pertinent to the references to ANSI/HI 2.1–2.2–2008 nomenclature proposed in the April 2015 pumps test procedure NOPR. As such, DOE believes that it is appropriate to reference the most up-to-date industry standard and is updating all references in the RSV and VTS equipment category definitions from ANSI/HI 2.1–2.2–2008 to ANSI/HI 2.1–2.2–2014 in this final rule.

#### Specific Styles of IL Pumps

In response to DOE's request for comment on all proposed pump definitions in general, HI commented that twin head pumps, which combine two impeller assemblies into a common single axis flow casing with a single inlet and discharge, were not included in DOE's definitions and should be added to the rulemaking scope. (HI, No. 8 at p. 3) DOE notes that such pumps are a style of IL pump and, thus subject to the test procedure and standards as an IL pump, but DOE understands that this inclusion was not explicitly laid out in the NOPR. As such, twin head pumps meet the definition of IL pumps as proposed in the April 2015 pumps test procedure NOPR. Specifically, twin head pumps are single-axis flow, rotodynamic pumps with single-stage impellers and in which liquid is discharged through a volute in a plane perpendicular to the impeller shaft. However, to clarify the applicability of the IL pump definition and DOE's pump test procedure to twin head pumps, DOE is adopting in this final rule a definition of twin head pump as set forth in the regulatory text of this rule (10 CFR 431.62).

In this final rule, DOE is also clarifying the testing and certification requirements for such pumps. For the purposes of applying the DOE test procedure to and certifying twin head pumps, DOE is clarifying that such pumps should be tested configured with a single impeller assembly, as discussed further in section III.C.2.c.

#### RSV Pump Definition

DOE also requested specific comment on whether it needed to clarify the flow direction to distinguish RSV pumps from other similar pumps when determining test procedure and standards applicability and on whether any additional language would be necessary in the proposed RSV definition in the April 2015 pumps test procedure NOPR to make the exclusion of immersible pumps clearer. HI commented that it believes the icons shown and the definition found in ANSI/HI 2.1-2.2-2014 provide sufficient clarity to the flow direction, and that it does not believe any additional language is necessary. (HI, No. 8 at pp. 6-7) DOE reviewed the figures in ANSI/HI 2.1-2.2-2014 and believes that the figure is illustrative of the general equipment characteristics for RSV pumps. The description accompanying the figure also describes the manner in which liquid enters and exits the pump. Specifically, section 2.1.3.6 of ANSI/HI 2.1-2.2-2014 states that, for RSV pumps, “fluid enters one nozzle of the in-line casing and is directed to the inlet of an internal multi-stage diffuser pump. After traveling through multiple stages, the liquid exits at the top stage of the pump where the flow is redirected via the outer sleeve to the opposing nozzle of the in-line casing.” As DOE’s definition of RSV pump references the figures and description in ANSI/HI 2.1-2.2-2014, and this description of flow path through the pump is not inconsistent or conflicting with DOE’s definition of RSV pump, DOE does not believe that further clarification is necessary in this regard.

Regarding the exclusion of immersible pumps, HI commented that it did not believe any additional clarification was necessary. (HI, No. 8 at pp. 6-7) Therefore, in this final rule, DOE has determined that the adopted language is sufficient to exclude any immersible pumps from treatment as an RSV pump for purposes of DOE’s regulations.

#### VTS Equipment Terminology

Upon review of CIP Working Group transcripts and slides, DOE also determined that interested parties had requested the equipment category

“vertical turbine submersible” be termed “submersible turbine,” given that some of these pumps are installed horizontally. (CIP Working Group transcript, No. 14 at p. 263) DOE notes that the definition proposed for vertical turbine submersible is silent as to installation orientation and, as a result, would include horizontally installed pumps. DOE believes that referring to submersible turbine pumps as “vertical turbine submersible,” when horizontally mounted submersible turbine pumps are also included in the equipment category, as defined, could lead to confusion among manufacturers and in the market place. As such, and given that changing the defined term from vertical turbine submersible to submersible turbine would not change the scope of the definition, DOE is revising the nomenclature in this final rule to match that used in the CIP Working Group, which more accurately describes the subject equipment. In the preamble to this final rule, DOE has retained the VTS abbreviation for the submersible turbine equipment category for consistency with the April 2015 pump test procedure NOPR, pumps energy conservation standards rulemaking (Docket No. EERE-2011-BT-STD-0031), and all Working Group discussions and recommendations to date (Docket No. EERE-2013-BT-NOC-0039). However, DOE is adopting the acronym “ST” for the regulatory text for long-term consistency with the defined term.

#### ESFM Equipment Terminology

Similarly, the “end suction frame mounted” category proposed in the NOPR had been referred to as “end suction frame mounted/own bearings” in the CIP Working Group documentation. (See for example, EERE-2013-BT-NOC-0039-0092 at p. 2 and EERE-2013-BT-NOC-0039-0031 at p. 4) The proposed end suction frame mounted definition would be inclusive of own bearing pumps, or any end-suction pump that “does not rely on the motor shaft to serve as the impeller shaft.” 80 FR 17586, 17641 (April 1, 2015). DOE intended the ESFM and ESCC equipment category definitions proposed in the April 2015 pumps test procedure NOPR to be mutually exclusive, whereby pumps that are close coupled to the motor and share a single impeller and motor shaft would be part of the ESCC equipment category, and all other end suction pumps that are mechanically-coupled to the motor and for which the bare pump and motor have separate shafts would be part of the ESFM equipment category.

DOE understands that there are several coupling and mounting methods for pairing a bare pump and motor, in addition to frame mounting, and that referring to the ESFM equipment category based only on that criteria may be misleading. To clarify the applicability of the previously defined end suction frame mounted equipment category to own bearing pumps, and given that changing the term itself would not change the scope of the definition, DOE is revising the nomenclature in this final rule to match that used in the CIP Working Group. Therefore, in this final rule, DOE is defining this equipment category as end-suction frame mounted/own bearing and adding to the definition the term “mechanically-coupled” to clarify that the ESFM equipment is, in fact, inclusive of many coupling methods. DOE is further adopting a specific definition for “mechanically-coupled,” as mutually exclusive with “close-coupled,” to explicitly establish the coupling methods to which the ESFM equipment category applies. The definition of mechanically-coupled consists of text that was in the proposed definition for ESFM and does not change the scope of ESFM from the proposal.

#### b. Circulators

Circulators, which are a specific kind of rotodynamic pump, are small, low-head pumps similar to the IL configuration pumps that are generally used to circulate water in hydronic space conditioning or potable water systems in buildings.

The CIP Working Group recommended that circulators be addressed as part of a separate rulemaking process that would involve informal negotiation between interested parties followed by an ASRAC-approved negotiation. (Docket No. EERE-2013-BT-NOC-0039, No. 92, Recommendation #5A at p. 2)

In the April 2015 test procedure NOPR, DOE also proposed to exclude circulators from the rulemaking, and proposed a definition that would be mutually exclusive from the other pumps in the rulemaking. Specifically, DOE proposed definitions for circulators, ESCC, ESFM, and IL pumps that were mutually exclusive, based on the assumption that circulators require only the support of the supply and discharge piping to function as designed, whereas ESCC, ESFM, and IL pumps require attachment to a rigid foundation to function as designed. In response to the proposed circulator definition, DOE received comments from several interested parties,

addressed below. However, DOE has not yet received any formal proposals or requests for negotiation from the interested parties.

The EEAs and CA IOUs expressed concern that the portion of the proposed circulator definition that describes circulators as “requir[ing] only the support of the supply and discharge piping to which it is connected to function as designed,” may lead to the design of circulators with alternative mounting intended to circumvent regulation. (EEAs, No. 10 at p. 1; CA IOUs, No. 13 at pp. 4–5) HI agreed that no pump definition should be associated with a rigid foundation, as in the industry rigid foundation has a different connotation than DOE is using. (HI, No. 8 at pp. 5–6, 10). HI also disagreed with the proposed circulator definition, commenting that there are many end suction and close-coupled IL pumps that would meet the proposed circulator definition but that are not considered circulators. Instead, HI stated its belief that such pumps should be included in the scope of pumps considered in this rulemaking. As a result, HI recommended revising the definitions of circulator, ESFM, ESCC, and IL pumps, as well as other related definitions. (HI, No. 8 at pp. 7–8) Following the close of the comment period, the HI circulator pump committee resubmitted revised definitions for circulator and IL pumps, and other related definitions. (HI, No. 15 at pp. 1–3)

DOE reviewed both sets of HI’s recommended definitions and found them to be essentially the same. Specifically, HI’s circulator pump committee offered the following revised definitions of IL pumps and circulator pumps, which were also included in HI’s comments submitted in response to the April 2015 pumps test procedure NOPR:

“In-line pump means a single-stage, single-axis flow, dry rotor, rotodynamic pump that has a shaft input power greater than or equal to one horsepower and less than or equal to two hundred horsepower at BEP and full impeller diameter, in which liquid is discharged through a volute in a plane perpendicular to the shaft, except for: Those that are short-coupled or close-coupled, have a maximum hydraulic power that is less than or equal to five horsepower at the full impeller diameter and over the full range of operation, and are distributed in commerce with a horizontal motor. Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature OH3, OH4, or OH5, as described in ANSI/HI 1.1–1.2–2014, within the specified

horsepower range. Pumps complying with ANSI/HI nomenclature CP1, CP2, and CP3, as described in ANSI/HI 1.1–1.2–2014, would not meet the definition of in-line pump.” (HI, No. 8 at pp. 5–6; HI, No. 15 at p. 1)

“Circulator pump means a single stage, in-line, rotodynamic pump that meets one of the following descriptions:

i. [Wet Rotor Circulator] A single-axis flow, close-coupled, wet rotor pump that: (1) Has a maximum hydraulic power greater than or equal to 1/40 hp and less than or equal to 5 hp at full impeller diameter and over the full range of operation, (2) is distributed in commerce with a horizontal motor, and (3) discharges the pumped liquid through a volute in a plane perpendicular to the shaft. Examples include, but are not limited to, pumps complying with ANSI/HI 1.1–1.2–2014 nomenclature CP1; or

ii. [Dry Rotor Two-Piece Circulator] A single-axis flow, close-coupled, dry rotor pump that: (1) Has a maximum hydraulic power greater than or equal to 1/40 hp and less than or equal to 5 hp at full impeller diameter and over the full range of operation, (2) is distributed in commerce with a horizontal motor, and (3) discharges the pumped liquid through a volute in a plane perpendicular to the shaft. Examples include, but are not limited to, pumps complying with ANSI/HI 1.1–1.2–2014 nomenclature CP2; or

iii. [Dry Rotor Three-Piece Circulator] A single-axis flow, short-coupled, dry rotor pump, either flexibly or rigidly coupled that: (1) Has a maximum hydraulic power greater than or equal to 1/40 hp and less than or equal to 5 hp at full impeller diameter and over the full range of operation, (2) is distributed in commerce with a horizontal motor, and (3) discharges the pumped liquid through a volute in a plane perpendicular to the shaft. Examples include, but are not limited to, pumps complying with ANSI/HI 1.1–1.2–2014 nomenclature CP3.”

(HI, No. 8 at pp. 8–9; HI, No. 15 at p. 1)

HI also recommended several supporting definitions, including definitions for single-axis flow pump, close-coupled pump, short-coupled pump, rigid-coupled pump, flexibly-coupled pump, hydraulic power, wet rotor pump, dry rotor pump, horizontal motor, and non-horizontal motor. (HI, No. 8 at pp. 9–10; HI, No. 15 at pp. 2–3)

The EEAs and CA IOUs also stated that they are collectively discussing an improved definition of circulators with

HI. (EEAs, No. 10 at p. 1; CA IOUs, No. 13 at pp. 4–5)

In light of the continued discussions among these interested parties regarding future definitions, test procedures, and energy conservation standards for circulators, DOE has decided to refrain from defining the term “circulator” in this rulemaking. Rather than explicitly define the term circulator in this rule, DOE has modified the definitions of ESFM, IL, VTS, and RSV to specifically exclude certain categories of pumps that are widely considered circulators by the industry, using many of the criteria and characteristics of circulators indicated by HI in its comments and proposed in the April 2015 pumps test procedure NOPR.

In particular, in its definition of IL pump, DOE excluded pumps that are commonly marketed and sold as circulators in the pump industry by utilizing the design features of a horizontal motor, as well as a hydraulic power less than or equal to 5 hp. This is consistent with HI’s suggested definition of IL pump as well as circulator pump, which includes reference to a horizontal motor and a horsepower range of 1/40 to 5 hydraulic hp. DOE agrees that a horizontal motor, which is a motor that is required to be oriented with the motor shaft in a horizontal position in order to operate as designed, is a distinguishing feature of a circulator. To clearly establish this characteristic, DOE is also defining the term horizontal motor in this rulemaking based on the definition HI suggested in its comments. Specifically, HI’s proposed definition and the definition DOE is adopting in this final rule are as follows:

*Horizontal motor* means a motor that requires the motor shaft to be in a horizontal position to function as designed, as specified in the manufacturer literature.

DOE notes that it is maintaining a lower shaft limit of 1 hp for the IL pump equipment category and only specifically excluding those pumps that have both: (1) A hydraulic output of less than 5 hp and (2) a horizontal motor. As such, any IL pumps that have a shaft horsepower greater than or equal to 1 hp and hydraulic output less than 5 hp and are not sold with a horizontal motor, as well as IL pumps that have a hydraulic output greater than or equal to 5 hp and shaft horsepower less than or equal to 200 hp and are sold with a horizontal or non-horizontal motor, would continue to be included in the IL pump definition and subject to the test procedure established in this final rule. DOE notes that the majority of pumps that are commonly referred to as

circulators have a shaft input power less than 1 hp. Such pumps may operate with or without horizontal motors. As such, the lower shaft power limit in the IL pump definition excludes these pumps from the scope of this rulemaking.

DOE also acknowledges that HI recommended establishing the hydraulic horsepower threshold over the full range of operation of the pump. (HI, No. 8 at pp. 5–6 and 8–9; HI, No. 15 at p. 1) However, DOE notes that the other horsepower thresholds referenced in this final rule reference pump shaft input power as measured at BEP. DOE also notes that the test procedure established in this final rule contains a specific and repeatable methodology for determining BEP of a tested pump. Conversely, in the proposed test procedure, DOE did not define the “full range of operation” of a pump or propose a method for how to determine it. Since it is important that DOE’s test procedures be as precise and unambiguous as possible, DOE believes that it is important that the hydraulic horsepower of a pump be determined in a consistent manner when determining whether or not the pump meets the definition of an IL pump and, thus, is subject to DOE’s pumps test procedure established in this final rule. Therefore, in this final rule, DOE is establishing the hydraulic horsepower threshold for circulator pumps as determined at BEP. That is, DOE will exclude from the definition of IL pump, IL pumps with a hydraulic horsepower less than 5 hp, as determined at full impeller diameter and BEP, and that are distributed in commerce with a horizontal motor, as those pumps are considered to be circulator pumps.

Consistent with the changes to the IL definition, DOE is also incorporating horsepower limits into the ESCC, ESFM, RSV, and VTS equipment category definitions. DOE notes that, in the April 2015 pumps test procedure NOPR, DOE proposed to establish the scope of the test procedure using a horsepower range of greater than or equal to 1 hp and less than 200 hp that was applicable to all ESCC, ESFM, IL, RSV, and VTS pumps. 80 FR 17586, 17600 (April 1, 2015). However, to maintain consistent format among the five defined equipment categories, DOE is including this established horsepower range in each of the equipment category definitions explicitly rather than in a separate scope limitation. DOE discusses the horsepower range and other parameters used to establish the scope of the test procedure in section III.A.4.

Additionally, DOE has added the design feature of a “dry rotor” to the

definition of an IL pump<sup>22</sup> and added a definition of dry rotor pump, as suggested by HI. This feature excludes pumps that comply with ANSI/HI nomenclature CP1, also referred to as wet rotor circulators, as described in ANSI/HI 1.1–1.2–2014. This definition is also consistent with HI’s proposed IL and circulator pump definitions. DOE notes that wet rotor pumps were proposed to be excluded from the scope of the test procedure in the April 2015 pumps test procedure NOPR under the definition of “sealless pump.” Specifically, DOE proposed a definition of sealless pump to include both: (1) A pump that transmits torque from the motor to the bare pump using a magnetic coupling and (2) a pump in which the motor shaft also serves as the impeller shaft for the bare pump and the motor rotor is immersed in the pumped fluid. 80 FR at 17641–42. HI’s proposed definition of wet rotor is identical to the second clause of DOE’s proposed sealless pump definition. As such, in this final rule, DOE defines dry rotor pump, consistent with the definition proposed by HI, and to incorporate the term dry rotor into the ESFM, ESCC, IL, RSV, and VTS equipment category definitions. Given the mutually exclusive relationship between wet and dry rotor pumps, the definitions of ESCC, ESFM, IL, RSV, and VTS pumps, as established in section III.A.2.a, now implicitly exclude wet rotor pumps from the scope of this test procedure. This implicit exclusion of wet rotor pumps alleviates the need to explicitly exclude wet rotor pumps using the definition of sealless pump as proposed in the NOPR. Further discussion of modifications to the definition of sealless pump are found in section III.A.2.b.

DOE also acknowledges the concern from interested parties regarding the potential issues associated with referencing attachment to a rigid foundation. As noted in the NOPR, DOE initially proposed such a design feature to clearly differentiate and exclude circulators from other, similar categories of pumps that would be subject to the proposed test procedure. However, DOE has, based on comments received from interested parties, revised its approach to the exclusion of circulators and, consequently, this design feature is no longer needed in the definitions of IL, ESCC, and ESFM. Instead, DOE has made other modifications to the

applicable definitions to continue to exclude circulators from the equipment categories addressed in this rulemaking, as discussed above.

In addition to the parameters necessary to exclude circulators from the scope of pumps for which the test procedure is applicable, the CA IOUs commented that certain multi-stage pumps should be included in the definition of a circulator, as proposed by DOE. CA IOUs also provided an example of a commercially available style of pump that they believe to be a multi-stage circulator. (CA IOUs, No. 13 at pp. 4–5) DOE reviewed the example style of pump provided by the CA IOUs and found that this specific style of pump is available in sizes from 0.5 to 75 motor hp, depending on impeller diameter and number of stages. DOE also concluded that specific models within this general pump family, namely those with shaft horsepower greater than or equal to 1 hp, meet the definition of an RSV pump and therefore are included in the scope of this rulemaking. Conversely, other models within the same pump family with shaft horsepower less than 1 hp do not meet the definition of an RSV pump and are not subject to the test procedure established in this rulemaking. Consequently, given that DOE has withdrawn its proposal to define circulators at this time, DOE has determined that it does not need to define or address these small RSV pumps in this rulemaking.

#### c. Pool Pumps

The CIP Working Group formally recommended that DOE initiate a separate rulemaking for dedicated-purpose pool pumps (DPPPs) by December 2014. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #5A at p. 2) In the April 2015 pumps test procedure NOPR, DOE proposed defining a “dedicated-purpose pool pump” as an end suction pump designed specifically to circulate water in a pool and that includes an integrated basket strainer. 80 FR 17586, 17641 (April 1, 2015). DOE developed this proposed definition to help distinguish a DPPP from other categories of pumps under consideration in this rulemaking (Docket No. EERE–2013–BT–TP–0055).

In response, APSP requested that DOE continue to keep pool pumps separate from the scope of pumps considered in this rulemaking (APSP, No. 12 at p.1), and the CA IOUs encouraged ASRAC to establish a new working group for DPPP. (CA IOUs, No. 13 at pp. 1–2) In July 2015, DOE issued a RFI on DPPPs requesting data and information from

<sup>22</sup> In the NOPR, DOE had excluded sealless pumps, including wet rotor pumps, from the scope of the rulemaking in addition to explicitly limiting the defined pump categories to dry rotor pumps. 80 FR 17586, 17598–99 (April 1, 2015) See section III.A.3.b.

interested parties on this equipment (July 2015 DPPP RFI). 80 FR 38032 (July 3, 2015). On August 25, 2015, DOE also published a notice of intent to establish a working group for DPPPs. 80 FR 51483. See [https://www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx/ruleid/14](https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14) for more updates and information on the DPPP rulemaking.

DOE also received several comments regarding its proposed definition. During the April 2015 NOPR public meeting, CA IOUs expressed that the defining characteristic of a pool pump may not be the strainer basket, as not all pool pumps have them. (CA IOUs, NOPR public meeting transcript, No. 7 at pp. 57–58, 68) An HI representative from Xylem (Mark Handzel) responded that commercial pool pumps without basket strainers would be considered under one of the equipment categories addressed in this rulemaking. (HI, NOPR public meeting transcript, No. 7 at pp. 58–59) An HI representative from Xylem (Paul Ruzicka) also suggested that, on the residential side, pool pumps are double insulated products. (HI, NOPR public meeting transcript, No. 7 at pp. 69–70)

In written comments, the EEAs and the CA IOUs noted that many pool pumps, including booster pumps, do not include an integrated basket strainer, and that not all pool pumps are designed specifically to circulate water (EEAs, No. 10 at p. 2; CA IOUs, No. 13 at p. 2–3). The CA IOUs noted that 40 percent of California residential in-ground pools have booster pumps that are operated 2.5 hours per day. The size is typically  $\frac{3}{4}$  nameplate horsepower with a service factor of 1.5. The CA IOUs recommended that these be considered pool pumps and excluded from this rulemaking, further noting that these manufacturers were not involved in the CIP Working Group deliberations. The CA IOUs also stated that mass market commodity pool pumps are unique because either the pump is secured directly to the motor; or the pump and motor are each factory secured to a common frame. (CA IOUs, No. 13 at pp. 2–4)

In separate written comments, APSP and the CA IOUs recommended the following definition:

“A ‘pool pump’ is a pump with the following characteristics:

- An integral end suction pump and motor combination specifically designed for pool and spa applications.
- The impeller is attached to a motor (or motor and controller) served by single-phase power five total horsepower or less.

- The pump is secured directly to the motor, or the pump and motor are factory secured to a common frame.” (APSP, No. 12 at p. 1; CA IOUs, No. 13 at p. 3–4)

DOE’s original intent in proposing a definition for DPPP in the April 2015 pumps test procedure NOPR was to properly exclude them from this rulemaking. Upon review, DOE agrees with certain of the submitted comments on the proposed definition, such as that all pumps associated with pools may not include an integrated basket strainer. For example, DOE is aware that booster pumps are not typically sold with integrated basket strainers and some filter pumps may be sold separately from the strainer, as discussed in the July 2015 DPPP RFI. 80 FR 26475, 26481 (May 8, 2015).

Therefore, after reviewing the comments submitted by interested parties, DOE has decided to refrain from adopting a definition for DPPP in this final rule. Instead, in this final rule, DOE is excluding DPPP from the definitions for ESCC and ESFM pumps, and DOE will define DPPP in the separate DPPP rulemaking that was initiated with the RFI.

#### d. Axial/Mixed Flow and Positive Displacement Pumps

“Axial/mixed flow pump” is a term used by the pump industry to describe a rotodynamic pump that is used to move large volumes of liquid at high flow rates and low heads. These pumps are typically custom-designed and used in applications such as dewatering, flood control, and storm water management.

Positive displacement (PD) pumps are a style of pump that operates by first opening an increasing volume to suction; this volume is then filled, closed, moved to discharge, and displaced. PD pumps operate at near-constant flow over their range of operational pressures and can often produce higher pressure than a centrifugal pump, at a given flow rate. PD pumps also excel at maintaining flow and efficiency for liquids more viscous than water. When used in clean water applications, PD pumps are typically chosen for high pressure, constant flow applications such as high pressure power washing, oil field water injection, and low-flow metering processes.

The CIP Working Group recommended excluding both of these types of pumps from prospective energy conservation standards. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #6 at p. 2) The primary reason for excluding these

pumps from this test procedure rulemaking is their low market share in the considered horsepower range and low potential for energy savings. (Docket No. EERE–2013–BT–NOC–0039, No. 14 at pp. 114 and 372–73) In addition, the CIP Working Group acknowledged that PD pumps are more commonly used in non-clean water applications and provide a different utility than the categories of pumps addressed in this rulemaking. (Docket No. EERE–2013–BT–NOC–0039, No. 14 at p. 114) Therefore, in the April 2015 pumps test procedure NOPR, DOE proposed to exclude these pumps from the scope of this rulemaking and the parallel energy conservation standards rulemaking, but determined that both axial/mixed flow and PD pumps were implicitly excluded based on the proposed equipment category definitions and scope parameters, so that explicit exclusions were not necessary. 80 FR 17586, 17597–98 (April 1, 2015). In the April 2015 pumps test procedure NOPR, DOE requested comment on the proposed exclusion and the assertion that such pumps were explicitly excluded based on the existing definitions and scope parameters. *Id.*

HI commented that both positive displacement and axial/mixed flow pumps should be added to the list of equipment excluded from the scope of pumps in this final rule. HI noted that PD pumps represent a small percentage of the overall pump market and are generally used for niche applications, such as viscous or shear-sensitive liquids. As a result, such pumps have a distinct difference in design compared with rotodynamic pumps. HI also suggested differentiating and excluding axial/mixed flow pumps using a specific speed limit of 4,500,<sup>23</sup> where pumps with a specific speed greater than 4,500 would be considered axial/mixed flow. (HI, No. 8 at p. 11)

In response to HI, DOE notes that the April 2015 pumps test procedure NOPR does not include PD pumps within its scope of applicability. All equipment to which the April 2015 pumps test procedure NOPR and this final rule applies is explicitly defined as types of rotodynamic pumps. Further, rotodynamic pumps are explicitly defined in the April 2015 pumps test procedure NOPR and this final rule as continuously imparting energy to the pumped fluid by means of a rotating impeller, propeller, or rotor. Such definition necessarily does not include

<sup>23</sup> Specific speed is a quasi-dimensionless quantity used to describe relative pump geometry and flow characteristics.



PD pumps, which do not continuously impart energy to the pumped fluid and do not contain an impeller, propeller, or rotor. As such, no PD pumps meet the definition of any equipment within the scope of this test procedure, as discussed in section III.A.2.a. Therefore, DOE does not believe it is necessary to explicitly exclude PD pumps, which is consistent with the comments submitted by HI.

Regarding axial/mixed flow pumps, DOE agrees with HI that axial/mixed flow pumps, which are designed to accommodate high flow-to-head-ratio applications, should not be subject to the test procedure established in this final rule. DOE notes that the definitions of IL, RSV, and VTS implicitly exclude axial/mixed flow pumps through specific design features. Specifically, the definitions of IL and RSV pumps exclude axial/mixed flow pumps by specifying single axis flow and a liquid inlet in a plane perpendicular to the impeller shaft. In contrast, the liquid intake in axial/mixed flow pumps is typically parallel to the impeller shaft; as such, these pumps do not meet the definition of an RSV or IL pump. DOE understands that less typical piping configurations could allow an axial/mixed flow pump to be built with the liquid inlet in a plane perpendicular to the impeller shaft. However, such a configuration would not satisfy the definition of single axis flow and, as such, these pumps would not meet the definition of an RSV or IL pump. Additionally, the definition of VTS pump excludes axial/mixed flow pumps by specifying that the pump must be designed to operate with the motor and stage(s) fully submerged in the pumped liquid. Axial/mixed flow pumps are not designed to be completely submerged in the pumped liquid and, therefore do not meet the definition of a VTS pump.

In summary, DOE believes that the definitions of IL, RSV, and VTS equipment categories are sufficient to exclude pumps that are referred to as axial/mixed flow. As a result, DOE maintains that a specific speed limitation or other criteria for these categories is unnecessary, and DOE has not included a specific speed range for these pumps in the parameters for establishing the scope of this rulemaking described in section III.A.4.

With respect to the end suction pumps defined in this final rule, DOE agrees that additional scope parameters are necessary to limit the scope of this rulemaking to end suction pumps and not inadvertently include axial/mixed flow pumps. DOE agrees with HI's suggestion of a specific speed limit to accomplish the exclusion of axial/mixed

flow pumps. However, DOE reviewed the specific speeds of all end suction pumps submitted by manufacturers during the energy conservation standards rulemaking and identified multiple end suction pumps with specific speeds in the range of 4,500 to 5,000.<sup>24</sup> DOE notes these data were voluntarily submitted by manufacturers who self-classified their pumps into equipment types with the understanding that the rulemaking was not intended to include axial/mixed flow pumps. DOE reviewed literature for the specific pumps end suction pumps with specific speeds in the range of 4,500 to 5,000 and found them to be marketed as end suction pumps. Furthermore, DOE notes that the performance data for these pumps were included in the energy conservation standards rulemaking analysis. Consequently, DOE finds it appropriate to explicitly include within the scope of this rule, as established in § 431.464(a)(1)(ii), all end suction pumps with specific speeds up to and including 5,000 and exclude pumps with specific speeds greater than 5,000.

#### e. Final Equipment Category Definitions

After consideration of all comments, definitions for pump equipment categories subject to this test procedure are as set forth in the regulatory text of this rule (10 CFR 431.62).

DOE received no comments on DOE's other supporting definitions proposed in the April 2015 pumps test procedure NOPR, namely rotodynamic pump, single axis flow pump, and end suction pump. Therefore, DOE is adopting those definitions as proposed.

#### 3. Scope Exclusions Based on Application

In an effort to meet the intent and recommendations of the CIP Working Group to include only those pumps intended to pump clean water in the scope of this test procedure rulemaking (Docket No. EERE-2013-BT-NOC-0039, No. 92, Recommendation #8 at pp. 3-4), DOE proposed to define "clean water pump" in the April 2015 pumps test procedure NOPR. 80 FR 17586, 17598 (April 1, 2015). DOE also proposed defining several kinds of clean water pumps that are designed for specific applications and that the CIP Working Group had indicated should be excluded from the scope of this test procedure and DOE's standards rulemaking efforts that are being considered in a separate rulemaking. (Docket No. EERE-2011-BT-STD-0031)

<sup>24</sup> All values for specific speed in this final rule pertain to calculations using U.S. customary units.

These proposed definitions, comments DOE received regarding the proposed definitions, and DOE's responses to those comments are discussed in the subsequent sections III.A.3.a and III.A.3.b.

#### a. Definition of Clean Water Pump

In the NOPR, DOE proposed defining "clean water pump" as a pump that is designed for use in pumping water with a maximum non-absorbent free solid content of 0.25 kilograms per cubic meter, and with a maximum dissolved solid content of 50 kilograms per cubic meter, provided that the total gas content of the water does not exceed the saturation volume, and disregarding any additives necessary to prevent the water from freezing at a minimum of -10 °C. DOE also noted that several common pumps would not meet the definition of clean water pumps, as they are not designed for pumping clean water, including wastewater, sump, slurry, or solids handling pumps; pumps designed for pumping hydrocarbon product fluids; chemical process pumps; and sanitary pumps. DOE also proposed to incorporate by reference the definition for "clear water" established in HI 40.6-2014 to describe the characteristics of the fluid to be used when testing pumps in accordance with the DOE test procedure. 80 FR 17586, 17598 (April 1, 2015).

DOE requested comment on the definition of "clean water pump" proposed in the April 2015 pumps test procedure NOPR and its proposal to incorporate by reference the definition of "clear water" in HI 40.6-2014 to describe the testing fluid to be used when testing pumps in accordance with the DOE test procedure. In response to these proposals, HI commented that it agrees with the definition of "clean water pump" as set forth in the NOPR, and that it agrees with incorporating by reference the definition of "clear water" in HI 40.6-2014. (HI, No. 8 at p. 11) DOE received no other comments on these terms and has determined that the definitions proposed in the NOPR are sufficient for the purposes of applying DOE's test procedure. However, for consistency, DOE is making the minor modification of translating the definition to use all U.S. customary units. As such, DOE is adopting the definition of clean water pump and incorporating by reference the definition of "clear water" in HI 40.6-2014 as proposed in the April 2015 pumps test procedure NOPR, with only the minor modification regarding units noted previously.



b. Exclusion of Specific Kinds of Clean Water Pumps

In the April 2015 pumps test procedure NOPR, DOE also proposed defining several kinds of pumps that meet the definition of clean water pumps discussed in section III.A.3.a, but that the CIP Working Group recommended be excluded from this pumps test procedure rulemaking. Specifically, in the April 2015 pump test procedure NOPR, DOE proposed that the test procedure would not apply to the following:

- Fire pumps;
- self-priming pumps;
- prime-assist pumps;
- sealless pumps;
- pumps designed to be used in a nuclear facility subject to 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities; and
- a pump meeting the design and construction requirements set forth in Military Specification MIL-P-17639F, “Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use” (as amended).

80 FR 17586, 17598–17600 (April 1, 2015).

Accordingly, DOE proposed the following definitions of fire pump, self-priming pump, prime-assist pump, and sealless pump:

- *Fire pump* means a pump that is compliant with National Fire Protection Association (NFPA) 20–2016,<sup>25</sup> “Standard for the Installation of Stationary Pumps for Fire Protection,” and either (1) American National Standards Institute (ANSI)/UL listed under ANSI/UL 448–2013, “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” or (2) FM approved under the January 2015 edition<sup>26</sup> of FM Class Number 1319,

<sup>25</sup> DOE notes that in the April 2015 pumps test procedure NOPR, DOE proposed to reference NFPA 20–2013. However, on May 26, 2015, NFPA released a revised version of NFPA 20. DOE reviewed the new NFPA 20–2016 and finds it to be consistent with NFPA 20–2013 for the purposes of defining the characteristics of a “fire pump” in the context of DOE’s regulations for pumps. DOE finds it most appropriate to reference the most up-to-date version of the NFPA Standard, as that version would be the version currently in use for specifying the necessary characteristics of fire pumps in the industry. Therefore, in this final rule, DOE is updating the definition of fire pump to reference NFPA 20–2016.

<sup>26</sup> Similar to NFPA 20–2016, DOE notes that, in January 2015, FM Global released an updated version of the FM Class Number 1319 standard. DOE reviewed the new January 2015 edition and notes that it contains only editorial changes as compared to the October 2008 edition proposed in the NOPR. DOE believes that it is most appropriate to reference the most up-to-date version of the FM standard, as that version is the version currently in use for specifying the necessary characteristics of fire pumps in the industry. Therefore, in this final

“Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type).”

- *Self-priming pump* means a pump designed to lift liquid that originates below the center line of the pump impeller. Such a pump requires initial manual priming from a dry start condition, but requires no subsequent manual re-priming.
- *Prime-assist pump* means a pump designed to lift liquid that originates below the center line of the pump impeller. Such a pump requires no manual intervention to prime or re-prime from a dry-start condition. Such a pump includes a vacuum pump or air compressor to remove air from the suction line to automatically perform the prime or re-prime function.
- *Sealless pump* means either:
  - A pump that transmits torque from the motor to the bare pump using a magnetic coupling; or
  - A pump in which the motor shaft also serves as the impeller shaft for the bare pump, and the motor rotor is immersed in the pumped fluid.

*Id.* at 17641–42.

HI commented that it agrees with the definition of “fire pump” and recommended alternate definitions for “self-priming pump,” “prime-assist pump,” and “sealless pump” as follows:

- *Self-priming pump* means a pump designed to lift liquid that originates below the centerline of the pump inlet. Further, such a pump must contain at least one internal recirculation passage and requires a manual filling of the pump casing prior to initial start-up. Such a pump must then be able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve.
- *Prime-assist pump* means a pump designed to lift liquid that originates below the centerline of the pump inlet. Such a pump requires no manual intervention to prime or re-prime from a dry-start condition without the use of a foot valve. Such a pump includes a vacuum pump or air compressor and venture/educator to remove air from the suction line to automatically perform the prime or re-prime function at any point during the pump’s operating cycle.
- *A sealless pump* means either:
  - A hermetically sealed pump that transmits torque from the motor to an inner impeller rotor via magnetic force through a containment shell;
  - Or, a type of pump that has a common shaft to link the pump and motor in a single hermetically sealed

rule, DOE is updating the definition of fire pump to reference the January 2015 edition of FM Class Number 1319.

unit. The pumped liquid is circulated through the motor but is isolated from the motor components by a stator liner. (HI, No. 55 at pp. 11–12)

DOE considered these recommendations and revised the definitions of these excluded clean water pumps in this final rule, incorporating the key components of HI’s proposals. Specifically, DOE agrees with HI’s revised definitions for prime-assist pump and self-priming pump and is adopting them in this final rule with some minor modifications for clarity. DOE finds HI’s suggested definitions to be consistent with DOE’s proposed definitions but more precise, using industry-specific language.

Regarding HI’s suggested definition of sealless pump, DOE agrees with the content of the definition. However, DOE notes that, based on the modifications to equipment category definitions described in section III.A.2.a, DOE has determined that it is no longer necessary to explicitly exclude wet rotor pumps (the second clause of HI’s sealless pump definition) from the scope of this rulemaking. Specifically, as explained in section III.A.2.a, DOE is specifying in its revised definitions that all ESCC, ESFM, IL, RSV, and VTS pumps are types of dry rotor pumps. Dry rotor pump means a pump in which the motor rotor is not immersed in the pumped fluid. Conversely, a wet rotor pump is one in which the motor rotor is immersed in the pumped liquid.

Given the mutually exclusive relationship between wet and dry rotor pumps, the definitions of ESCC, ESFM, IL, RSV, and VTS pumps, as established in section III.A.2.a, now implicitly exclude wet rotor pumps from the scope of this test procedure. As a result, DOE has simplified the sealless pump exclusion in this final rule to exclude magnet driven pumps only.

Accordingly, DOE is also modifying the term “sealless pump” to “magnet driven pump,” as DOE believes this term more accurately describes the excluded equipment. In addition, DOE is modifying the definition of magnet driven pump to be consistent with the suggestions from HI, which DOE believes is consistent with the portion of the sealless pump definition proposed in the April 2015 pumps test procedure NOPR addressing magnet driven pumps, but which uses more precise and industry-specific terminology.

HI also commented that no pumps designed to the Federal defense specification MIL-P-17639 should be included in this rulemaking. (HI, No. 8 at p. 12) HI stated that the specifications included in the CIP Working Group

term sheet also should be excluded, specifically MIL-P-17881, MIL-P-17840, MIL-P-18682, and MIL-P-18472 (commonly referred to as "MIL-SPEC"). DOE has therefore reviewed these additional specifications in determining exclusions in this final rule.

Pumps designed to these military specifications must meet very specific physical and/or operational characteristics and comply with complex and rigid reporting requirements.<sup>27</sup> These specifications require that significant amounts of design and test data be submitted to various military design review agencies to ensure that the pump can be operated and maintained in harsh naval environments. DOE believes there is sufficient justification to exclude all of the MIL-SPEC pumps identified by HI from the scope of this rulemaking without a risk of clean water pumps being marketed or sold as MIL-SPEC for actual use in other applications due to the rigorous and burdensome requirements associated with complying with those regulations. DOE notes that, as mentioned in the April 2015 pumps test procedure NOPR, when considering if a pump is designed and constructed to the requirements set forth in any of these specifications, DOE may request that a manufacturer provide DOE with copies of the original design and test data that were submitted to appropriate design review agencies, as required by each of these specifications. 80 FR 17586, 17599 (April 1, 2015).

After reviewing and considering comments, DOE is adopting in this final rule that the following specific types of clean water pumps are excluded from the scope of this test procedure final rule:

- Fire pumps;
- self-priming pumps;
- prime-assist pumps;
- magnet driven pumps;
- pumps designed to be used in a nuclear facility subject to 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities; and
- pumps meeting the design and construction requirements set forth in Military Specification MIL-P-17639F, "Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use" (as amended); MIL-P-17881D, "Pumps, Centrifugal, Boiler Feed, (Multi-Stage)" (as amended); MIL-P-17840C, "Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship

Application)" (as amended); MIL-P-18682D, "Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard" (as amended); and MIL-P-18472G, "Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant" (as amended).

Accordingly, DOE provides the revised definitions of fire pump, self-priming pump, prime-assist pump, and magnet driven pump set forth in the regulatory text of this rule (10 CFR 431.62).

#### 4. Parameters for Establishing the Scope of Pumps in This Rulemaking

In addition to limiting the types of pumps that DOE will regulate at this time through pump definitions and their applications, DOE proposed in the April 2015 pumps test procedure NOPR to further limit the scope of the pumps test procedure considered in this rulemaking by applying the following performance and design characteristics:

- 1–200 hp (shaft power at the BEP at full impeller diameter for the number of stages<sup>28</sup> required for testing to the standard);<sup>29</sup>
- 25 gallons per minute (gpm) and greater (at BEP at full impeller diameter);
- 459 feet of head maximum (at BEP at full impeller diameter);
- design temperature range from – 10 to 120 °C;
- pumps designed for nominal 3,600 or 1,800 revolutions per minute (rpm) driver speeds; and
- 6-inch or smaller bowl diameter for VTS pumps (HI VS0).

(Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #7 at p. 3); 80 FR 17586, 17600 (April 1, 2015).

Wilo commented that lower thresholds for horsepower and BEP flow rate should not be included as limiting parameters on the scope of pumps considered in the rule, citing unspecified gains in energy savings that could be realized by regulating smaller models. (Wilo, Docket No. EERE–2011–BT–STD–0031, No. 44 at pp. 1–2)<sup>30</sup> In

<sup>28</sup> The number of "stages" in a multi-stage pump refers to the number of bowl assemblies included in that pump.

<sup>29</sup> The CIP Working Group also recommended that testing be required with three stages for RSV pumps and nine stages for VTS pumps, unless a model is not available with that specific number of stages, in which case the pump would be tested with the next closest number of stages. This recommendation is discussed in more detail in section III.C.2.c.

<sup>30</sup> A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for commercial and industrial pumps (Docket No. EERE–2011–BT–STD–0031, which is

response to Wilo's suggestion that DOE apply the test procedure to pumps with flow rates below 25 gpm or shaft input power below 1 hp. DOE believes that such a recommendation is inconsistent with the scope of pumps the CIP Working Group recommended for this rulemaking. Given that such small horsepower pumps were not considered in the CIP Working Group discussions, any data or information submitted to DOE throughout those negotiations did not consider small horsepower pumps. As such, DOE is electing to maintain the lower thresholds for horsepower and BEP flow rate as proposed in the April 2015 pumps test procedure NOPR.

HI recommended in the April 2015 NOPR public meeting and written comments that DOE establish scope related to "driver and impeller" speed rather than just driver speed. HI noted that pumps do not all have 1:1 motor rotating speed to impeller-rotating speed, such as a gear pump. (HI, NOPR public meeting transcript, No. 7 at p. 85; HI, No. 8 at p. 13) HI further specified as an example that a geared pump designed to use a 2-pole motor could be in scope but could not be tested according to section I.C.1 of the test procedure. (HI, No. 8 at p. 13)

DOE notes that the list shown in the preamble of the April 2015 pump test procedure NOPR, based on the CIP Working Group recommendations, included a limitation for pumps designed for nominal driver speeds of 3,600 or 1,800 revolutions per minute (rpm) driver. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #7 at p. 3); 80 FR 17586, 17600 (April 1, 2015). However, in the regulatory text of the April 2015 pumps test procedure NOPR, DOE modified this recommendation to acknowledge that the pumps within the scope of the proposed test procedure include pumps paired with non-induction motors, which have wide range of operating speeds. Specifically, DOE proposed to limit the scope of the proposed test procedure to pumps designed to operate with either: (1) A 2- or 4-pole induction motor, or (2) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 rpm and/or 1,440 and 2,160 rpm. *Id.* at 17642. DOE proposed the speed ranges of 2,880 to 4,320 and 1,440 to 2,160 based on the nominal rotating speeds of 3,600 and 1,800 for 2- and 4-pole motors, respectively, and the allowed 20

maintained at [www.regulations.gov](http://www.regulations.gov). This particular notation refers to a comment: (1) Submitted by Wilo; (2) appearing in document number 44 of the docket; and (3) appearing on pages 1–2 of that document.

<sup>27</sup> United States General Accounting Office, Report to Congressional Committees, Acquisition Reform: DOD Begins Program To Reform Specifications and Standards, GAO/NSIAD–95–14, October 11, 1994. Washington, DC, pp. 2–3. <http://www.gao.gov/archive/1995/ns95014.pdf>.

percent tolerance on rotating speed proposed in the NOPR. *Id.* at 17609.

DOE notes that geared pumps were never explicitly addressed by the CIP Working Group; were not included in the pump data which are the basis of this final rule and the associated energy conservation standard rulemaking; and were not intended to be included in the scope of the April 2015 pumps test procedure NOPR. In addition, as mentioned in section III.A.2.a, geared pumps typically operate at impeller speeds higher than the 1,800 and 3,600 nominal rotating speeds DOE referenced in CIP Working Group discussions and the April 2015 pumps test procedure NOPR. In light of HI's comment, DOE agrees that it is worth clarifying that such pumps are not subject to or addressed by the test procedure established in this final rule. To clarify that pumps with higher impeller or lower driver rotating speeds (*i.e.*, geared pumps) are not within the scope of this rulemaking, DOE is modifying the language establishing the rotating speeds within the scope of the test procedure adopted in this final rule to note that the driver and impeller must operate at the same speed.

During the April 2015 NOPR public meeting, the CA IOUs expressed concern regarding whether it was the CIP Working Group's intention to address VTS pumps that operate at high speed. Specifically, the CA IOUs mentioned that it may not have been the intent of HI to exclude a product operating at a higher rpm and recommended that HI consider the language proposed in the April 2015 pumps test procedure NOPR to ensure they support the scope of pumps addressed by the proposed test procedure. (CA IOUs, NOPR public meeting transcript, No. 7 at pp. 86–88) However, in its written comments, HI did not recommend any changes to the parameters other than the discussion on impeller speed versus driver speed. (HI, No. 8 at p. 13)

Wilo commented that manufacturers may redesign to nominal speeds excluded from the DOE regulation. (Wilo, Docket No. EERE–2011–BT–STD–0031, No. 44 at p. 2) Wilo indicated that, for example, a pump could be designed for use with 6-pole motors at 1,200 rpm, or for use with controls at 2,650 rpm. Wilo recommended to instead apply the minimum efficiency required per equipment class (*e.g.*, C-values at 1,800 rpm) to pumps of any speed and specific speed, thereby eliminating exceptions for speed and allowing for enforcement across all motor speeds. (*Id.*)

DOE's data and analysis are based solely on pumps with nominal rotating speeds corresponding to those speed ranges proposed in the 2015 pumps test procedure NOPR. DOE notes that, during the initial data request underlying the parallel pumps test procedure and energy conservation standards rulemakings, DOE requested data on six-pole pumps from manufacturers. However, manufacturers declined to provide such on the basis that, while some pumps may be sold for use with 6-pole motors, they are all designed for use with 4- or 2-pole motors. (Docket No. EERE–2013–BT–NOC–0039, No. 46 at p. 198) As such, manufacturers posited that these pumps would already be captured in the provided data for 4- and 2-pole, and any efficiency improvements made to meet the energy conservation standards for those equipment classes would also result in energy savings when the pump was operated with a 6-pole motor. Additionally, DOE finds it unlikely that, for those pumps that can operate with 2-, 4-, or 6-pole motors, a manufacturer would begin specifying that their pump was inappropriate for operation in the nominal speed ranges of 2,880 and 4,320 rpm and/or 1,440 and 2,160 rpm to avoid regulation.

After considering these comments, DOE maintains its position set forth in the NOPR, and limits the test procedure applicability to pumps designed for the given motors or speeds. DOE notes that pumps with lower or higher operating speeds are covered as “pumps” and, should DOE deem it necessary, DOE could evaluate the need for a test procedure or standards for pumps at other rotating speeds in a future rulemaking.

In summary, DOE is establishing in this final rule the following scope parameters:

- 25 gpm and greater (at BEP at full impeller diameter);
- 459 feet of head maximum (at BEP at full impeller diameter and the number of stages specified for testing);
- design temperature range from 14 to 248 °F;
- designed to operate with either (1) a 2- or 4-pole induction motor, or (2) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 rpm and/or 1,440 and 2,160 rpm, and in either case, the driver and impeller must rotate at the same speed; and
- 6-inch or smaller bowl diameter for VTS pumps (HI VSO).

As discussed further in section III.B.2, DOE is clarifying that the limitation on pump total head of 459 feet must be

ascertained based on the pump operating at BEP, at full impeller diameter, and with the number of stages specified for testing.

Additionally, to exclude axial/mixed flow pumps, DOE is applying a seventh scope parameter for ESCC and ESFM pumps, namely:

- For ESCC and ESFM pumps, specific speed less than or equal to 5,000 when calculated using U.S. customary units in accordance with the DOE test procedure.

As discussed in section III.A.2.d, DOE is setting this limit on specific speed based on HI's suggestion and data submitted by manufacturers for end suction pumps. DOE believes that a specific speed limit for the remaining equipment categories, namely IL, RSV, and VTS, are unnecessary, as the definitions for these categories include design features that implicitly exclude axial/mixed flow pumps.

In the April 2015 pumps test procedure NOPR, DOE proposed defining bowl diameter to specify clearly and unambiguously the limiting criterion for VTS pumps (*i.e.*, bowl diameter). 80 FR 17586, 17600 (April 1, 2015). Specifically, DOE proposed defining “bowl diameter” as it applies to VTS pumps as follows:

*Bowl diameter* means the maximum dimension of an imaginary straight line passing through and in the plane of the circular shape of the intermediate bowl or chamber of the bare pump that is perpendicular to the pump shaft and that intersects the circular shape of the intermediate bowl or chamber of the bare pump at both of its ends, where the intermediate bowl or chamber is as defined in ANSI/HI 2.1–2.2–2008.

With this definition, only those VTS pumps with bowl diameters of 6 inches or less would be required to be tested under the test procedure. *Id.*

In response to DOE's request for comment on the proposed definition for “bowl diameter” as it would apply to VTS pumps, HI commented that the definition should reference the updated 2014 version of ANSI/HI 2.1–2.2–2008, and recommended that the word “outermost” should be inserted before the text “circular shape of the intermediate bowl.” (HI, No. 8 at p. 13) Based on previously submitted HI comments regarding the energy conservation standards rulemaking for pumps, DOE understands that VTS (*e.g.*, VSO) pumps are considered equivalent to a style of pump referred to as “submersible multi-stage water pump”

(MSS) in EU regulation 547.<sup>31</sup> (HI, Docket No. EERE–2011–BT–STD–0031, No. 25 at p. 3) DOE also understands that, according to EU 547, MSS pumps are designed to be operated in a borehole and have a nominal outer diameter of either 4 or 6 inches.

DOE agrees with HI that including the word “outermost” in the proposed bowl diameter definition would improve the clarity of the critical dimension and ensure the definition is aligned with how the pumps are treated in EU 547. Therefore, in this final rule, DOE is including the term outer diameter before the text “circular shape of the intermediate bowl” in the definition of “bowl diameter” proposed in the April 2015 pumps test procedure NOPR. DOE has also determined that in order to avoid confusion with the ANSI/HI 2.1–2.2–2014 term “seal chamber,” the text “or chamber” should be removed from the bowl diameter definition. The revised definition reads as set forth in the regulatory text of this rule (10 CFR 431.62).

#### 5. Drivers Other Than Electric Motors

DOE recognizes that some pumps, particularly in the agricultural sector, may be sold and operated with drivers other than electric motors (*i.e.*, non-electric drivers), such as engines, steam turbines, or generators. In the April 2015 pump test procedure NOPR, in accordance with the recommendations of the CIP Working Group (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #3 at p. 2), DOE proposed that pumps sold with non-electric drivers be rated as bare pumps only. Specifically, based on DOE’s proposed test procedure for bare pumps discussed in detail in section III.E.1.a, pumps sold with non-electric drivers would determine the PEI<sub>CL</sub> for the pump based on the calculated performance of the bare pump combined with a default motor that is minimally compliant with DOE’s energy conservation standards for electric motors<sup>32</sup> listed at 10 CFR 431.25. 80 FR 17586, 17600 (April 1, 2015). DOE noted that by requiring testing and certification in this manner, any hydraulic improvements made to the bare pump to comply with any applicable energy conservation standards that may apply to the bare

pump would also result in energy savings when the pump was used with a non-electric driver. *Id.*

DOE requested comment on its proposal to test pumps sold with non-electric drivers as bare pumps. HI commented that it agrees that pumps sold with non-electric drivers should be tested as bare pumps, as recommended by the CIP Working Group. (HI, No. 8 at p. 13) DOE received no other comments on the proposal and is adopting provisions for testing pumps paired with non-electric drivers as bare pumps in this final rule, as proposed in the April 2015 pumps test procedure NOPR.

#### 6. Pumps Sold With Single-Phase Induction Motors

In the April 2015 pumps test procedure NOPR, DOE acknowledged that some pumps within the scope of this rulemaking may be distributed in commerce with single-phase motors. However, DOE determined that the majority of pumps in the scope of this test procedure rulemaking are sold with polyphase induction motors. Moreover, DOE noted that, to the extent that pumps within the scope of the proposed test procedure are distributed in commerce with single-phase motors, most of these pumps are offered for sale with either single-phase or polyphase induction motors of similar size, depending on the power requirements of customers.

Given that single-phase induction motors are, in general, less efficient than polyphase induction motors and, thus, will result in different energy consumption characteristics when paired with the same bare pump, DOE proposed that pumps sold with single-phase induction motors be tested and rated in the bare pump configuration, using the calculation-based method (*see* section III.E.1.a for a more detailed description of this method). DOE believed that such an approach would more equitably rate pumps sold with single-phase motors and prevent pumps sold with single-phase motors from being penalized by the reduced energy efficiency of the paired single-phase motor, as compared to similarly-sized polyphase motors. 80 FR 17586, 17600–01 (April 1, 2015).

In response to DOE’s proposed method for testing pumps sold with single-phase induction motors, HI agreed that it is appropriate to apply the calculation-based test procedure to bare pumps to determine the PEI<sub>CL</sub> for such pumps. However, HI also requested the option of using single-phase motor wire-to-water test data (that is, applying the testing-based method for pumps sold with motors, discussed in section

III.E.2.b) to determine the PEI<sub>CL</sub> for such pumps. (HI, No. 8 at p. 13) Given that single-phase induction motors are, in general, less efficient than polyphase induction motors, determining the PEI<sub>CL</sub> for pumps sold with single-phase induction motors based on the testing-based method for pumps sold with motors will generally result in PEI<sub>CL</sub> ratings that are equivalent to or lower than those determined by rating the pump as a bare pump (as proposed in the April 2015 pumps test procedure NOPR). Therefore, use of the testing-based method will make it harder, rather than easier, for pumps sold with single-phase induction motors, to meet the established standards. For these reasons, DOE sees no reason why manufactures could not be allowed to employ the testing-based method for pumps sold with motors to determine the PEI<sub>CL</sub> if they chose to. As such, DOE is adopting provisions in this final rule that allow manufacturers the option of rating pumps sold with single-phase motors as bare pumps (using a calculation-based method) or as pumps with motors using the testing-based methods. DOE notes that if manufacturers choose to employ the testing-based methods for pumps sold with motors, the denominator must still be calculated based on the default motor efficiency values for polyphase NEMA Design B motor, as discussed in section III.B.2. DOE also notes that, as for all pumps subject to this test procedure final rule, manufacturers must report which test method was employed in determining the certified PEI<sub>CL</sub> rating for the given basic model in the certification report submitted to DOE. These requirements are discussed in more detail in the pumps energy conservation standards rulemaking. (Docket No. EERE–2011–BT–STD–0031)

#### B. Rating Metric: Constant and Variable Load Pump Energy Index

After significant discussion in the CIP Working Group open meeting, the Working Group recommended that DOE use a wire-to-water, power-based metric for all pumps, regardless of how they are sold. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #11 at p. 5) Specifically, the CIP Working Group recommended that DOE use the PEI metric to measure pump energy performance, which is calculated as a ratio of the PER (PER<sub>CL</sub> or PER<sub>VL</sub>) of the tested pump divided by the PER<sub>CL</sub> of a pump that would minimally comply with any DOE energy conservation standard for that pump type (PER<sub>STB</sub>). In both cases, PER represents a pump’s power consumption at a weighted average of

<sup>31</sup> Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. *Official Journal of the European Union*. L 165, 26 June 2012.

<sup>32</sup> In context, the terms “electric motor” and “motor” are used interchangeably.

three or four load points. The CIP Working Group recommended a similar metric for all pump configurations (*i.e.*, bare pumps, pumps sold with a motor, and pumps sold with a motor and continuous or non-continuous controls) to allow for better comparability and more consistent application of the rating metric for all pumps within the recommended scope. This way, the benefit of speed control, as compared to a similar pump without speed control,

can be reflected in the measurement of energy use or energy efficiency. Accordingly, in the April 2015 pumps test procedure NOPR, DOE proposed to establish a test procedure to determine the PEI<sub>CL</sub> for pumps sold without continuous or non-continuous controls and PEI<sub>VL</sub> for pumps sold with continuous or non-continuous controls. 80 FR 17586, 17601–02 (April 1, 2015). As recommended by the CIP Working Group, DOE proposed to determine the PEI<sub>CL</sub> or PEI<sub>VL</sub> as the ratio of a PER<sub>CL</sub> or PER<sub>VL</sub> scaled with respect to a

“standard pump energy rating” (PER<sub>STD</sub>) that represents the performance of a bare pump of the same equipment class that serves the same hydraulic load, has the same flow and specific speed characteristics, and is minimally compliant with DOE’s energy conservation standards. *Id.*

Specifically, for pumps sold without continuous or non-continuous controls, DOE proposed using the PEI<sub>CL</sub> metric, which would be evaluated as shown in equation (1):

$$PEI_{CL} = \frac{PER_{CL}}{PER_{STD}} \tag{1}$$

Where:  
 PER<sub>CL</sub> = the weighted average input power to the motor at load points of 75, 100, and 110 percent of BEP flow (hp) and  
 PER<sub>STD</sub> = the PER<sub>CL</sub> for a pump of the same equipment class with the same flow and

specific speed characteristics that is minimally compliant with DOE’s energy conservation standards serving the same hydraulic load (hp). A more detailed discussion of the PER<sub>STD</sub> value is provided in section III.B.2.

Similarly, for pumps sold with a motor and continuous or non-continuous controls, DOE proposed to use PEI<sub>VL</sub>, which would be evaluated as shown in equation (2):

$$PEI_{VL} = \frac{PER_{VL}}{PER_{STD}} \tag{2}$$

Where:  
 PER<sub>VL</sub> = the average input power to the motor and continuous or non-continuous controls at load points of 25, 50, 75, and 100 percent of BEP flow (hp) and  
 PER<sub>STD</sub> = the PER<sub>CL</sub> for a pump of the same equipment class with the same flow and specific speed characteristics that is minimally compliant with DOE’s energy conservation standards serving the same hydraulic load (hp).

DOE noted in the April 2015 pumps test procedure NOPR that, under the proposed approach, the performance of bare pumps or pumps paired with motors (but without continuous or non-continuous controls) would be determined for the appropriate load points along the single-speed pump curve by increasing head (*i.e.*, throttling) as flow is decreased from the maximum flow rate of the pump, while pumps

sold with continuous or non-continuous controls, by contrast, would follow a system curve and achieve the desired flow points by reducing the pump’s speed of rotation rather than controlling flow by throttling. By reducing speed, power is reduced in proportion to the cube of speed, resulting in lower power requirements for any part load flow points. As such, the PEI<sub>VL</sub> for a pump sold with continuous or non-continuous controls would be lower than the PEI<sub>CL</sub> for the same pump sold without continuous or non-continuous controls. In essence, consistent with the recommendation of the CIP Working Group, adopting the PEI<sub>CL</sub> and PEI<sub>VL</sub> metrics as proposed would illustrate the inherent performance differences that can occur when coupling a given pump with continuous or non-continuous controls. *Id.*

1. Determination of the Pump Energy Rating

As mentioned above, PER<sub>CL</sub> and PER<sub>VL</sub> represent the weighted average input power to the pump determined at three or four discrete load points for PER<sub>CL</sub> or PER<sub>VL</sub>, respectively. In order to determine the representative performance of a given pump unit, DOE must define a load profile and establish specific load points at which to test a given pump for pumps sold with speed controls and pumps sold without such speed controls (*i.e.*, pumps sold as bare pumps and pumps sold with motors). Based on DOE’s research and recommendations provided by the CIP Working Group, DOE proposed adopting two distinct load profiles to represent constant speed and variable speed pump operation, as shown in Table III.2.

TABLE III.2—LOAD PROFILES BASED ON PUMP CONFIGURATION

Pump configuration	Load profile	Load points
Pumps Sold without Continuous or Non-Continuous Controls ( <i>i.e.</i> , bare pumps and pumps sold with motors).	Constant Load Profile .....	75%, 100%, and 110% of BEP flow.
Pumps Sold with Continuous or Non-Continuous Controls .....	Variable Load Profile .....	25%, 50%, 75%, and 100% of BEP flow.

Lack of field data on load profiles and the wide variation in system operation also make it difficult to select appropriate weights for the load profiles. For these reasons, the CIP

Working Group members concluded that equal weighting would at least create a level playing field across manufacturers (see, *e.g.*, Docket No. EERE–2013–BT–NOC–0039, No. 63 at p.

125), and DOE proposed to adopt this recommendation in the April 2015 pumps test procedure NOPR. 80 FR 17586, 17604 (April 1, 2015).

In response to DOE's proposed metrics, load points, and weights, HI commented that it agrees with the  $PEI_{CL}$  and  $PEI_{VL}$  metric architecture (HI, No. 8 at p. 14), and the CA IOUs also indicated their support of DOE's proposed approach (CA IOUs, NOPR

public meeting transcript, No. 7 at p. 110). Therefore, DOE is adopting, in this final rule, a metric of  $PEI_{CL}$  for pumps sold as bare pumps or pumps sold with motors, but without continuous or non-continuous controls, as proposed in the April 2015 pumps test procedure NOPR,

where the  $PER_{CL}$  would be evaluated as the weighted average input power to the motor at load points corresponding to 75, 100, and 110 percent of BEP flow, as shown in equation (3):

$$\begin{aligned} PER_{CL} &= \sum_{i=75\%,100\%,110\%} \omega_i P_i^{in,m} \\ &= \omega_{75\%} (P_{75\%}^{in,m}) + \omega_{100\%} (P_{100\%}^{in,m}) + \omega_{110\%} (P_{110\%}^{in,m}) \\ &= 0.3333 \times (P_{75\%}^{in,m}) + 0.3333 \times (P_{100\%}^{in,m}) + 0.3333 \times (P_{110\%}^{in,m}) \quad (3) \end{aligned}$$

Where:

$\omega_i$  = weighting at load point  $i$  (equal weighting or 0.3333 in this case),  
 $P_i^{in,m}$  = measured or calculated driver power input to the motor at load point  $i$  (hp),  
 and

$i$  = load point corresponding to 75, 100, or 110 percent of BEP flow as determined in accordance with the DOE test procedure.

*Id.* at 17602.

Similarly, DOE is adopting a metric of  $PEI_{VL}$  for pumps sold with motors and continuous or non-continuous controls, where  $PER_{VL}$  is calculated as shown in equation (4):

$$\begin{aligned} PER_{VL} &= \sum_{i=25\%,50\%,75\%,100\%} \omega_i P_i^{in,c} \\ &= \omega_{25\%} (P_{25\%}^{in,c}) + \omega_{50\%} (P_{50\%}^{in,c}) + \omega_{75\%} (P_{75\%}^{in,c}) + \omega_{100\%} (P_{100\%}^{in,c}) \\ &= 0.25 \times (P_{25\%}^{in,c}) + 0.25 \times (P_{50\%}^{in,c}) + 0.25 \times (P_{75\%}^{in,c}) + 0.25 \times (P_{100\%}^{in,c}) \quad (4) \end{aligned}$$

Where:

$\omega_i$  = weighting at load point  $i$  (equal weighting or 0.25 in this case),  
 $P_i^{in,c}$  = measured or calculated driver power input to the continuous or non-continuous controls at load point  $i$  (hp),  
 and  
 $i$  = load point corresponding to 25, 50, 75, or 100 percent of BEP flow as determined in accordance with the DOE test procedure.

*Id.* at 17603.

DOE notes that, in the April 2015 pumps test procedure NOPR, DOE proposed to refer to the driver power input using the variable  $P_i^{in}$  regardless of whether it applied to pumps sold with motors, where the driver input power is measured at the input to the motor, or pumps sold with motors and continuous or non-continuous controls, where the driver power input is measured at the input to the controls. In this final rule, DOE is clarifying the

terminology by referring to driver power input to the motor as  $P_i^{in,m}$  and driver power input to the controls as  $P_i^{in,c}$ . DOE notes that HI 40.6–2014 uses the variable  $P_{gr}$  to refer to driver input power and, for the purposes of applying HI 40.6–2014 and the DOE test procedure, DOE's defined variable (*i.e.*,  $P_i^{in,m}$  and  $P_i^{in,c}$ ) should be treated as equivalent to  $P_{gr}$ .

## 2. $PER_{STD}$ : Minimally Compliant Pump

DOE proposed in the April 2015 pumps test procedure NOPR that the  $PER_{CL}$  or  $PER_{VL}$  of the pump being rated in the numerator of these equations would be scaled based on  $PER_{CL}$  of a pump that would minimally comply with the applicable standard for the same class of pump to provide a rating for each pump model that is indexed to a standardized value. DOE noted that scaling the  $PEI_{CL}$  and  $PEI_{VL}$  metrics

based on a normalizing factor would help compare values across and among various pump types and sizes. 80 FR 17586, 17604 (April 1, 2015). DOE noted that such an approach would be consistent with the CIP Working Group's recommendations (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #11 at pg. 5) and is similar to the approach suggested by Europump, a trade association of European pump manufacturers.<sup>33</sup> *Id.*

In the April 2015 pumps test procedure NOPR, DOE proposed to determine  $PER_{STD}$  as a baseline, minimally compliant pump, inclusive of a minimally compliant default motor, defined as a function of flow and specific speed. To do this, DOE proposed to use an equation to determine the efficiency of a minimally compliant pump, shown in equation (5):<sup>34</sup>

<sup>33</sup> Europump. *Extended Product Approach for Pumps: A Europump Guide*. April 8, 2013.

<sup>34</sup> This equation reflects that shown in the April 2015 NOPR public meeting (Docket No. EERE–2013–BT–TP–0055, No. 6 at p.49) and represents a

correction from that published in the April 2015 pumps test procedure NOPR. 80 FR 17586, 17604 (April 1, 2015).

$$\eta_{\text{pump,STD}} = -0.85 * \ln(Q_{100\%})^2 - 0.38 * \ln(N_s) * \ln(Q_{100\%}) - 11.48 * \ln(N_s)^2 + 17.80 * \ln(Q_{100\%}) + 179.80 * \ln(N_s) - (C + 555.6) \quad (5)$$

Where:

$Q_{100\%}$  = BEP flow rate (gpm),

$N_s$  = specific speed at 60 Hz and calculated using U.S. customary units, and

$C$  = a constant that is set for the two-dimensional surface described by equation (5), which is set based on the speed of rotation and equipment type of the pump model. The values of this constant, or "C-values," are used to establish the minimum, mandatory pump efficiency with a minimally compliant pump and will be established in the pump energy conservation standard rulemaking.

DOE developed this equation based on the equation used in the EU to develop its regulations for clean water pumps, translated to 60 Hz electrical input power and U.S. customary units.<sup>35</sup> *Id.* HI commented that it agrees with the corrected version of the equation for minimum pump efficiency equation ( $\eta_{\text{pump,STD}}$ ) presented during the public meeting, except that the 555.6 value should be changed to 555.60 and a full significant digit analysis should be conducted to ensure that two decimal places can be carried for efficiency. (HI, No. 8 at pp. 14–15) HI also indicated that because all data in the equation are supposed to be

normalized to 1,800 or 3,600 rpm,  $Q_{100\%}$  should be clarified as the flow at BEP in gallons per minute normalized to synchronous speed at 60 Hz. In response to HI's suggested clarifications to the pump efficiency equipment presented in the April 2015 pump test procedure NOPR and the slide deck presented at the NOPR public meeting (see Docket No. EERE-2013-BT-TP-0055, No. 6 at p.49), DOE is clarifying in this final rule that  $Q_{100\%}$  in the minimum pump efficiency equation ( $\eta_{\text{pump,STD}}$ ) is the BEP flow rate (gpm) measured at 60 Hz and full impeller diameter and normalized to nominal speed of rotation of the pump (1,800 or 3,600 rpm). DOE has also revised the equation for minimum pump efficiency equation ( $\eta_{\text{pump,STD}}$ ) to match the equation shared during the public meeting, as suggested by HI.

Regarding the significance of the 555.6 value in equation (5) and its impact on the number of significant digits in the resultant minimally compliant pump efficiency ( $\eta_{\text{pump,STD}}$ ) or final determination of  $PER_{CL}$  or  $PEI_{VL}$ , DOE notes that all coefficients in the listed equations in DOE's pump test procedure, including the equation for

the minimally compliant pump efficiency, should be treated as infinitely significant and should not limit the number of significant digits reported in the resultant value. As noted in the April 2015 pumps test procedure NOPR and discussed in more detail in section III.C.2.f, all calculations should be performed with raw measured values and rounded only when determining  $PER_{CL}$  or  $PER_{VL}$  and  $PEI_{CL}$  or  $PEI_{VL}$ . 80 FR 17586, 17612 (April 1, 2015) However, considering HI's comment, DOE acknowledges that testing personnel or manufacturers may inadvertently interpret equation coefficients to be reflective of a given degree of resolution, precision, or significance. Therefore, to ensure that, even if the coefficients are incorrectly treated as carrying an indication of measurement resolution or precision such rounding does not impact the significance of the reported  $PER_{CL}$  and  $PEI_{CL}$  or  $PER_{VL}$  and  $PEI_{VL}$  values, DOE is adding values (zeros in most cases) after the decimal to some of the coefficients in the minimally compliant pump efficiency equation, as shown in equation (6):

$$\eta_{\text{pump,STD}} = -0.8500 * \ln(Q_{100\%})^2 - 0.3800 * \ln(N_s) * \ln(Q_{100\%}) - 11.480 * \ln(N_s)^2 + 17.800 * \ln(Q_{100\%}) + 179.800 * \ln(N_s) - (C + 555.60) \quad (6)$$

Where:

$Q_{100\%}$  = BEP flow rate measured at full impeller diameter and normalized to the nominal speed of rotation for the tested pump (gpm),

$N_s$  = specific speed at 60 Hz and calculated using U.S. customary units, and

$C$  = a constant that is set for the two-dimensional surface described by equation (6) based on the speed of rotation and equipment type of the pump model. This constant, or "C-value," is used to establish the minimum,

mandatory pump efficiency with a minimally compliant pump and will be established in the pump energy conservation standard rulemaking.

DOE added sufficient significant digits to ensure efficiency can be reported to 4 significant digits (*i.e.*, the hundredths place for efficiencies greater than 10 percent). DOE is also adding zeros to the equations for calculating the reference system curve (described in section III.E.1.c) to similarly ensure

sufficient significance is maintained throughout DOE's test procedure calculations.

In equation (6), the specific speed ( $N_s$ ) is a quasi-non-dimensional number used to classify pumps based on their relative geometry and hydraulic characteristics. It is calculated as a function of the rotational speed, flow rate, head of the pump, and number of stages as shown in equation (7) below:

$$N_s = \frac{n_{sp} * \sqrt{Q_{100\%}}}{(H_{100\%}/S)^{0.75}} \quad (7)$$

Where:

$N_s$  = specific speed,

$n_{sp}$  = nominal speed of rotation (rpm),

<sup>35</sup> The equation to define the minimally compliant pump in the EU is of the same form, but employs different coefficients to reflect the fact that the flow will be reported in m<sup>3</sup>/h at 50 Hz and the

specific speed will also be reported in metric units. Specific speed is a dimensionless quantity, but has a different magnitude when calculated using metric versus U.S. customary units. DOE notes that an

exact translation from metric to U.S. customary units is not possible due to the logarithmic relationship of the terms.

$Q_{100\%}$  = BEP flow rate at full impeller and nominal speed (gpm),  
 $H_{100\%}$  = pump total head at BEP flow at full impeller and nominal speed (ft), and  
 $S$  = number of stages.

DOE notes that, in the April 2015 pumps test procedure NOPR, the definition of specific speed did not indicate that the  $H_{100\%}$  term should be normalized by the number of stages. 80 FR 17586, 17604 (April 1, 2015). However, doing so is consistent with the theoretical calculation of specific speed for multi-stage pumps used in the pump industry,<sup>36</sup> as well as the CIP Working Group discussions and analysis<sup>37</sup> and treatment in the EU 547 regulations.<sup>38</sup> DOE also noted this in the second footnote to Table 1.2 in the Framework document. (Docket No. EERE-2011-BT-

STD-0031, No. 13 at p. 7) To clarify that, for multi-stage RSV and VTS pumps the specific speed should be calculated for a single stage only, DOE is modifying equation (7) to clearly specify that the head at BEP should be divided by the number of stages with which the pump is being tested. Further, DOE also proposed using the capital letter “N” to define nominal speed of rotation. DOE notes that HI 40.6-2014 defines the “specified speed of rotation” using the nomenclature “ $n_{sp}$ .” While DOE believes that the phrase “nominal speed of rotation” is clearer and more consistent with DOE’s regulatory approach, DOE believes referencing the same nomenclature as HI 40.6-2014 will reduce confusion

when conducting the pumps test procedure. As such, in this final rule, DOE is updating the variable used for nominal speed of rotation to be consistent with HI 40.6-2014.

As proposed in the April 2015 pumps test procedure NOPR, the calculated efficiency of the minimally compliant pump reflects the pump efficiency at BEP. To calculate  $PER_{STD}$  as the weighted average input power to a minimally compliant bare pump at the same load points as  $PER_{CL}$ , DOE determined a method to translate the default efficiency of a minimally compliant pump at BEP to the load points corresponding to 75 and 110 percent of BEP flow, as shown in equation (8):

$$PER_{STD} = \sum_{i=75\%,100\%,110\%} \omega_i \left( \frac{P_{u,i}}{\alpha_i \times \left[ \eta_{pump,STD} / 100 \right]} + L_i \right)$$

$$= \omega_{75\%} \left( \frac{P_{u,75\%}}{0.947 \times \left[ \eta_{pump,STD} / 100 \right]} + L_{75\%} \right) + \omega_{100\%} \left( \frac{P_{u,100\%}}{1.000 \times \left[ \eta_{pump,STD} / 100 \right]} + L_{100\%} \right)$$

$$+ \omega_{110\%} \left( \frac{P_{u,110\%}}{0.985 \times \left[ \eta_{pump,STD} / 100 \right]} + L_{110\%} \right) \quad (8)$$

Where:

$\omega_i$  = weighting at load point  $i$  (equal weighting or 0.3333 in this case);  
 $P_{u,i}$  = the measured hydraulic output power at load point  $i$  of the tested pump (hp);<sup>39</sup>  
 $\alpha_i$  = 0.947 for 75 percent of the BEP flow rate, 1.000 for 100 percent of the BEP flow rate, and 0.985 for 110 percent of the BEP flow rate;  
 $\eta_{pump,STD}$  = the minimally compliant pump efficiency, as determined in accordance with equation (6);  
 $L_i$  = the motor losses at load point  $i$ , as determined in accordance with the procedure specified for bare pumps in sections III.D.1 and III.D.2; and  
 $i$  = load point corresponding to 75, 100, or 110 percent of BEP flow, as determined

in accordance with the DOE test procedure.

80 FR 17586, 17605 (April 1, 2015).

DOE also proposed in the April 2015 pumps test procedure NOPR that the quotient of the hydraulic output power divided by the minimally compliant pump efficiency for the rated pump would be used to determine the input power to a minimally compliant pump at each load point, and that the pump hydraulic output power for the minimally compliant pump would be the same as that for the particular pump being evaluated. Specifically, DOE proposed that the hydraulic power in equation (8) at 75, 100, and 110 percent

of BEP flow would be calculated using the following equation (9):

$$P_{u,i} = \frac{Q_i \times H_i \times SG}{3956} \quad (9)$$

Where:

$P_{u,i}$  = the measured hydraulic output power at load point  $i$  of the tested pump (hp);  
 $Q_i$  = the measured flow rate at load point  $i$  of the tested pump (gpm);  
 $H_i$  = pump total head at load point  $i$  of the tested pump (ft);  
 $i$  = load point corresponding to 75, 100, or 110 percent of BEP flow, as determined in accordance with the DOE test procedure; and  
 $SG$  = the specific gravity of water at specified test conditions.<sup>40</sup>

<sup>36</sup> Wilson, S. *Specific Speed*. Grundfos White Paper. Available at: <http://www.grundfos.com/content/dam/CBS/global/whitepapers/Specific-Speed.pdf>.

<sup>37</sup> DOE’s PEI Calculator that was used to support Working Group negotiations and analysis divided the pump total head at 100 percent of BEP flow by the number of stages for multi-stage pumps (See, for example, Docket No. EERE-2013-BT-NOC-0039, No. 95).

<sup>38</sup> Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25

June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. *Official Journal of the European Union*. L 165, 26 June 2012.

<sup>39</sup> In the April 2015 pumps test procedure NOPR, DOE proposed to define pump hydraulic output power using the variable nomenclature  $P_{Hydro}$ . However, HI 40.6-2014 uses the nomenclature  $P_u$  to refer to pump hydraulic output power. Therefore, for consistency, DOE is adopting the nomenclature  $P_u$  for hydraulic output power in this final rule.

<sup>40</sup> DOE notes that the specific gravity of the test liquid specified in the DOE test procedure, which is clear water as defined by section 40.6.5.5 of HI 40.6-2014, requires that the liquid be between 50–86 °F, with a maximum kinematic viscosity of  $1.6 \times 10^{-5}$  ft<sup>2</sup>/s and a maximum density of 62.4 lb/ft<sup>3</sup>. Based on these parameters, the specific gravity of the test liquid will be between 1.000 and 0.995 and, therefore, can be treated as unity when testing in accordance with the DOE test procedure.



Id.

As indicated in equation (8), the calculated shaft input power for the minimally compliant pump at each load point is then combined with a minimally compliant motor for that default motor type and appropriate size, as described in section III.D.1, and the default part load loss curve, as described in section III.D.2, to determine the input power to the motor at each load point. *Id.*

As noted previously, HI and CA IOUs expressed their support of DOE's proposed approach. (HI, No. 8 at p. 7; CA IOUs, NOPR public meeting transcript, No. 7 at p. 110) HI also pointed out in its written comments that  $\eta_{\text{pump,STD}}$  incorrectly appeared twice in

the middle term in the denominator in equation (10) of the April 2015 pumps test procedure NOPR. (HI, No. 8 at p. 15) DOE acknowledges the correction and has implemented the equation correctly in this final rule document. Having received no other comments, DOE is adopting the calculation procedure for  $\text{PER}_{\text{STD}}$  as proposed in the April 2015 pumps test procedure NOPR, with the minor clarifications regarding the number of digits reported for certain equation coefficients and calculation of specific speed for multi-stage pumps as noted above and correcting the erroneous terms that occurred in the April 2015 pump test procedure NOPR.

Regarding the calculation of pump hydraulic output power presented in

equation (9), DOE notes that the equation presented in the April 2015 pumps test procedure NOPR specifies a denominator of 3956. 80 FR 17586, 17605 (April 1, 2015). DOE notes that this value represents the unit conversion from the product of flow (Q) in gpm, head in ft, and specific gravity (which is dimensionless), to horsepower. Conversely, DOE observes that HI 40.6–2014 specifies a value of 3960 in section 40.6.6.2 in regards to calculating pump efficiency. HI 40.6–2014 does not specify a specific unit conversion factor for the purposes of calculating pump hydraulic output power. Instead HI 40.6–2014 provides the following equation (10) for determining pump power output:

$$P_u = \rho \times Q \times H \times g \quad (10)$$

Where:

$P_u$  = the measured hydraulic output power of the tested pump,<sup>41</sup>

$\rho$  = density,

$Q$  = the volume rate of flow,

$H$  = pump total head, and

$g$  = acceleration due to gravity.

As shown in equation (10), the unit conversion factor can be derived from the product of density and acceleration due to gravity. An analysis was performed to convert from the metric units for density and acceleration due to gravity specified in HI 40.6–2014 to the appropriate units. This analysis found the value of 3956 to be more accurate and have a greater amount of precision than the 3960 value specified in HI 40.6–2014. DOE notes that, in its submitted comments, HI suggested a definition for hydraulic power as “the mechanical power transferred to the liquid as it passes through the pump, also known as pump output power. (Refer to HI 40.6–2014)” and provided the following equation (11):

$$P_u = \frac{Q \times H \times SG}{3960} \quad (11)$$

Where:

$P_u$  = measured hydraulic output power (hp),

$Q$  = measured flow rate (gpm),

$H$  = measured pump total head (ft), and

$SG$  = the specific gravity of the test fluid.

(HI, No. 8 at p. 10; HI, No. 15 at p. 3)

However, as noted above, DOE believes a unit conversion of 3956 is more accurate. Therefore, to ensure consistent calculations and results in the DOE test procedure, in this final rule

DOE is maintaining a unit conversion factor of 3956 instead of the 3960 value specified in HI 40.6–2014 and clarifying that the 3960 calculation in section 40.6.6.2 of HI 40.6–2014 should not be used. The calculation and rounding requirements for the pumps test procedure are described further in section III.C.2.f.

### C. Determination of Pump Performance

To determine  $\text{PEI}_{\text{CL}}$  or  $\text{PEI}_{\text{VL}}$  for applicable pumps, DOE proposed that the test procedure would require physically measuring the performance of either: (1) The bare pump, under the calculation-based methods (see section III.E.1), or (2) the entire pump, inclusive of any motor, continuous control, or non-continuous control, under the testing-based methods (see section III.E.2). Specifically, the input power to the pump at 75, 100, and 110 percent of BEP flow for  $\text{PEI}_{\text{CL}}$ , or at 25, 50, 75, and 100 percent of BEP flow for  $\text{PEI}_{\text{VL}}$ , would be required for input into the  $\text{PEI}_{\text{CL}}$  or  $\text{PEI}_{\text{VL}}$  equations, respectively. DOE proposed that, depending on whether the calculation-based method or testing-based method were applied, a slightly different test method would apply for measuring pump performance. In the case of the calculation-based method, only the bare pump performance is physically measured—the performance of the motor and any continuous or non-continuous controls would be addressed through a series of calculations. In the case of the testing-based method, the input power to the pump at the motor or at the continuous or non-continuous control, if any, is directly measured and used to calculate

$\text{PEI}_{\text{CL}}$  or  $\text{PEI}_{\text{VL}}$ . 80 FR 17586, 17606–07 (April 1, 2015).

#### 1. Incorporation by Reference of HI 40.6–2014

Regarding the determination of bare pump performance, the CIP Working Group recommended that whatever procedure DOE adopts, it should be consistent with HI 40.6–2014 for determining bare pump performance. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #10 at pg. 4) In preparation of the April 2015 pump test procedure NOPR, DOE reviewed HI 40.6–2014 and determined that it contains the relevant test methods needed to accurately characterize the performance of the pumps that would be addressed by this rulemaking, with a few minor modifications noted in section III.C.2. Specifically, HI 40.6–2014 defines and explains how to calculate pump power input,<sup>42</sup> driver power input (for testing-based methods),<sup>43</sup> pump power output,<sup>44</sup>

<sup>42</sup> The term “pump power input” in HI 40.6–2014 is defined as “the power transmitted to the pump by its driver” and is synonymous with the term “pump shaft input power,” as used in this document.

<sup>43</sup> The term “driver power input” in HI 40.6–2014 is defined as “the power absorbed by the pump driver” and is synonymous with the term “pump input power to the driver,” as used in this document.

<sup>44</sup> The term “pump power output” in HI–40.6 is defined as “the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power.” It is used synonymously with “pump hydraulic power” in this document.

<sup>41</sup> For each of the quantities listed, HI 40.6–2014 provides multiple metric and U.S. customary units. Appendix E also provides unit conversions.

pump efficiency,<sup>45</sup> bowl efficiency,<sup>46</sup> overall efficiency,<sup>47</sup> and other relevant quantities at the specified load points necessary to determine PEI<sub>CL</sub> and PEI<sub>VL</sub>. HI 40.6–2014 also contains appropriate specifications regarding the scope of pumps covered by the test methods, test methodology, standard rating conditions, equipment specifications, uncertainty calculations, and tolerances.

Accordingly, in the April 2015 pumps test procedure NOPR, DOE proposed to incorporate by reference HI 40.6–2014 as part of DOE's test procedure for measuring the energy consumption of pumps, with the minor modifications and exceptions listed in III.C.2.a through III.C.2.f of the NOPR document and discussed in more detail in section III.C.2 of this final rule. 80 FR 17586, 17607–12 (April 1, 2015).

HI commented that it agrees with using HI 40.6–2014 as the basis of DOE test procedure for pumps. (HI, No. 8 at p. 15) DOE received no other comments on this proposal in the April 2015 pumps test procedure NOPR and, therefore, is incorporating by reference HI 40.6–2014 as the basis for the DOE pumps test procedure, with the minor modifications and exceptions listed in section III.C.2 of this final rule.

## 2. Minor Modifications and Additions to HI 40.6–2014

In general, DOE finds the test methods contained within HI 40.6–2014 are sufficiently specific and reasonably designed to produce test results that accurately measure the energy efficiency and energy use of applicable pumps. However, as proposed in the April 2015 pumps test procedure NOPR, DOE believes a few minor modifications are necessary to ensure repeatable and reproducible test results and to provide measurement methods and equipment specifications for the entire scope of pumps that DOE is addressing as part of this final rule. DOE's proposed modifications and clarifications to HI 40.6–2014, comments received on those topics, DOE's responses to those comments, and any changes to the April 2015 pumps test procedure NOPR proposals that DOE is making as a result are addressed in the subsequent sections III.C.2.a through III.C.2.f.

<sup>45</sup> The term "pump efficiency" is defined in HI 40.6–2014 as a ratio of pump power output to pump power input.

<sup>46</sup> The term "bowl efficiency" is defined in HI 40.6–2014 as a ratio of pump power output to bowl assembly power input and is applicable only to VTS and RSV pumps.

<sup>47</sup> The term "overall efficiency" is defined in HI 40.6–2014 as a ratio of pump power output to driver power input and describes the combined efficiency of a pump and driver.

## a. Sections Excluded From DOE's Incorporation by Reference

While DOE is referencing HI 40.6–2014 as the basis for its test procedure, in the April 2015 pumps test procedure NOPR, DOE noted that some sections of the standard are not applicable to DOE's regulatory framework. Specifically, DOE noted that section 40.6.5.3 provides requirements regarding the generation of a test report and appendix "B" provides guidance on test report formatting, both of which are not required for testing and rating pumps in accordance with DOE's procedure. In addition, DOE noted that section A.7 of appendix A, "Testing at temperatures exceeding 30 °C (86 °F)," HI 40.6–2014 addresses testing at temperatures above 30 °C (86 °F), which is inconsistent with DOE's proposal to only test with liquids meeting the definition of "clear water" established in section 40.6.5.5 of HI 40.6–2014. As such, DOE proposed not incorporating by reference section 40.6.5.3, section A.7, and appendix B of HI 40.6–2014. 80 FR 17586, 17608 (April 1, 2015).

HI commented that it agrees with the proposal to not incorporate by reference section 40.6.5.3, section A.7, and appendix B of HI 40.6–2014 as part of the DOE test procedure. (HI, No. 8 at 15) DOE received no other comments on this proposal in the April 2015 pumps test procedure NOPR and, as such, is adopting the proposal in the April 2015 pumps test procedure NOPR to incorporate by reference HI 40.6–2014 except for section 40.6.5.3, section A.7, and appendix B in this final rule.

In reviewing the relevant sections of HI 40.6–2014, DOE also noted that section 40.6.4.1, "Vertically suspended pumps," which contains specific testing instructions for vertically suspended VS1 and VS3 pumps, mentions VS0 pumps. Specifically, section 40.6.4.1 states "A variation to this is pump type VS0 . . . [a] VS0 [pump] is evaluated as a pump end only similar to the bowl performance and efficiency described for the line-shafted product." DOE notes that this language in HI 40.6–2014 is intended to exclude VS0 pumps from the specifications in section 40.6.4.1 and specify that testing for VS0, as a type of vertical turbine pump, must consider only bowl assembly total head and, for VTS bare pumps, only the bowl assembly power input, as defined in section 40.6.2 of HI 40.6–2014. However, DOE believes that the language of section 40.6.4.1 is somewhat confusing and may lead to misinterpretation by some not familiar with all the varieties of vertical turbine and vertically suspended pumps and their specific testing considerations.

Therefore, in this final rule, DOE is clarifying that the specifications of section 40.6.4.1 of HI 40.6–2014 do not apply to VTS pumps and that the performance of VTS bare pumps considers the bowl performance only. For VTS pumps sold with motors evaluated using the testing-based approaches discussed in section III.E.2, the bowl assembly total head and driver power input are to be used to determine the pump performance.

## b. Data Collection and Determination of Stabilization

In order to ensure the repeatability of test data and results, the DOE pump test procedure must provide instructions regarding how to sample and collect data at each load point such that the collected data are taken at stabilized conditions that accurately and precisely represent the performance of the pump at that load point. Section 40.6.5.5.1 of HI 40.6–2014 provides that all measurements shall be made under steady state conditions, which are described as follows: (1) No vortexing, (2) margins as specified in ANSI/HI 9.6.1 Rotodynamic Pumps Guideline for NPSH Margin, and (3) when the mean value of all measured quantities required for the test data point remains constant within the permissible amplitudes of fluctuations defined in Table 40.6.3.2.2 over a minimum period of 10 seconds before performance data are collected. HI 40.6–2014 does not specify the measurement interval for determination of steady state operation. However, DOE understands that a minimum of two stabilization measurements are required to calculate an average. DOE proposed in the April 2015 pumps test procedure NOPR that the stabilization measurement interval should not be greater than 5 seconds, thereby allowing for no fewer than two separate measurements that each have an integration time of no more than 5 seconds. 80 FR 17586, 17606 (April 1, 2015).

Section 40.6.3.2.2 of HI 40.6–2014, "Permissible fluctuations," also provides that permissible damping devices may be used to minimize noise and large fluctuations in the data in order to achieve the specifications noted in Table 40.6.3.2.2. In the April 2015 pumps test procedure NOPR, DOE proposed to specify that damping devices would only be permitted to integrate up to the measurement interval to ensure that each stabilization data point is reflective of a separate measurement. 80 FR 17586, 17606 (April 1, 2015).

DOE requested comment on its proposal to require that data be

collected at least every 5 seconds for all measured quantities. HI commented that collecting stabilization data every 5 seconds is not standard industry practice, and that this practice would require manufacturers to obtain automated data acquisition systems, posing additional and unnecessary burden not agreed to by the CIP Working Group. (HI, No. 8 at pp. 15–16) HI recommended that steady-state operation be verified by recording flow at the beginning and end of the data acquisition and checking that the difference in flow is within the allowable fluctuation identified in HI 40.6–2014 (Table 40.6.3.2.2). HI also stated that the two flow readings should be separated by a minimum of 5 seconds.

DOE also requested comment on its proposal to allow damping devices, as described in section 40.6.3.2.2, but with integration limited to the data collection interval and HI commented that it agrees with this proposal except with respect to the interval used for data collection. (HI, No. 8 at p. 16)

After reviewing HI’s comments and considering the proposal in the April 2015 pump test procedure NOPR, DOE maintains that at least two unique measurements, at a minimum, are necessary to determine stabilization prior to recording a measurement at a given load point. DOE also agrees with HI that it is appropriate to continue to reference the requirements for permissible fluctuations and minimum duration of stabilization testing, as detailed in HI 40.6–2014 sections 40.6.3.2.2 and 40.6.5.5.1. However, in light of HI’s concern regarding automated data collection requirements if the interval of data collection is specified as 5 seconds, DOE has determined that a threshold for the data

collection interval does not need to be specified to determine steady state operation provided the other requirements for stabilization are satisfied. That is, provided that at least two unique measurements are recorded, their mean computed, and that the two unique measurements are not farther away from the mean than the tolerance specified in the “permissible amplitude of fluctuation” table (Table 40.6.3.2.2) in HI 40.6–2014, the pump can be determined to be stabilized and data recorded for the purposes of conducting the DOE test procedure. DOE notes that section 40.6.5.5.1 requires that steady state be determined for a minimum of 10 seconds, but that a longer time can be used if necessary, in which case the two unique measurements could be recorded more than 5 seconds apart. For example, if a facility were not equipped with a data acquisition system, stabilization could be determined over 1 minute and data taken every 30 seconds to determine stabilized operation at each flow point.

Regarding the use of damping devices, DOE is maintaining the requirements that the integration time for each measurement cannot be greater than the measurement interval. This is necessary to ensure that the measurements used to determine stabilization are, in fact, unique. Therefore, in this test procedure final rule, DOE is adopting stabilization requirements consistent with HI section 40.6.3.2.2 and section 40.6.5.5.1, except that at least two unique measurements must be used to determine stabilization and any damping devices are only permitted to integrate up to the data collection interval. DOE notes that, for physical dampening devices, the pressure indicator/signal must register 99 percent of a sudden change in pressure over the measurement interval

to satisfy the requirement for unique measurements, consistent with annex D of ISO 3966:2008(E), “Measurement of fluid flow in closed conduits—Velocity area method using Pitot static tubes,” which is referenced in HI 40.6–2014 for measuring flow with pitot tubes.

c. Modifications Regarding Test Consistency and Repeatability

Sections 40.6.5.6 and 40.6.5.7 of HI 40.6–2014 specify test arrangements and test conditions. However, DOE finds that the standardized test conditions described in these sections are not sufficient to produce accurate and repeatable test results. To address these potential sources of variability or ambiguity, in the April 2015 pumps test procedure NOPR, DOE proposed to adopt several additional requirements regarding the nominal pump speed, the input power characteristics, and the number of stages to test for multi-stage pumps to further specify the procedures for testing pumps in a standardized and repeatable manner. 80 FR 17586, 17608 (April 1, 2015).

Pump Speed

The rotating speed of a pump affects the efficiency and PEI<sub>CL</sub> or PEI<sub>VL</sub> of that pump. To limit variability and increase repeatability within the test procedure, DOE proposed in the April 2015 pumps test procedure NOPR to require all test data to be normalized to one of two nominal speeds—1,800 or 3,600 rpm at 60 Hz. Specifically, pumps designed to operate at any speed of rotation between 2,880 and 4,320 rpm would be rated at 3,600 rpm, and pumps designed to operate at any speed of rotation between 1,440 and 2,160 rpm would be rated at 1,800 rpm, as noted in Table III.3. 80 FR 17586, 17609 (April 1, 2015).

TABLE III.3—NOMINAL SPEED OF ROTATION FOR DIFFERENT CONFIGURATIONS OF PUMPS

Pump configuration	Pump design speed of rotation	Style of motor	Nominal speed of rotation for rating
Bare Pump .....	2,880 and 4,320 rpm .....	N/A .....	3,600 rpm. 1,800 rpm.
	1,440 and 2,160 rpm .....		
Pump + Motor OR .....	N/A .....	2-pole Induction Motor .....	3,600 rpm.
	N/A .....	4-pole Induction Motor .....	1,800 rpm.
Pump + Motor + Control .....	N/A .....	Non-Induction Motor Designed to Operate between 2,880 and 4,320 rpm.	3,600 rpm.
		Non-Induction Motor Designed to Operate between 1,440 and 2,160 rpm.	1,800 rpm.

DOE proposed that, for pumps sold without motors, the nominal speed would be selected based on the speed of rotation for which the pump is designed to be operated, while for pumps sold with motors, the nominal speed of

rotation would be selected based on the speed(s) for which the motor is designed to operate. DOE also clarified that pumps designed to operate at speeds that include both ranges would be rated at both nominal speeds of rotations

since each nominal speed rating represents a different basic model of pump. Finally, DOE noted that these speed ranges are not exclusive. That is, if a pump were to be designed to operate from 2,600 to 4,000 rpm, such a pump

would have a nominal speed of rotation of 3,600 rpm for the purposes of testing and rating the pump, even though part of the operating range of the pump (*i.e.*, 2,600 to 2,880 rpm) falls outside DOE’s specified speed ranges.

In DOE’s April 2015 pumps test procedure NOPR proposal, DOE acknowledged that it may not be feasible to operate pumps during the test at exactly the nominal speeds of 3,600 or 1,800 rpm and noted that section 40.6.5.5.2 of HI 40.6–2014 allows for tested speeds up to 20 percent off of the nominal speed, provided the tested speed does not vary more than  $\pm 1$  percent at each load point as required by section 40.6.3.2.2 of HI 40.6–2014. However, to ensure consistent and comparable test results, DOE proposed that all data collected during the test procedure at the speed measured during the test should be adjusted to the nominal speed prior to use in subsequent calculations and the  $PEI_{CL}$  or  $PEI_{VL}$  of a given pump should be based on the nominal speed. *Id.* For pumps sold with motors and continuous or non-continuous controls and that are tested using the testing-based method described in section III.E.2.c, DOE proposed that this adjustment to the nominal speed only apply at the 100 percent of BEP flow load point and that subsequent part load points be measured at reduced speed and used in subsequent calculations without adjustment. DOE also proposed to use the methods in HI 40.6–2014 section 40.6.6.1.1, “Translation of the test results into data based on the specified speed of rotation (for frequency) and density” to adjust any data from the tested speed to the nominal speed. *Id.*

DOE requested comment on its proposal to require data collected at the pump speed measured during testing to be normalized to the nominal speeds of 1,800 and 3,600 rpm. HI commented that it agrees with the proposal. (HI, No. 8 at p. 16)

Therefore, in this test procedure final rule, DOE is opting to adopt the operating speed limits proposed in the April 2015 pumps test procedure NOPR and discussed in section III.A.4 for the purposes of applying this test procedure final rule.

DOE also requested comment on its proposal to adopt the requirements in HI 40.6–2014 regarding the deviation of tested speed from nominal speed and the variation of speed during the test, specifically regarding whether maintaining tested speed within  $\pm 1$  percent of the nominal speed is feasible and whether this approach would produce more accurate and repeatable test results. HI commented that it does not believe it is feasible to maintain tested speed within  $\pm 1$  percent of the specified nominal speed because typical motor speed-load curves do not meet this criterion. (HI, No. 8 at p. 16) However, HI also noted that data could be collected and rotating speed maintained at  $\pm 1$  percent for a particular data collection point. DOE believes that HI may have misinterpreted the proposal in the April 2015 pumps test procedure NOPR. In the NOPR, DOE proposed maintaining the speed of rotation at each test point within the  $\pm 1$  percent speed tolerance, but that the speed of rotation at each test point could vary from the nominal speed of rotation  $\pm 20$  percent, consistent with HI 40.6–2014. DOE agrees that the  $\pm 1$  percent speed tolerance is applicable to determining stabilization at each data collection point only and is not determined relative to nominal speed and, therefore, is adopting the April 2015 pump test procedure NOPR proposal to adopt the nominal speed tolerances listed in section 40.6.5.5.2 of HI 40.6–2014, as well as the stabilization requirements provided in section 40.6.3.2.2 of HI 40.6–2014 in this test procedure final rule. Additionally, DOE is adopting the provisions that all measured data be translated to the nominal rating speed.

**Power Supply Characteristics**

Because pump power consumption is a component of the proposed metric, inclusive of any motor and continuous or non-continuous controls, measuring power consumption is an important element of the test. The characteristics of the power supplied to the pump affect the accuracy and repeatability of the measured power consumption of the pump. As such, to ensure accurate and repeatable measurement of power

consumption, in the April 2015 pumps test procedure NOPR, DOE specified nominal values for voltage, frequency, voltage unbalance, total harmonic distortion (THD), and impedance levels, as well as tolerances about each of these quantities, that must be maintained at the input terminals to the motor, continuous control, or non-continuous control, as applicable when performing the testing-based methods or when using a calibrated motor to determine bare pump performance. 80 FR 17586, 17610 (April 1, 2015).

To determine the appropriate power supply characteristics for testing pumps with motors (but without continuous or non-continuous controls) and pumps with both motors and continuous or non-continuous controls, DOE examined applicable test methods for electric motors and VSD systems. DOE determined that the Institute of Electrical and Electronics Engineers (IEEE) Standard 112–2004, “IEEE Standard Test Procedure for Polyphase Induction Motors and Generators,” (IEEE 112–2004) and the Canadian Standards Association (CSA) C390–10, “Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,” (CSA C390–10) are the most relevant test methods for measuring input power to electric motors, as they are the test methods incorporated by reference as the DOE test procedure for electric motors. Other widely referenced industry standard test methods for motors include: IEC 60034–1 Edition 12.0 2010–02, “Rotating electrical machines—Part 1: Rating and performance” (IEC 60034–1:2010) and NEMA MG 1–2014, “Motors and Generators” (NEMA MG 1–2014). DOE also identified both AHRI 1210–2011, “2011 Standard for Performance Rating of Variable Frequency Drives,” (AHRI 1210–2011) and the 2013 version of CSA Standard C838, “Energy efficiency test methods for three-phase variable frequency drive systems,” (CSA C838–13) as applicable methods for measuring the performance of VSD control systems. A summary of DOE’s proposed power supply characteristics and the requirements of the industry standards DOE referenced in developing such a proposal are summarized in Table III.4.

**TABLE III.4—SUMMARY OF TOLERANCES PROPOSED BY DOE IN THE APRIL 2015 PUMPS TEST PROCEDURE NOPR AND REFERENCED IN RELEVANT INDUSTRY STANDARDS**

Reference document	Section	Voltage unbalance	Voltage tolerance	Frequency tolerance	Voltage waveform distortion	Source impedance
April 2015 Pumps Test Procedure NOPR Proposal.	III.C.2.c ....	$\pm 0.5\%$ .....	$\pm 0.5\%$ .....	$\pm 0.5\%$ .....	THD $\leq 5\%$ .	
HI 40.6–2014 (calibrated motors) .....	C.4.1 .....	.....	$\pm 5\%$ .....	$\pm 1\%$ .		

TABLE III.4—SUMMARY OF TOLERANCES PROPOSED BY DOE IN THE APRIL 2015 PUMPS TEST PROCEDURE NOPR AND REFERENCED IN RELEVANT INDUSTRY STANDARDS—Continued

Reference document	Section	Voltage unbalance	Voltage tolerance	Frequency tolerance	Voltage waveform distortion	Source impedance
CSA C390–10 (motors)	5.2	±0.5%	±0.5%	±0.5%	THD ≤5% (to 20th).	
IEC 60034–1:2010 (motors)	7.3 9.11		±5% * (zone A)	±2% * (zone A)	THD ≤5% (to 100th).	
IEEE 112–2004 (motors)	3.1	≤0.5%		±0.5%	THD ≤5%.	
NEMA MG 1–2014 (motors)	7.7.3.2	≤1%		±0.5%	deviation factor ≤10%.	
	12.44.1		±10% **	±5% **		
	12.45	≤1% †				
AHRI 1210–2011 (VFDs)	5.1.2	≤0.5%	±0.5%	±0.5%		≤1%.
CSA C838–13 (VFDs)	5.3	±0.5%	±0.5%	±0.5%	THD ≤5% (to 20th).	1% < value ≤3% of VFD.

\* Values are for the overall bounds of the hexagonal surface in IEC Figure 12.

\*\* NEMA states that performance within these voltage and frequency variations will not necessarily be in accordance with the standards established for operation at rated voltage and frequency.

† NEMA states that performance will not necessarily be the same as when the motor is operating with a balanced voltage at the motor terminals.

HI commented that it disagrees with the power conditioning requirements proposed in the April 2015 pumps test procedure NOPR; knows of no pump test labs that meet them; and views them as a significant and unnecessary burden to manufacturers that were not agreed to by the CIP Working Group. HI specifically cited costs associated with the proposed limitation on voltage unbalance, and noted that the nominal motor efficiency values used for the calculation method have a less stringent tolerance of 2 percent. HI also indicated that testing with unconditioned power will result in a lower efficiency value and a higher PEI value than when testing with conditioned power. HI proposed that whereas conditioned power, as proposed in the April 2015 pumps test procedure NOPR, should be used for DOE enforcement testing and motor calibration, manufacturer test labs should only be held to the 3 percent limit for driver input power fluctuation specified in HI 40.6–2014. (HI, No. 8 at pp. 16–18)

Regal Beloit stated during the April 2015 NOPR public meeting that motor manufacturers faced similar challenges when motor standards were introduced, and third-party test labs adapted to help meet the power conditioning requirements. Regal Beloit also indicated that AHRI 1210 was not developed for pumps, and CSA C838 would be preferred. In addition, Regal Beloit expressed concern that any loosening of the power conditioning requirements could hinder differentiation between lower and higher performing products. (Regal Beloit, NOPR public meeting transcript, No. 7 at pp. 137–46)

As noted in the April 2015 pumps test procedure NOPR, DOE recognizes that driver efficiency can vary: (a) When the input voltage level is not exactly at the nameplate voltage, (b) when the fundamental frequency of the input voltage waveform is not exactly 60 Hz, (c) when input voltage phases are unbalanced, and/or (d) when the input voltage waveform is not strictly sinusoidal. However, DOE acknowledges the concerns of HI regarding the burden of providing power meeting strict voltage, frequency, voltage unbalance, and THD limits. As EPCA requires DOE test procedures to not be unduly burdensome to conduct (42 U.S.C. 6314(a)(2)), DOE, in this final rule, is reconsidering the proposed requirements regarding the power supply characteristics to find a compromise among repeatability, accuracy, and test burden.

DOE notes that HI’s proposal of a ±3 percent tolerance on power is not feasible without some parameters around power supply characteristics, as variation in voltage unbalance, harmonics, voltage, and frequency will affect the variability in the measurement of input power to the pump insofar as it will affect the performance and efficiency of the motor. That is, for example, increased voltage unbalance will affect motor performance such that testing the same pump sold with a motor under differing voltage unbalance conditions will result in different measured pump performance. This can be viewed either as: (1) Different (typically lower) hydraulic output for the same input power to the motor or (2) different (typically increased) input

power to the motor to deliver the same hydraulic output power.

Under the latter scenario, DOE has developed an approach to correlate variability in power supply characteristics with variability in the measured input power to the motor. Similarly, DOE separately considered how variability in power supply characteristics would impact input power to the continuous or non-continuous controls. Specifically, DOE determined, for each power supply characteristic (*i.e.*, voltage, frequency, voltage unbalance, and voltage THD) the level of variability that was associated with HI’s proposed acceptable tolerance of ±3 percent on driver input power. As such, DOE considered each of the power supply variables individually to determine if alternative, less burdensome requirements were feasible.

Regarding the impact of variation in voltage, section 12.44.1 of NEMA MG 1–2014 specifies that AC motors shall operate successfully under running conditions at rated load with a variation in the voltage up to ±10 percent of rated (nameplate) voltage with rated frequency for induction motors. Similarly, according to Figure 5–1 in the DOE Advanced Manufacturing Office (AMO) “Premium Efficiency Motor Selection and Application Guide” (AMO motor handbook), the efficiency of a “pre-EPAct”<sup>48</sup> standard efficiency motor varies by less than ±3 percent when operated at ±10 percent of nameplate voltage. Section 2.2.2 of ANSI C84.1–2011 states that the nominal voltage of a system is near the voltage level at which the system

<sup>48</sup> Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594

normally operates, and that systems generally operate at voltage levels about 5 to 10 percent below the maximum system voltage for which system components are designed. DOE also notes that section C.4.1 of HI 40.6–2014 indicates that when a calibrated motor is used to determine the pump input power, the voltage shall be the same as used during the calibration of the motor with a tolerance of  $\pm 5$  percent; this specification is consistent with the  $\pm 5$  percent outermost limits in Figure 12 of IEC 60034–1:2010 for zone A (continuous operation). In consideration of these standards, DOE has determined that, within reasonable limits, motor performance does not appear to be strongly affected by variation in voltage. However, DOE believes that it is important to ensure voltage is maintained within those reasonable limits. Therefore, in this final rule, DOE is adopting a tolerance on voltage consistent with the requirements in HI 40.6–2014 of  $\pm 5.0$  percent of the nominal rated voltage. DOE believes such a proposal provides representative measurements without imposing undue test burden on manufacturers.

Considering the impact of frequency on the rated performance of pumps and motors, the AMO motor handbook states that a premium efficiency motor is usually 0.5 to 2.0 percent more efficient when operating at 60 Hz than when the same motor is driven by a 50-Hz power supply, suggesting that motor performance is not strongly dependent on frequency. However, section C.4.1 of HI 40.6–2014 indicates that when a calibrated motor is used to determine the pump input power, the frequency shall be the same as used during the calibration of the motor with a tolerance of  $\pm 1$  percent. DOE believes that the HI requirement would be equally applicable to determining the performance of pumps sold with motors and pumps sold with motors and continuous or non-continuous controls under the testing-based methods to ensure repeatable and accurate measurements. Therefore, in this final rule, DOE is relaxing the proposal in the April 2015 pumps test procedure NOPR to instead limit frequency variation of  $\pm 1.0$  percent of nameplate frequency, consistent with HI 40.6–2014. DOE also notes that the U.S. electric grid typically provides power at a frequency within these bounds and, as such, DOE believe such a tolerance will not impose undue test burden. Further, DOE believes that maintaining tolerances consistent with the typical U.S. electric power supply is necessary to ensure repeatability of the test and ensure that the test is

representative of the energy consumption of the equipment. Specifically, a specification of  $\pm 1$  percent is consistent with the  $\pm 1$  percent tolerance for continuous operation across all durations of off-nominal frequency specified in the North American Electric Reliability Corporation (NERC) Standard PRC–024–1, “Generator Frequency and Voltage Protective Relay Settings.”

Regarding voltage unbalance, DOE notes that motor performance will vary as a function of voltage unbalance. Specifically, NEMA MG 1–2014 includes a horsepower derating curve for up to 5 percent voltage unbalance and recommends limiting voltage unbalance to 1 percent, noting that motor performance will not necessarily be the same as when the motor is operating with a balanced voltage at the motor terminals. Similarly, Table 5–3 in the AMO motor handbook relates a voltage unbalance of 3 percent to a decrease in motor efficiency of 2 to 3 percent, compared with a decrease of 5 percent or more for a voltage unbalance of 5 percent.<sup>49</sup> DOE notes that a variation of 3 percent in motor efficiency equates to a 3 percent variability in measured input power to the motor.

Given the dependence of motor, and thus pump, performance on voltage unbalance, DOE then evaluated the relative burden associated with providing different levels of voltage unbalance in the test facility, in an effort to determine a level of voltage unbalance that would not be unduly burdensome to specify in the test procedure. DOE researched typical levels of voltage unbalance available on the national electric grid, based on utility standards and specifications for generation and distribution of power. NEMA MG 1–2014 states that if a motor is subjected to more than 1 percent voltage unbalance the manufacturer should be consulted regarding this unusual service condition, and the AMO motor handbook states that unbalances exceeding 1 percent will void most manufacturers’ warranties. DOE also found that PG&E Electric Rule No. 2 states that the voltage balance between phases for service delivery voltages will be maintained by PG&E as close as practicable to 2.5 percent.<sup>50</sup> Similarly, Annex C of ANSI C84.1–2011 indicates that approximately 98 percent

of the electric supply systems surveyed were found to be below 3.0 percent voltage unbalance, and 66 percent were found to be below 1.0 percent; the standard states that electric supply systems should be designed and operated to limit the maximum voltage unbalance to 3 percent when measured at the electric-utility revenue meter under no-load conditions.<sup>51</sup> Therefore, DOE determines 3.0 percent voltage unbalance provides a reasonable tolerance, would be generally available to most testing facilities using grid-supplied power and would limit the impact on input power to less than 3 percent, consistent with HI’s recommendation.

Regarding limitations on harmonic distortion on the power supply, the AMO publication, “Improving Motor and Drive System Performance” (AMO motor sourcebook) states that electrical equipment is often rated to handle 5 percent THD (as defined in IEEE Std 519), and notes that motors are typically much less sensitive to harmonics than computers or communication systems.<sup>52</sup> Similarly, IEC 60034–1:2010 specifies a limit of 5 percent voltage THD, measured to the 100th harmonic. In addition, for bus voltage of 1.0 kV or less at the point of common coupling (PCC), section 5.1 of IEEE Std 519–2014 recommends line-to-neutral harmonic voltage limits of 5.0 percent individual harmonic distortion and 8.0 percent voltage THD for weekly 95th percentile short time (10 min) values, measured to the 50th harmonic. The IEEE standard also indicates that daily 99th percentile very short time (3 second) values should be less than 1.5 times these values. NEMA MG 1–2014 uses different metrics (voltage waveform deviation factor and harmonic voltage factor or HVF) to establish harmonic voltage limits and horsepower derating factors for motors. However, the NEMA metrics are not directly comparable to voltage THD, and the HVF derating curve was developed under the assumption that any voltage unbalance or even harmonics are negligible.<sup>53</sup> In

<sup>51</sup> American National Standard For Electric Power Systems and Equipment—Voltage Ratings (60 Hertz).

<sup>52</sup> DOE EERE, Improving Motor and Drive System Performance—A Sourcebook for Industry (February 2014, [www.energy.gov/eere/amo/motor-systems](http://www.energy.gov/eere/amo/motor-systems)).

<sup>53</sup> NEMA’s voltage deviation factor is calculated as the maximum difference between corresponding ordinates of the voltage waveform and of the equivalent sine wave, divided by the maximum ordinate of the equivalent sine wave when the waves are superimposed such that the maximum difference is minimized. Harmonic voltage factor (HVF) is calculated by squaring the ratio of harmonic voltage to rated voltage for each odd harmonic not divisible by three (up to some specified order, e.g., the 13th harmonic in IEC

<sup>49</sup> DOE Office of Energy Efficiency and Renewable Energy (EERE), *Premium Efficiency Motor Selection and Application Guide—A Handbook for Industry* (February 2014, [www.energy.gov/eere/amo/motor-systems](http://www.energy.gov/eere/amo/motor-systems)).

<sup>50</sup> Accessed on August 21, 2015, at [www.pge.com/tariffs/tm2/pdf/ELEC\\_RULES\\_2.pdf](http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_2.pdf).

consideration of these recommendations regarding voltage THD limits and potentially significant impacts on motor performance, in this final rule, DOE is limiting voltage THD to  $\leq 12.0$  percent (corresponding to the IEEE 3-second limit but measured to the 40th harmonic) in this final rule to ensure representative and repeatable measurements. DOE also notes that a limit of  $\leq 12.0$  percent voltage THD is not unduly burdensome for test labs as it is within the bounds of standardized voltage THD limits placed on grid operators and, thus, is generally available on the national electric power grid.

DOE also discussed source impedance in the NOPR and considered adopting specifications in AHRI 1210–2011 (source impedance  $\leq 1$  percent) or CSA C838–13 (source impedance  $> 1.0$  percent of VFD and  $\leq 3.0$  percent of VFD) for motors and speed controls. 80 FR 17586, 17611–12 (April 1, 2015). DOE understands that a nonlinear load can distort the voltage waveform, depending on the magnitudes of the source impedance and current distortion.<sup>54</sup> However, DOE also understands that motors are not a significant source of harmonics in the current waveform if the steel core is not magnetically saturated,<sup>55</sup> and that motor efficiency is not greatly affected by harmonics in the voltage waveform if voltage THD is sufficiently limited. Therefore, in this final rule, DOE is not specifying source impedance requirements. DOE believes that the adopted requirements for the preceding four power supply characteristics (*i.e.*, voltage unbalance, voltage, frequency, and voltage THD) will sufficiently limit variability in motor performance resulting from variations in the characteristics of the mains power supplied to the motor.

Regarding the impact of variation in power supply characteristics on continuous and non-continuous

controls, DOE understands that motors, continuous controls, and non-continuous controls all have similar power conditioning requirements because they will be subjected to similar electrical conditions in the field. That is, based on DOE's research, manufacturers appear to have designed motors to be reasonably tolerant of variability in power supply characteristics (or power quality) that are characteristic of typical grid operation, but their performance is significantly impacted at levels outside the bounds of that commonly experienced in their field. While less information is available of the response of continuous and non-continuous controls to these power supply variables, DOE expects this relationship to be true for such controls as well. For example, NEMA guidance published in 2007 states that adjustable frequency controls can operate on power systems with a voltage unbalance not exceeding 3 percent.<sup>56</sup> In addition, guidance published by the Electric Power Research Institute (EPRI) in 2001 indicates that VSDs should be specified to operate without any problem for a voltage unbalance of 2 percent.<sup>57</sup> Consequently, DOE is applying, in this final rule, the same power conditioning requirements to pumps tested with motors and pumps tested with motors and continuous or non-continuous controls.

DOE notes that these requirements are applicable to pumps sold with motors and pumps sold with motors and continuous or non-continuous controls rated using the testing-based method, as such methods require measurement of electrical input power to the motor or control. Commensurately, these requirements are applicable to any pumps rated using a calculation-based method, including bare pumps, pumps sold with applicable electric motors, and pumps sold with applicable electric motors and continuous controls, when the bare pump is tested using a calibrated motor to determine pump shaft input power. Pumps evaluated based on the calculation method where the input power to the motor is determined using equipment other than a calibrated motor would not have to meet these requirements, as variations in voltage, frequency, voltage unbalance, and voltage THD are not

expected to significantly affect the tested pump's energy performance.

#### Number of Stages for Multi-Stage Pumps

RSV and VTS pumps are typically multi-stage pumps that may be offered in a variety of stages.<sup>58</sup> The energy consumption characteristics of such multi-stage pumps vary, approximately linearly, as a function of the number of stages. However, to simplify certification requirements and limit testing burden, DOE proposed in the April 2015 pumps test procedure NOPR that certification of RSV and VTS pumps be based on testing with the following number of stages:

- RSV: 3 stages; and
- VTS: 9 stages.

If a model is not available with that specific number of stages, the model would be tested with the next closest number of stages distributed in commerce by the manufacturer, or the next higher number of stages if both the next lower and next higher number of stages are equivalently close to the required number of stages. This is consistent with DOE's proposal, discussed previously in section III.A.1.c, that variation in number of stages for RSV and VTS pumps would not be a characteristic that constitutes different basic models. 80 FR 17586, 17610 (April 1, 2015).

In response to DOE's proposal regarding testing of multi-stage RSV and VTS pumps, HI commented that it agrees with this proposal. (HI, No. 8 at p. 18) DOE received no other comments on this proposal and has, therefore, adopted the provisions for testing multi-stage RSV and VTS pumps proposed in the April 2015 pumps test procedure NOPR with no modifications.

#### Twin Head Pumps

A twin head pump is a type of IL pump that contains two impeller assemblies, mounted in two volutes that share a single inlet and discharge in a common casing. In response to the April 2015 pumps test procedure NOPR, DOE received comment from HI recommending that DOE include twin head pumps in this rulemaking and align their test procedure with Europump guidelines.<sup>59</sup> (HI, No. 8 at p. 3) These guidelines recommend testing a twin head pump by incorporating one

60034–1:2010), dividing each result by the order of the corresponding harmonic, and then taking the square root of the sum of these quotients. Voltage THD is calculated by taking the square root of the sum of squares of each RMS harmonic voltage (up to some specified order, *e.g.*, the 50th harmonic in IEEE 519–2014), and then dividing by the RMS fundamental voltage.

<sup>54</sup> IEEE Std 1560–2005, "IEEE Standard for Methods of Measurement of Radio-Frequency Power-Line Interference Filter in the Range of 100 Hz to 10 GHz" (February 2006).

<sup>55</sup> Fire Protection Research Foundation, "Evaluation of the Impact on Non-Linear Power On Wiring Requirements for Commercial Buildings" (June 2011, [www.nfpa.org/research/fire-protection-research-foundation/projects-reports-and-proceedings/electrical-safety/new-technologies-and-electrical-safety/evaluation-of-the-impact-on-non-linear-power](http://www.nfpa.org/research/fire-protection-research-foundation/projects-reports-and-proceedings/electrical-safety/new-technologies-and-electrical-safety/evaluation-of-the-impact-on-non-linear-power)).

<sup>56</sup> NEMA Application Guide for AC Adjustable Speed Drive Systems (December 2007, [www.nema.org/Standards/Pages/Application-Guide-for-AC-Adjustable-Speed-Drive-Systems.aspx](http://www.nema.org/Standards/Pages/Application-Guide-for-AC-Adjustable-Speed-Drive-Systems.aspx)).

<sup>57</sup> EPRI Guide to the Industrial Application of Motors and Variable-Speed Drives (September 2001, [www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=0000000001005983](http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=0000000001005983)).

<sup>58</sup> The stages of VTS pumps are also commonly referred to as "bowls." See section 2.1.3.1 and Figure 2.1.3.1 of ANSI/HI 2.1–2.2–2014.

<sup>59</sup> Guideline on the application of COMMISSION REGULATION (EU) No 547/2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps (12th of September 2012).

of the impeller assemblies into an adequate IL type pump casing.

DOE agrees with HI's recommendation and, as discussed in section III.A.2.a, originally intended to include these pumps as a category of IL pumps. To clarify DOE's original intent in this final rule, DOE is adopting a definition of twin head pump, specifying that twin head pumps are a subset of the IL pump equipment category, and modifying the test procedure in this final rule to be consistent with the EU guidelines. DOE's definition for twin head pump and the modified IL definition are presented in section III.A.2.a. However, DOE also acknowledges that clarifications to the test procedure proposed in the April 2015 pumps test procedure NOPR are necessary to explicitly specify the procedures for testing twin head pumps in accordance with the DOE test procedure. As such,

DOE is establishing explicit instructions for configuring twin head pumps in this final rule.

In general, twin head pumps, as a subset of IL pumps, are tested in accordance with the test procedure for IL pumps. Specifically, twin head pumps, which are essentially two IL pumps packaged together in a single casing, are to be tested using an equivalent single-head IL configuration. That is, to test a twin head pump, one of the two impeller assemblies is to be incorporated into an adequate, IL style, single impeller volute and casing. An adequate, IL style, single impeller volute and casing means a volute and casing for which any physical and functional characteristics that affect energy consumption and energy efficiency are essentially identical to their corresponding characteristics for a single impeller in the twin head pump volute and casing.

d. Determination of Pump Shaft Input Power at Specified Flow Rates

HI 40.6–2014 provides a specific procedure for determining BEP for a given pump based on seven load points at 40, 60, 75, 90, 100, 110 and 120 percent of the expected BEP flow of the pump. The test protocol in section 40.6.6.2 of HI 40.6–2014 requires that the hydraulic power and the pump shaft input power, or input power to the motor for pumps tested using the testing-based methods, be measured at each of the seven load points. HI 40.6–2014 further specifies that the pump efficiency be determined as the hydraulic power divided by the shaft input power, or as the hydraulic power divided by the product of the measured input power to the motor and the known efficiency of a calibrated motor, depending on how the pump is tested. The equations for calculating pump efficiency are shown in equation (12):

$$\eta_{\text{pump},i} = \frac{P_{\text{Hydrou},i}}{P_i} = \frac{P_{\text{Hydrou},i}}{P_i^{\text{in},m} \times \eta_{\text{motor},i}} \quad (12)$$

Where:

$\eta_{\text{pump},i}$  = pump efficiency at load point  $i$  (%);  
 $P_{u,i}$  = pump hydraulic output power at load point  $i$  (hp);  
 $P_i$  = pump shaft input power at load point  $i$  (hp);  
 $P_i^{\text{in},m}$  = measured driver power input to the calibrated motor at load point  $i$  (hp);  
 $\eta_{\text{motor},i}$  = the calibrated motor efficiency<sup>60</sup> at load point  $i$  (%); and  
 $i$  = load point corresponding to 40, 60, 75, 90, 100, 110 or 120 percent of expected BEP flow.

The pump efficiency at each of these load points is then used to determine the tested BEP for a given pump and, in particular, the flow rate associated with the BEP of the pump (*i.e.*, BEP flow). Then, based on the determined BEP flow, the pump shaft input power or input power to the motor is determined at each of the specified load points, as discussed in section III.B.

In the April 2015 pumps test procedure NOPR, DOE observed that the specific load points measured in the test protocol may not be exactly at 75, 100, or 110 percent of the BEP flow load points specified in the test procedure and, thus, the relevant power input

measurements—specifically, pump shaft input power, input power to the pump at the driver, or input power to the continuous or non-continuous controls—must be adjusted to reflect the power input at the specific load points specified in the test procedure. To adjust the measured power input values, DOE proposed that the measured input power and flow data corresponding to the load point from 60 percent of expected BEP flow to 120 percent of expected BEP flow be linearly regressed and the input power at the specific load point of 75, 100, and 110 percent of BEP flow be determined from that regression equation. 80 FR 17586, 17610–11 (April 1, 2015).

In response to the April 2015 pumps test procedure NOPR, HI commented that it agrees with DOE's proposal to use a linear regression of the pump input power with respect to flow rate at all the tested load points greater than or equal to 60 percent of expected BEP flow to determine the pump shaft input power at the specified load points of 75, 100, and 110 percent of BEP flow. (HI, No. 8 at p. 18) DOE received no other comments on the proposal and, as such, is adopting it as proposed in the April 2015 pump test procedure NOPR with no revisions or modifications.

Determination of Pump Shaft Input Power for Pumps With BEP at the Maximum Allowable Flow

HI 40.6–2014 contains a method for determining the BEP of tested pumps based on the flow rate at which the maximum pump efficiency occurs. DOE recognizes that there may be some unique pump models that do not exhibit the typical parabolic relationship of pump efficiency to flow rate. Instead, for some pumps, pump efficiency will continue to increase as a function of flow until reaching the maximum allowable flow that can be developed without damaging the pump, also referred to as “pump run-out.” Similarly, the expected BEP of some pumps may be only slightly below the maximum allowable flow. For such pumps, it may not be possible to use the procedure described in HI 40.6–2014 to determine the BEP, since the pump cannot safely operate at flows of 110 and/or 120 percent of the expected BEP of the pump. In such cases, DOE proposed in the April 2015 pumps test procedure NOPR that the seven flow points for determination of BEP should be 40, 50, 60, 70, 80, 90, and 100 percent of the expected maximum allowable flow rate of the pump instead of the seven flow points described in section 40.6.5.5.1 of HI 40.6–2014. In addition, in such cases, DOE proposed that the specified constant load flow points should be 100, 90, and 65 percent

<sup>60</sup> Note: to determine pump shaft input power based on the measured driver input power, a calibrated motor and the calibrated motor efficiencies at each load point  $i$  must be used where they are known with “sufficient accuracy,” meaning that the efficiency of the motor combined with the power measurement device uncertainty must not exceed  $\pm 2.5$  percent, as required by Table 40.6.3.2.3 in HI 40.6–2014.



of the BEP flow rate. 80 FR 17586, 17611 (April 1, 2015).

In response, HI commented that it disagreed with this proposal because in order to determine the location of the BEP, testing must occur at rates of flow greater than 100 percent of expected BEP flow. (HI, No. 8, p. 18) DOE notes that the proposal in the April 2015 pumps test procedure NOPR is specified with respect to the expected maximum allowable flow rate, or the expected BEP, of the pump, not the measured BEP flow. That is, under the NOPR proposal, pumps with the expected BEP occurring at the maximum allowable flow, as defined in ANSI/HI 1.1–1.2–2014, would be tested at the alternative load points specified in test procedure for pumps with BEP at run-out.

DOE acknowledges that pump manufacturers must have some knowledge of the expected operational characteristics of their pump, including the expected BEP and expected maximum allowable flow, in order to determine the appropriate load points for determining BEP. However, DOE notes that this is the case for all pumps, not just pumps with BEP at run-out. That is, the specific load points used to determine BEP for all pumps are specified with respect to the expected operating characteristics of the pump (*i.e.*, BEP flow rate, as specified in section 40.6.5.5.1 of HI 40.6–2014, or maximum allowable flow for pumps with BEP at run-out). DOE believes this is necessary since the BEP and flow characteristics of different load points could vary widely and it is important that the data captured during the test procedure effectively and fully characterize the performance of the pump over the pump's operating ranges. DOE also understands that significant design, engineering, and modeling are involved with creating pump models for specific applications and design parameters and, as such, DOE finds it unlikely that the BEP of a pump will occur at or near a pump's maximum allowable flow without the pump manufacturer having some expectation that this will occur based on the inherent design characteristics of the pump. As such, DOE believes that the proposed test procedure for pumps with BEP at or near run-out is consistent with the HI 40.6–2014 industry test protocols and appropriate for determining the performance of such pumps and no additional changes are necessary. DOE also notes that the maximum efficiency point (or BEP), in the case of pumps with BEP at the maximum allowable flow rate will occur at the maximum flow rate tested and will not be a

parabolic maxima, as is the case for most pumps.

DOE notes that, in the April 2015 NOPR, DOE referred to pumps with BEP at run-out as corresponding to those with their expected BEP at the expected maximum allowable flow. DOE recognizes that pumps with their maximum allowable flow occurring between 100 and 120 percent of BEP flow would also not be able to be tested in accordance with the proposed test procedure, as not all of the load points specified in the procedure could be measured in accordance with the test procedure. As such, DOE is adopting, in this final rule, the proposal described in the April 2015 pumps test procedure NOPR, except that DOE is clarifying that pumps with maximum allowable flow occurring between 100 and 120 of BEP flow also qualify as pumps with BEP at run-out and must apply the appropriate test procedure. To ensure that the DOE test procedure is consistent and adequately captures the range of flow rates with which the pump is expected to operate, DOE is maintaining in this final rule that load points for determination of BEP are specified with respect to the expected maximum allowable flow of the pump, for pumps with the expected BEP within 20 percent of the expected maximum allowable flow. In the final rule, DOE is also clarifying the specific load points that must be used in determining pump or driver input power in accordance with the procedure described in section III.C.2.d.

#### e. Measurement Equipment for Testing-Based Methods

In the April 2015 pumps test procedure NOPR, DOE noted that HI 40.6–2014 does not contain all the necessary methods and calculations to determine pump power consumption for the range of equipment that will be addressed by this final rule (*i.e.*, pumps inclusive of motors and continuous or non-continuous controls). For the purposes of determining most quantities relevant to the determination of  $PEI_{CL}$  or  $PEI_{VL}$  for pumps rated using the calculation-based methods, DOE proposed to incorporate by reference HI 40.6–2014, appendix C, which specifies the required instrumentation to measure head, speed, flow rate, torque, temperature, and electrical input power to the motor. However, DOE noted that, for the purposes of measuring input power to the driver for pumps sold with a motor and continuous or non-continuous controls rated using the testing-based method, the equipment specified in section C.4.3.1, “electric power input to the motor,” of HI 40.6–

2014 may not be sufficient. Based on the specifications in CSA C838–13 and AHRI 1210–2011, since these test standards are the most relevant references for measuring input power to such controls, DOE proposed that electrical measurements for determining VSD efficiency be taken using equipment capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency<sup>61</sup> and have an accuracy level of  $\pm 0.2$  percent of full scale when measured at the fundamental supply source frequency. 80 FR 17586, 17611–12 (April 1, 2015).

DOE requested comment on the type and accuracy of required measurement equipment, especially the equipment required for electrical power measurements for pumps sold with motors having continuous or non-continuous controls. AHRI commented that AHRI 1210–2011 specifies appropriate power supply tolerances so that both pump manufacturers and DOE enforcement testing can be confident with the establishment and verification of ratings of VFDs sold with pumps. (AHRI, No. 11 at pp. 1–2) AHRI also indicated that any harmonics in the power system can affect the measured performance of the pump when tested with a motor or motor and continuous or non-continuous control. In addition, AHRI notified DOE that VFD manufacturers are working to expand the scope of AHRI 1210–2011 to include a higher horsepower upper limit and to include additional load points.

HI commented that it disagrees with the requirements in AHRI 1210–2011 and CSA C838–13, asserting that they were not agreed to by the CIP Working Group and would be excessively burdensome. (HI, No. 8 at pp. 18–19) HI also indicated that pump manufacturers do not have the same equipment as motor and drive test laboratories and should not be expected to have the same level of instrumentation. HI recommended that DOE instead require the  $\pm 2.0$  percent maximum permissible measurement device uncertainty specified in Table 40.6.3.2.3 of HI 40.6–2014 for driver input power.

In response to HI's concerns regarding the burden of such additional instrumentation, DOE notes that, in the April 2015 pumps test procedure NOPR proposal, such sophisticated electric measurement equipment was only proposed to be required for the

<sup>61</sup> CSA C838–13 requires measurement up to the 50th harmonic. However, DOE believes that measurement up to the 40th harmonic is sufficient, and the difference between the two types of frequency measurement equipment will not be appreciable.

measurement of input power to the continuous or non-continuous control when rating the pump under the testing-based methods. For other pump configurations and when testing a pump using the calculation-based methods, the electrical measurement equipment specified in HI 40.6–2014 section C.4.3.1 of appendix C would apply. DOE also notes that several interested parties, including HI, previously commented that such measurement equipment was necessary due to the potential impact of the continuous control on line harmonics and other equipment on the circuit. (Docket No. EERE–2011–BT–STD–0031, CA IOUs, Framework public meeting transcript No. 19 at p. 236; Docket No. EERE–2011–BT–STD–0031, HI, No. 25 at p. 35) HI also previously noted that this additional instrumentation is manageable and within the capabilities of what most of the HI members are doing today. (Docket No. EERE–2011–BT–STD–0031; HI, public meeting transcript, No. 19 at p. 235)

In addition, given the power conditioning requirements adopted in section III.C.2.c, DOE believes that the more sophisticated electrical measurement equipment capable of measuring true root mean square (RMS) voltage, true RMS current, and real power for distorted waveforms is required to ensure that the incoming power is within the specifications for those pump configurations where it is required and that the power measurement is accurate. Specifically, DOE is requiring, as discussed at length in section III.C.2.c, certain voltage, frequency, voltage unbalance, and voltage THD levels be maintained when testing: (1) Bare pumps using a calibrated motor, (2) pumps sold with motors using the testing-based methods, and (3) pumps sold with motors and continuous or non-continuous controls using the testing-based method. In order to verify that these requirements are met, measurement equipment must be capable of accurately measuring real power, true RMS voltage, frequency, voltage unbalance, and voltage THD. DOE notes that, in section C.4.3, HI 40.6 specifies that driver input power to the motor should be calculated as the product of (1) line volts, (2) line amps, and (3) power factor. As HI 40.6–2014 specifies the measurement of power factor, DOE believes that the electric equipment capable of measuring at least real power, true RMS voltage, and true RMS current is already required by HI 40.6–2014, as such measurements are necessary for determining power factor.

Some watt meters and watt-hour meters would not be sufficient for

accurate measurement of real power for distorted voltage waveforms or distorted current waveforms; this is because such instruments incorrectly assume that the waveforms are perfectly sinusoidal (*i.e.*, free of the harmonics that are introduced by non-linear loads).<sup>62</sup> DOE is therefore requiring the use of instruments that accurately measure true RMS current, true RMS voltage, and real power for distorted waveforms with harmonic frequencies ranging from the fundamental frequency (60 Hz) up to and including the 40th harmonic (2400 Hz).

However, with respect to the required accuracy of any electrical measurement equipment, DOE acknowledges the concern from HI regarding the additional burden associated with acquiring instrumentation consistent with the specifications provided in the NOPR. As such, DOE reviewed available and applicable test methods for motors and controls, including AHRI 1210–2011 and CSA C838–13. DOE notes that AHRI 1210–2011 in turn references IEC 61000–4–7, “Testing and measurement techniques—General guide on harmonics and interharmonics measurements and instrumentation, for power supply systems and equipment connected thereto,” regarding the necessary characteristics for electric measurement equipment. IEC 61000–4–7 provides requirements for Class I instruments and recommends their use where precise measurements are necessary, such as for verifying compliance with standards. The maximum error on power for IEC Class I instruments is  $\pm 1$  percent of measured value for readings greater than or equal to 150 W (0.2 hp). However, IEC 61000–4–7 states that the error limits refer to single-frequency (*i.e.*, sinusoidal) steady-state waveforms, in the operating frequency range, applied to the instrument under rated operating conditions to be indicated by the manufacturer.

The requirements in IEC 61000–4–7 generally align with those in section 5.7.3 of CSA C390–10, which specifies that motor input power measurements shall have a maximum uncertainty of  $\pm 1.0$  percent of the reading (including all errors from the power meter, current transformers, and potential/voltage transformers). However, CSA also states that the specified uncertainties shall apply only at the rated full load (*i.e.*, near rated power factor) of the motor

under test. While both IEC 61000–4–7 and CSA C390–10 recommend instrument tolerances of  $\pm 1.0$  percent, DOE notes that their application of that tolerance is not the same as the tolerance DOE is adopting in this final rule, which applies to the measured power at each test point and with the power supply characteristics experienced during the test.

DOE recognizes that the accuracy of input power measurements can be compromised to some extent when voltage and/or current waveforms are displaced and/or distorted. In addition, DOE recognizes that motors will not always be fully loaded during pump testing, that motors may be operated somewhat above nameplate voltage (as allowed in this final rule), and that some distortion of the voltage waveform is permitted in this final rule. Therefore, DOE believes it is appropriate to allow electrical equipment accuracy of  $\pm 2.0$  percent of measured value, consistent with the tolerance specified in section 40.6.3.2.3 of HI 40.6–2014 and HI’s request. DOE is adopting such a requirement in this final rule.

DOE also recognizes that current and voltage instrument transformers can be used in conjunction with electrical measurement equipment to measure current and voltage. Usage of instrument transformers can introduce additional losses and errors to the measurement system. DOE is clarifying in this final rule that the combined accuracy of all instruments used to measure a parameter must meet the prescribed accuracy requirements for electrical measurement equipment. Section C.4.1 of AHRI 1210–2011 indicates that combined accuracy should be calculated by multiplying the accuracies of individual instruments. In contrast, section 5.7.2 of CSA C838–2013 indicates that if all components of the power measuring system cannot be calibrated together as a system, the total error shall be calculated from the square root of the sum of the squares of all the errors. DOE understands that it is more accurate to combine independent accuracies (*i.e.*, uncertainties or errors) by summing them in quadrature.<sup>63</sup> DOE is therefore using the root sum of squares to calculate the combined accuracy of multiple instruments used in a single measurement, consistent with conventional error propagation methods.

Therefore, in this final rule, DOE is specifying the characteristics of the

<sup>62</sup> PG&E, “Voltage and Current Measurement of Non-Sinusoidal AC Power” (October 2004, [http://www.pge.com/includes/docs/pdfs/mybusiness/customer-service/energystatus/powerquality/nonsinusoidal\\_power.pdf](http://www.pge.com/includes/docs/pdfs/mybusiness/customer-service/energystatus/powerquality/nonsinusoidal_power.pdf), accessed September 8, 2015).

<sup>63</sup> National Institute of Standards and Technology (NIST) Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results (<http://physics.nist.gov/Pubs/guidelines/sec5.html>, accessed September 8, 2015).

electrical measurement equipment that must be used when measuring input power to the motor, continuous controls, or non-continuous controls. Specifically, the electrical measurement equipment in such cases must be capable of measuring true RMS current, true RMS voltage, and real power up to at least the 40th harmonic of fundamental supply frequency

and have an accuracy level of  $\pm 2.0$  percent of the measured value when measured at the fundamental supply source frequency. DOE notes that standard electrical measurement equipment meeting the requirements of HI 40.6–2014 section C.4.3.1 may still be used when testing any pumps under the calculation-based methods (*i.e.*, bare pumps, pump sold with motors, and

pumps sold with motors and continuous or non-continuous controls), provided a calibrated motor is not used to determine the pump shaft input power. The electrical measurement equipment requirements being adopted in this pumps test procedure final rule are summarized in Table III.5.

TABLE III.5—ELECTRICAL MEASUREMENT REQUIREMENTS FOR DIFFERENT CONFIGURATIONS OF PUMPS FOR THE CALCULATION BASED AND TESTING BASED APPROACHES

Pump configuration	Electrical measurement requirements	
	Calculation-based test method without a calibrated motor	Testing-based test method <i>or</i> Calculation-based test method with a calibrated motor
Bare Pump .....	HI 40.6–2014, section C.4.3.1, unless testing with a calibrated motor.	Not Applicable.
Pump + Motor or Pump + Motor + Continuous or Non-Continuous Controls.	HI 40.6–2014, section C.4.3.1, unless testing with a calibrated motor.	Equipment capable of measuring true RMS current, true RMS voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and have an accuracy level of $\pm 2.0$ percent of the measured value when measured at the fundamental supply source frequency.

While DOE acknowledges that these requirements may represent a burden for some manufacturers and test labs who do not already have such equipment, DOE has minimized the additional burden associated with this requirement, to the extent possible, by only requiring more sophisticated power measurement equipment in those cases where it is necessary to verify that the test procedure power conditioning requirements are being met. DOE also notes that, for many pumps, the testing-based approaches are optional and a manufacturer could elect to determine the PEI using the calculation-based approach and avoid having to purchase and use the more accurate and expensive electrical measurement equipment necessary for conducting testing under the testing-based approach. The burden associated with this test procedure, and in particular the required test equipment, is discussed further in section IV.B.

f. Calculations and Rounding

DOE notes HI 40.6–2014 does not specify how to round values for calculation and reporting purposes. DOE recognizes that the manner in which values are rounded can affect the resulting PER or PEI, and all PER or PEI values should be reported with the same number of significant digits. In the April 2015 pumps test procedure NOPR, DOE proposed to require that all calculations be performed with the raw measured data, to ensure accuracy, and that the

PER<sub>CL</sub> and PEI<sub>CL</sub> or PER<sub>VL</sub> and PEI<sub>VL</sub> be reported to the nearest 0.01. 80 FR 17586, 17612 (April 1, 2015).

DOE requested comment on its proposal to conduct all calculations using raw measured values and that the PER<sub>CL</sub> and PEI<sub>CL</sub> or PER<sub>VL</sub> and PEI<sub>VL</sub>, as applicable, be reported to the nearest 0.01. In response, HI commented that it understands and agrees that the requirement is to normalize raw data to nominal speed, and the PER<sub>CL</sub>, PEI<sub>CL</sub>, PER<sub>VL</sub> and PEI<sub>VL</sub> would be reported to the nearest 0.01. (HI, No. 8 at p. 19) In the April 2015 NOPR public meeting, a representative of HI (Paul Ruzicka) suggested that DOE clarify that calculations be performed with “raw normalized data,” since all data are to be corrected to nominal speed. (HI, NOPR public meeting transcript, No. 7 at pp. 165–66)

DOE appreciates HI’s confirmation of the proposed approach. In response to HI’s suggestion that DOE clarify that all calculations are to be performed with “raw normalized data,” DOE notes that the normalization to nominal speed is also a calculation and that such calculation is also to be performed with raw measured data. Also, some collected data do not need to be normalized to nominal speed. As such, DOE finds it clearer to continue to specify that all calculations be performed with raw measured data, including the normalization to nominal speed.

In addition, in preparing the final rule test procedure provisions, DOE reviewed the calculations, uncertainty, and significance of measured values used to determine the PER<sub>CL</sub> and PEI<sub>CL</sub> or PER<sub>VL</sub> and PEI<sub>VL</sub>, as applicable. Based on this analysis, DOE determined that while PEI<sub>CL</sub> and PEI<sub>VL</sub> are to be reported to 0.01, the precision of the measurement equipment specified in the NOPR is not sufficient to determine PER<sub>CL</sub> and PER<sub>VL</sub> to 0.01, especially for large pumps. As such, in this final rule, DOE is continuing to specify that all calculations be performed with the raw measured data, to ensure accuracy, and that the PEI<sub>CL</sub> and PEI<sub>VL</sub> be reported to the nearest 0.01. However, DOE is specifying, in this final rule, that PER<sub>CL</sub> and PER<sub>VL</sub> need only be specified to three significant digits, which is equivalent to or better than the level of significance specified for PEI<sub>CL</sub> and PEI<sub>VL</sub>. DOE also agrees with HI that all data should be corrected to nominal speed prior to performing subsequent calculations, as described in section III.C.2.c.

D. Determination of Motor Efficiency

The PEI<sub>CL</sub> and PEI<sub>VL</sub> metrics both describe the performance of a pump and an accompanying motor, including continuous or non-continuous controls, if applicable. As such, the performance of the applicable motor must be determined to calculate the PEI<sub>CL</sub> or PEI<sub>VL</sub> of a given pump model.

In the April 2015 pumps test procedure NOPR, DOE proposed that the motor efficiency would be determined based on the configuration in which the pump was sold. For determining the default motor efficiency of a minimally compliant pump ( $PER_{STD}$ ) and for determining the default motor efficiency used to calculate  $PER_{CL}$  for bare pumps, DOE proposed to specify the nominal full load motor efficiency that corresponds to the applicable Federal minimum standard. For determining  $PER_{CL}$  or  $PER_{VL}$  for pumps sold with motors or with motors and continuous or non-continuous controls, DOE proposed to use either (1) the physically tested performance of the motor paired with that pump when using testing-based methods, or (2) the represented nominal full load motor efficiency (*i.e.*, the nameplate and certified rating) of the motor (other than submersible) distributed in commerce with that pump model when using the calculation-based test method. 80 FR 17586, 17612–13 (April 1, 2015). The specific procedures for determining the applicable Federal minimum and represented nominal full load motor efficiency values are described in section III.D.1 and III.D.2, respectively.

Based on DOE's proposed test procedure, the applicable Federal minimum or the represented nominal full load motor efficiency would then be used to determine the full load losses, in horsepower, associated with that motor. The full load losses would then be adjusted using an algorithm to reflect the motor performance at partial loads, corresponding to the load points specified in the DOE test. These losses would then be combined with the measured pump shaft input power at each load point to determine the  $PER_{CL}$  or  $PER_{VL}$  for that pump, as described in section III.B. *Id.* Section III.E.1 describes how the Federal minimum or represented nominal full load motor efficiency is used in the calculation-based method when calculating overall pump power consumption.

#### 1. Default Nominal Full Load Motor Efficiency

For determining the default motor efficiency of a minimally compliant pump ( $PER_{STD}$ ) and for determining the default motor efficiency used to calculate  $PER_{CL}$  for bare pumps, DOE proposed to specify the nominal full load motor efficiency that corresponds to the applicable Federal minimum standard. In the April 2015 pumps test procedure NOPR, DOE proposed that the "default" nominal full load motor efficiency values be based on the minimum nominal full load motor

efficiency standards for polyphase, NEMA Design B motors from 1 to 500 hp, defined in 10 CFR part 431, subpart B for medium and large electric motors, except for submersible motors. Specifically, at the time of the proposal, the values in Table 5 of 10 CFR 431.25(h) defined the nominal full load motor efficiency standards, by number of poles and horsepower for the applicable motors. 80 FR 17586, 17612–13 (April 1, 2015). DOE is using the term "default nominal full load efficiency" throughout this document to refer to the default values used in this test procedure for determining  $PER_{STD}$  and for bare pumps,  $PER_{CL}$  corresponding to the applicable Federal minimum energy conservation standards. See section III.D.1.a for a discussion regarding electric motors covered by DOE's energy conservation standards at 10 CFR 431.25 and section III.D.1.b for a discussion regarding submersible motors.

#### a. Covered Electric Motors

For the determination of  $PER_{STD}$  for all pumps (except ST pumps) and  $PER_{CL}$  for bare pumps (see section III.E.1.a), default nominal full load motor efficiency values are required. As mentioned previously, DOE believes the nominal full load motor efficiency standards specified for NEMA Design B motors are appropriate for the pumps (except ST pumps) to which this test procedure is applicable. In the April 2015 pumps test procedure NOPR, DOE also proposed to specify the selection of the default motor characteristics used for calculating  $PER_{CL}$  and  $PER_{STD}$  based on the configuration in which the pump is being sold. Specifically, for bare pumps, DOE proposed that the default nominal full load motor efficiency for determining  $PER_{CL}$  and  $PER_{STD}$  would be based on the following criteria:

- The number of poles selected for the default motor would be equivalent to the nominal speed of the rated pump (*i.e.*, 2 poles correspond to 3,600 rpm and 4 poles correspond to 1,800 rpm);
- the motor horsepower selected for a given pump would be required to be either equivalent to, or the next highest horsepower-rated level greater than, the measured pump shaft input power at 120 percent of BEP flow, as determined based on an extrapolation of the linear regression of pump input power (discussed in section III.C.2.d); and
- the lower standard (*i.e.*, less stringent) of either the open or enclosed construction at the appropriate motor horsepower and number of poles. 80 FR 17586, 17612–13 (April 1, 2015).

As mentioned previously, the appropriate table at 10 CFR 431.25 is the

table of nominal full load motor efficiency standards that is currently required for compliance of NEMA Design B polyphase motors.

For pumps sold either with motors or with motors and continuous or non-continuous controls, selection of a default nominal full load motor efficiency for calculation of  $PER_{STD}$  is also required. This default nominal full load motor efficiency is also based on the applicable Federal minimum standards. In this case, DOE proposed that the motor horsepower and number of poles selected for determining the default nominal full load motor efficiency for use in the calculation of  $PER_{STD}$  should be equivalent to the horsepower and poles of the motor with which the pump model is distributed in commerce. Similar to the case for bare pumps, DOE also proposed that the default nominal full load motor efficiency corresponding to the minimally compliant motor in  $PER_{STD}$  would still be the minimum of the open and enclosed standards for the appropriate motor horsepower and number of poles. That is, regardless of the motor construction (*i.e.*, open or enclosed) of the motor with which the pump is being rated, the minimum nominal full load motor efficiency standard listed in the applicable table for polyphase NEMA Design B motors at 10 CFR 431.25 for the given motor horsepower and number of poles would be used. *Id.*

DOE requested comment on its proposal to determine the default motor horsepower for rating bare pumps based on the pump shaft input power at 120 percent of BEP flow and, in response, HI commented that it agrees with this proposal. (HI, No. 8 at p. 19) DOE also requested comment on its proposal to specify the default nominal full load motor efficiency based on the applicable minimally allowed nominal full load motor efficiency specified in DOE's energy conservation standards for NEMA Design B motors at 10 CFR 431.25 for all pumps except pumps sold with submersible motors. HI commented that each NEMA MG 1 nominal efficiency value is the average efficiency of a large population of motors of the same design, so for any given nominal efficiency value, half of the corresponding population would be lower. (HI, No. 8 at p. 19) HI indicated that the NEMA MG 1 minimum efficiency values should be used instead so that the test method for determining  $PE_{CL}$  and  $PE_{VL}$  are not disadvantaged. Wilo similarly commented that the use of NEMA nominal efficiencies would cause 50 percent of borderline pumps to

fail. (Wilo, Docket No. EERE-2011-BT-STD-0031, No. 44 at p. 2)

DOE acknowledges the comments from HI and Wilo regarding the use of nominal full load motor efficiency values from 10 CFR 431.25. DOE notes that these values represent the minimum Federal efficiency standard for applicable covered motors and, as such, believes that referencing an alternative, lower efficiency value would be inappropriate and inconsistent with DOE's regulatory framework. However, in response to the specific concern voiced regarding a potential disadvantage when using the testing-based method, DOE will follow the method the manufacturer used to determine the representative value when conducting enforcement testing. In other words, if a pump manufacturer has used the calculation-based rating method to determine the representative value for a pump basic model, then DOE would also use the calculation-based approach, which relies on the nominal full load motor efficiency values from the table and not the actual motor tested performance. Conversely, if a manufacturer elected to use the testing-based approach, DOE would also assess compliance using the testing-based approach which would account for the actual tested efficiency of the motor incorporated into the pump. Thus, a manufacturer need not be concerned that the actual efficiency of an individual motor would have a disparate effect on the measured efficiency during assessment or enforcement testing.

In this final rule, DOE is adopting the default nominal full load motor efficiency values for bare pumps and the method for determining PER<sub>STD</sub> proposed in the April 2015 pumps test procedure NOPR. That is, the default nominal full load motor efficiency for bare pumps and for determining PER<sub>STD</sub> for all pumps (besides VTS pumps) is determined by referencing the applicable energy conservation standards found at 10 CFR 431.25 for NEMA Design B motors that are required at the time the pump model is being certified. At the time of publication of this document, the

appropriate motor Federal energy conservation standards for NEMA Design B polyphase motors can be found at 10 CFR 431.25(h).

DOE notes that, if DOE were to amend the energy conservation standards for NEMA Design B polyphase motors, the represented values for pump PEI would no longer remain valid, and manufacturers would need to revise their represented values to reflect the amended nominal full load motor efficiency standards and recertify at the first annual certification date after the compliance date for the amended motor Federal energy conservation standards. As a result of the methodology being adopted today, which will result in changes to represented values for pumps when the Federal energy conservation standards for NEMA Design B polyphase motors changes, DOE does not believe that any actual design or manufacturing changes will be required from the pump manufacturer since the bare pump will remain the same and is unaffected by the motor standard. Instead, DOE is ensuring that pump ratings still reflect differential representations depending on the efficiency of the motor that is being sold with the pump. DOE understands that certain motors that were minimally compliant with the previous motor standard may no longer be able to be sold once manufacturers are required to comply with amended standards for motors (if adopted) and thus, DOE believes a methodology which reflects this reality is best. Because the PEI is an indexed value that is meant to compare the performance of the pump being tested to that of a theoretical "minimally-compliant" pump, the default nominal full load motor efficiency for that "minimally-compliant pump" must reflect any changes in the motor standard and available products in the market. If DOE did not adopt a methodology that acknowledges potential changes to the energy conservation standards for NEMA Design B motors, then pump represented values could be artificially inflated when compliance with amended energy conservation standards

for motors is required and could result in a situation where a compliant pump could be less efficient due to the credit being given from the amended energy conservation standards for motors.

For these reasons, DOE is specifying in the pumps test procedure adopted in this final rule that when determining PER<sub>STD</sub> for all pumps (except VTS pumps) and PER<sub>CL</sub> for bare pumps, the default nominal full load motor efficiency value that is used must be the energy conservation standard for NEMA Design B polyphase motors that is required at the time the pump model is being certified and must be updated with an annual certification. As this amended default nominal full load motor efficiency will occur in both the numerator and the denominator of the PEI metric, such a test procedure provision will not lead to changes in the relative ratings of bare pump models using the calculation-based approach.

b. Submersible Motors

DOE notes that submersible motors are not currently subject to the DOE energy conservation standards for electric motors specified at 10 CFR 431.25. Therefore, for the purposes of calculating PEI<sub>CL</sub> for bare VTS pumps or PER<sub>STD</sub> for any pumps sold with submersible motors, DOE requires a default assumption regarding full load efficiency for submersible motors. In the April 2015 pumps test procedure NOPR, DOE constructed a table of motor full load efficiencies by motor horsepower, similar to the table of energy conservation standards for electric motors at 10 CFR 431.25(h), as shown in Table III.6. 80 FR 17586, 17614-15 (April 1, 2015).

As it was not DOE's intent to impact the rated efficiency of submersible motors through this rulemaking, DOE deflated the minimum submersible motor efficiency that DOE observed by using the maximum number of "bands" across a horsepower range to ensure that the value represented a worst-case value. Where no data were available, DOE applied the same number of NEMA bands across the range of motor horsepower and numbers of poles.

TABLE III.6—TWO-POLE MOTOR SUBMERSIBLE MOTOR FULL LOAD EFFICIENCY BY MOTOR HORSEPOWER RELATIVE TO THE FULL LOAD EFFICIENCY IN IN TABLE 5 OF 10 CFR 431.25(h)

Motor horsepower (hp)	Minimum observed full load efficiency (2-poles) (%)	Observed number of "bands" below the full load efficiency in Table 5 of 10 CFR 431.25(h)	Default number of "bands" below the full load efficiency in Table 5 of 10 CFR 431.25(h)
1	67	6	11
1.5	67	11	

TABLE III.6—TWO-POLE MOTOR SUBMERSIBLE MOTOR FULL LOAD EFFICIENCY BY MOTOR HORSEPOWER RELATIVE TO THE FULL LOAD EFFICIENCY IN IN TABLE 5 OF 10 CFR 431.25(h)—Continued

Motor horsepower (hp)	Minimum observed full load efficiency (2-poles) (%)	Observed number of "bands" below the full load efficiency in Table 5 of 10 CFR 431.25(h)	Default number of "bands" below the full load efficiency in Table 5 of 10 CFR 431.25(h)
2	73	9	
3	75	9	
5	76	10	
7.5	77	10	15
10	75	13	
15	72.2	15	
20	76.4	13	
25	79	12	
30	79.9	12	12
40	83	10	
50	83	11	
60	84	11	
75	83.8	12	
100	87	10	14
125	86	13	
150	86	13	
175	88	12	
200	87	14	
250	87	14	

Id.

In response to the April 2015 pumps test procedure NOPR proposal, HI commented in the public meeting that several of the minimum motor efficiency values are higher than what is being published. (HI, NOPR public

meeting transcript, No. 7 at pp. 159–60). In written comments, HI provided corrected efficiencies for several values. (HI, No. 8 at pp. 19–20)

DOE thanks HI for submitting data to assist in constructing a submersible

motor efficiency table that is representative of minimally efficient submersible motors. DOE has revised its proposed submersible efficiency values to accommodate the lower values provided by HI, as shown in Table III.7.

TABLE III.7—REVISED SUBMERSIBLE MOTOR FULL LOAD EFFICIENCY BY MOTOR HORSEPOWER

Motor horsepower (hp)	Minimum observed full load efficiency (%)		Observed number of "bands" below the full load efficiency in Table 5 of 10 CFR 431.25(h)		Binned number of "bands" below the full load efficiency for NEMA design B motors in CFR 431.25		Resulting default nominal full load submersible motor efficiency	
	2 poles	4 poles	2 poles	4 poles	2 poles	4 poles	2 poles	4 poles
1	67		6		11	11	55	68
1.5	67		11				66	70
2	73		9				68	70
3	75		9				70	75.5
5	76		10				74	75.5
7.5	77		10		15	15	68	74
10	75		13				70	74
15	72.2		15				72	75.5
20	76.4		13				72	77
25	79		12				74	78.5
30	79.9	81.8	12	13	13	14	77	80
40	83		10				78.5	81.5
50	83	85.1	11	13			80	82.5
60	82.4	85.4	13	14			81.5	84
75	83.8	86.2	12	14			81.5	85.5
100	87		10		14	15	81.5	84
125	86		13				84	84
150	86	86.1	13				84	85.5
200	87		13	15			85.5	86.5
250	87		14				86.5	86.5

During the April 2015 NOPR public meeting, Nidec Corporation (Nidec) expressed that the levels of submersible motors should be consistent with the requirements for vertical motors. Nidec also stated that there be two sets of default efficiency values: one for a dry

rotor and one for a wet rotor. (Nidec, NOPR public meeting transcript, No. 7 at pp. 160–61) Nidec added that the type with air could use Table 12–12 from NEMA MG 1. (Nidec, NOPR public meeting transcript, No. 7 at p. 163)

In response to Nidec's comment, DOE notes that all equipment categories that are subject to the test procedure, including VTS pumps that are most commonly paired with submersible motors, are defined as dry rotor pumps. As such, wet rotor submersible motors

and wet rotor submersible pumps are not subject to the test procedure, and a table of minimum efficiency values for them is not necessary. DOE notes that, in response to Nidec's comment regarding "the type [of motor] with air," DOE believes Nidec is referring to non-hermitically sealed units (*i.e.*, non-submersible motors) and confirming that Table 12–12 in NEMA MG–1 (which is consistent with DOE's minimum efficiency standards for electric motors at 10 CFR 431.25) is appropriate for such non-submersible motors. While DOE's application of the minimum efficiency standards for electric motors in this final rule is limited to NEMA Design B motors, DOE notes that NEMA's comment is consistent with the approach being taken in this final rule.

HI stated that DOE needs to emphasize that single-phase motors are not part of the minimum efficiency tables. (HI, No. 8 at pp. 19–21) DOE notes that in this test procedure, as described in section III.A.6, all pumps sold with single-phase motors, including single-phase submersible motors, may be rated as bare pumps in order to not be penalized for the inherently lower efficiencies of single-phase equipment. In the bare pump approach, the default submersible motor efficiency values presented in Table III.7 are used in calculating both the numerator ( $PER_{CL}$  or  $PER_{VL}$ ) and denominator ( $PER_{STD}$ ) of PEI; the lower efficiency of a single-phase motor is not taken into account. DOE notes that, as described in section III.A.6, pumps sold with single-phase submersible motors may also apply the testing-based approach, if desired by the manufacturer. However, in such a case, the default motor efficiency used to determine  $PER_{STD}$  would continue to be the default nominal submersible motor efficiency presented in Table III.7.

In regard to selection of default motor size for submersible motors, in the April 2015 pumps test procedure NOPR, DOE proposed to apply the same sizing method proposed for other categories of pumps, described in section III.D.1 of this NOPR. At the April 2015 NOPR public meeting, HI stated that submersible motors are sold utilizing full NEMA motor service factors and recommended amending the submersible motor sizing to account for this sizing approach. (HI, NOPR public meeting transcript, No. 7 at p. 150) In its written comments, HI noted that DOE needs to emphasize that submersible pumps are typically loaded to the fully utilized service factor of the motor. (HI, No. 8 at pp. 19–20)

In response to HI's suggestion, DOE has reviewed the typical service factors of submersible motors offered for sale with pumps within the scope of this test procedure. DOE determined that the majority of submersible motors exhibited service factors of 1.15. DOE notes that this value is also consistent with the service factor prescribed in table 12–4 of NEMA MG–1 2009 for Design A, B, and C polyphase, squirrel cage, general-purpose, alternating-current motors of the open type with a motor horsepower greater than 1 hp. In light of this, DOE is revising its requirements for the default motor sizing of submersible motors in this final rule to reflect the service factors observed in the industry. That is, DOE is specifying that, for VTS bare pumps, the default submersible motor horsepower be determined as the motor horsepower that is equal to or the next highest motor horsepower greater than the pump shaft input power (in horsepower) at 120 percent of BEP flow divided by the service factor, or 1.15. DOE notes that some motors less than 3 horsepower may have a higher service factor, but by using the same value for all pumps, DOE is simplifying the procedure and does not expect this simplification to significantly impact the PEI for VTS bare pumps. This is because the same service factor (1.15) is used for the given pump's  $PER_{CL}$  and for  $PER_{STD}$ , so the two efficiency values essentially cancel out and do not significantly impact the rating.

DOE reiterates that this default service factor is only necessary for determining the default motor efficiency for submersible motors. For pumps sold with submersible motors and pumps sold with submersible motors and continuous or non-continuous controls, the actual submersible motor size with which the pump is distributed in commerce is used when determining motor efficiency for use in calculating  $PER_{CL}$ ,  $PER_{VL}$ , and  $PER_{STD}$ .

In summary, in this final rule, DOE will allow the use of default nominal full load submersible motor efficiency values presented in Table III.7 to rate (1) VTS bare pumps, (2) pumps sold with submersible motors, and (3) pumps sold with submersible motors and continuous or non-continuous controls as an option instead of using the testing-based approach. DOE believes that allowing the calculation-based method to be used for pumps sold with submersible motors may also reduce the testing burden for some manufacturers. However, if manufacturers wish to account for the use of submersible motors with a higher efficiency than the default nominal full load submersible

motor efficiency, they may choose to rate the pump model using the testing-based, wire-to-water method described in section III.E.2.

## 2. Represented Nominal Full Load Motor Efficiency for Pumps Sold With Motors

For pumps sold with motors or motors and continuous or non-continuous controls that are rated using the calculation-based approach, DOE proposed in the April 2015 pumps test procedure NOPR that the nominal full load motor efficiency used in determining the  $PER_{CL}$  or  $PER_{VL}$  will be the value that is certified to DOE as the nominal full load motor efficiency in accordance with the standards and test procedures for electric motors at 10 CFR 431, subpart B. 80 FR 17586, 17613–14 (April 1, 2015). As noted in the April 2015 pumps test procedure NOPR and described in greater detail in section III.E.1.b and III.E.2, this verifiable and standardized represented nominal full load motor efficiency is only available for motors that are subject to DOE's test procedure for electric motors and, as such, DOE proposed in the April 2015 pump test procedure NOPR, that only pumps sold with motors subject to DOE's electric motor test procedure and energy conservation standards would be able to conduct the proposed calculation-based approach. *Id.* at 17618, 17626–28. DOE notes that these represented nominal full load efficiency values correspond to the certified value submitted on the motor manufacturer's certification report and on the nameplate of the motor itself. Therefore, if the motor manufacturer elects to certify conservatively at the Federal energy conservation standard level, this is the value the pump manufacturer must use in its calculations for pumps sold with motors subject to DOE's Federal energy conservation standards.

For pumps sold with submersible motors and rated using the calculation-based approach, DOE also proposed that the nominal full load motor efficiency values would be the same as the default nominal full load submersible motor efficiency values used to determine the  $PER_{CL}$  for bare pumps and  $PER_{STD}$ . *Id.* at 17614. These values are representative of minimally efficient submersible motors and are discussed further in section III.D.1.b. As noted previously, if manufacturers wish to represent the efficiency of pumps sold with submersible motors that are more efficient than the assumed value, then they may perform the testing-based method described in section III.E.2.b in section.

DOE received no comments on these proposals and is adopting the provisions for specifying the represented nominal full load motor efficiency for motors subject to DOE’s electric motor test procedure and the default nominal full load submersible motor efficiency for submersible motors, as proposed. DOE notes that, for pumps sold with motors not addressed by DOE’s electric motor test procedure (except submersible motors), the calculation-based methods described in section III.E.1.b would not apply, and no assumption regarding nominal efficiency of the motor paired

with the pump is permitted when determining PER<sub>CL</sub> or PER<sub>VL</sub>. However, an assumption regarding the default efficiency of the minimally compliant motor that can be paired with a given pump would still be required to calculate PER<sub>STD</sub>. See Section III.D.1; 80 FR 17586, 17613–14 (April 1, 2015).

3. Determining Part Load Motor Losses

As described in section III.B.2, default nominal full load motor efficiency is converted to motor losses, in horsepower, at each load point to determine the input power to the motor

when determining PER<sub>STD</sub>. This same approach is used to determine PER<sub>CL</sub> under the calculation-based approach, which is described in greater detail in section III.E.2.b. In the April 2015 pumps test procedure NOPR, DOE proposed to determine the part load losses of the motor at each load point by applying an algorithm to the full load losses of the motor. 80 FR 17615. Specifically, DOE proposed to determine a part load loss factor (y<sub>i</sub>) at each load point based on the following equation (13):

$$y_i = \left(-0.4508 \times \left(\frac{P_i}{\text{MotorHP}}\right)^3 + 1.2399 \times \left(\frac{P_i}{\text{MotorHP}}\right)^2 - 0.4301 \times \left(\frac{P_i}{\text{MotorHP}}\right) + 0.6410\right) \quad (13)$$

Where:

y<sub>i</sub> = the part load loss factor at load point i,  
P<sub>i</sub> = the shaft input power to the bare pump at load point i (hp),

MotorHP = the motor horsepower (hp), and  
i = load point corresponding to 75, 100, or 110 percent of BEP flow for uncontrolled pumps or 25, 50, 75, or 100 percent of BEP flow for pumps sold with a motor

and continuous or non-continuous controls.

*Id.*

In the proposal, the full load losses of the motor would be determined based on the full load motor efficiency, which would be the default nominal full load motor efficiency described in section

III.D.1 for bare pumps and when determining PER<sub>STD</sub>, or the represented nominal full load motor efficiency described in section III.D.2 for pumps sold with applicable motors. Specifically, DOE proposed that the full load motor losses would be calculated as shown in equation (14):

$$L_{\text{full}} = \frac{\text{MotorHP}}{\left[\frac{\eta_{\text{motor,full}}}{100}\right]} - \text{MotorHP} \quad (14)$$

Where:

L<sub>full</sub><sup>64</sup> = motor losses at full load (hp),  
MotorHP = the motor horsepower (hp), and  
η<sub>motor,full</sub> = the default or rated nominal full load motor efficiency as determined in

accordance with section III.D.1 or III.D.2, respectively (%).

*Id.*

Finally, DOE proposed that the part load losses at each specified load point

would be determined based on the product of the full load losses and the part load loss factor at that load point, as shown in equation (15):

$$L_i = L_{\text{full}} \times y_i \quad (15)$$

Where:

L<sub>i</sub> = motor losses at load point i (hp),  
L<sub>full</sub> = motor losses at full load (hp),  
y<sub>i</sub> = part load loss factor at load point i, and  
i = load point corresponding to 75, 100, or 110 percent of BEP flow for uncontrolled pumps or 25, 50, 75, or 100 percent of BEP flow for pumps sold with a motor and continuous or non-continuous controls.

These calculated part load motor losses at each of the specified load points would then be combined with the measured pump shaft input power and weighted equally to calculate PER<sub>CL</sub> or PER<sub>VL</sub> via the calculation-based

approach and PER<sub>STD</sub>, as described in section III.E.1.b and III.B.2, respectively. *Id.* at 17615–16.

DOE requested comment on the development and use of the motor part load loss factor curves to describe part load performance of covered motors and submersible motors, including the default motor specified in section III.D.1 for bare pumps and calculation of PER<sub>STD</sub>. DOE received no comments on the proposal and, as such, is adopting the proposed methodology presented in the April 2015 pumps test procedure NOPR with no modification for pumps, except those sold with submersible

motors. DOE notes that, in making the change requested by interested parties to account for service factor in sizing submersible motors (see section III.D.1.b), DOE is making a slight modification to the part load loss factors for VTS pumps to specify that where

$$\frac{P_i}{\text{MotorHP}} > 1,$$

a value of 1.000 should be used as the part load loss factor.

This change is needed because the proposed part load loss curves were not developed to be representative of

<sup>64</sup> DOE notes that, in the April 2015 pumps test procedure NOPR, DOE proposed to define this term using the nomenclature L<sub>full,default</sub> and described it as equivalent to “default motor losses at full load.” However, upon further review, DOE finds this terminology confusing because this equation applies both to pumps rated as bare pumps, for

which a default nominal full load motor efficiency applies, as well as pumps rated with motors and pumps rated with motors and controls, for with the nominal full load motor efficiency with which the pump is rated applies (not a default value), depending on the context. Therefore, in this final rule, DOE is updating the terminology to use the

nomenclature L<sub>full</sub> and describe the term as equivalent to “motor losses at full load,” referencing the relevant procedure for determining full load motor losses based on the pump configuration.



performance above the full load of the motor. This modification implicitly assumes that the motor efficiency curve is flat between full load and the service factor (*i.e.*, 1.15). DOE expects the full load losses of the motor to be more representative of the performance of motors beyond full load operation than extending the curve, which would assume that losses would decrease (efficiency would increase) above full load. DOE has not made any other revisions to the part load loss factors. DOE also notes that such is the case for all pumps; that is, the ratio of pump shaft input power to motor horsepower should not exceed a value of 1 for any pump. As such, to ensure that the part load loss factor equation is not applied inappropriately, DOE is adding this clarification as applicable to all pumps tested under the test procedure.

*E. Test Methods for Different Pump Configurations*

As previously discussed, the  $PEI_{CL}$  and  $PEI_{VL}$  for a given pump is determined by first calculating the  $PER_{CL}$  or  $PER_{VL}$ , as applicable, for the given pump. For all pumps, the  $PER_{CL}$  or  $PER_{VL}$  is then scaled based on a

calculated  $PER_{STD}$  (*i.e.*, the  $PER_{CL}$  of a pump that would minimally comply with the applicable standard). (Docket No. EERE-2011-BT-STD-0031) The process for determining the  $PER_{STD}$  is described in section III.B.2.

In the April 2015 pumps test procedure NOPR, DOE proposed that different test methods for determining the  $PER_{CL}$  and  $PER_{VL}$  of applicable pumps would apply based on the configuration of the pump model and the characteristics of the motor and controls it may be sold with. 80 FR 17586, 17616 (April 1, 2015). For example, the available test method(s) for pumps sold alone (*i.e.*, bare pumps) would be different than those for pumps sold with motors or pumps sold with motors and continuous or non-continuous controls. Further, the available test methods for pumps sold with motors that are covered by DOE's energy conservation standards for electric motors at 10 CFR 431.25(g) (as established by the energy conservation standards established in the May 2014 medium electric motor energy conservation standard final rule (79 FR 30933 (May 29, 2014))<sup>65</sup> would be different than the available test methods

for pumps sold with motors that are not covered by DOE's test procedure for electric motors. Specifically, DOE proposed defining the applicability of the proposed test methods based on the following:

- Two potential approaches: (1) Testing-based versus (2) calculation-based;
  - three potential configurations: (1) Bare pumps, (2) pumps sold with motors, and (3) pumps sold with motors and controls; and
  - two different sub-configuration criteria:
    - (1) Whether the pump was sold with: (a) a motor covered by DOE's electric motor energy conservation standards, (b) a submersible motor, (c) a motor that is not covered by DOE's electric motor energy conservation standards and is not a submersible motor, or (d) no motor; and
    - (2) whether the pump was sold with: (a) continuous controls, (b) non-continuous controls, or (c) neither continuous or non-continuous controls.
- The applicability of DOE's proposed test methods to different configurations of pumps is summarized in Table III.8. *Id.* at 17627.

TABLE III.8—APPLICABILITY OF CALCULATION-BASED AND TESTING-BASED TEST PROCEDURE OPTIONS BASED ON PUMP CONFIGURATION

Pump configuration	Pump sub-configuration	Calculation-based test method	Testing-based test method
Bare Pump .....	Bare Pump .....	A.1: Tested Pump Efficiency of Bare Pump + Default Nominal Full Load Motor Efficiency + Default Motor Part Load Loss Curve.	Not Applicable.
Pump + Motor .....	Pump + Motor Covered by DOE's Electric Motor Energy Conservation Standards OR Pump + Submersible Motor.	B.1: Tested Pump Efficiency of Bare Pump + Represented Nominal Full Load Motor Efficiency for Actual Motor Paired with Pump + Default Motor Part Load Loss Curve.	B.2: Tested Wire-to-Water Performance.
	Pump + Motor Not Covered by DOE's Electric Motor Energy Conservation Standards (Except Submersible Motors).	Not Applicable .....	B.2: Tested Wire-to-Water Performance.
Pump + Motor + Speed Controls.	Pump + Motor Covered by DOE's Electric Motor Energy Conservation Standards + Continuous Control OR Pump + Submersible Motor + Continuous Control.	C.1: Tested Pump Efficiency of Bare Pump + Represented Nominal Full Load Motor Efficiency for Actual Motor Paired with Pump + Default Motor/Control Part Load Loss Curve + Assumed System Curve.	C.2: Tested Wire-to-Water Performance.
	Pump + Motor Covered by DOE's Electric Motor Energy Conservation Standards + Non-Continuous Control OR Pump + Submersible Motor + Non-Continuous Control.	Not Applicable .....	C.2: Tested Wire-to-Water Performance.
	Pump + Motor Not Covered by DOE's Electric Motor Energy Conservation Standards (Except Submersible Motors) + Continuous or Non-Continuous Controls.	Not Applicable .....	C.2: Tested Wire-to-Water Performance.

<sup>65</sup> DOE recognizes that the scope of the electric motor standards at 10 CFR 431.25 may change in the future as a result of potential future

rulemakings. Since the scope of such future motors standards is unknown, DOE wishes to clearly and unambiguously establish the specific motors which,

when sold with an applicable bare pump, would be eligible to apply the calculation-based test methods described in this section.

DOE's proposed applicability of testing-based and calculation-based test methods, as shown in Table III.8, was designed to maximize the number of pumps that can be rated using the less burdensome calculation-based methods A.1, B.1, and C.1. DOE also proposed the applicability of the various test methods to maximize flexibility in rating equipment. That is, where possible, DOE proposed to allow either the calculation-based or the testing-based method to be used to determine the PEI of applicable pump models. 80 FR 17627–28. In this case, if a manufacturer wished to represent the improved performance of a given pump, for example from a motor with improved part load efficiency performance, and believed that the assumptions made in the calculation method would not adequately represent the improved performance of that pump, the manufacturer would be able to use the testing-based methods to rate the PEI<sub>CL</sub> or PEI<sub>VL</sub> of that pump model to capture the improved performance of the pump as tested.

DOE also noted that, since the measured performance of individual units can vary from the average performance of the population or from DOE's assumed values used in the calculation-based approach, it is theoretically possible for the calculation-based approach to generate ratings that are better or worse than the testing-based approach. To address this possibility, DOE proposed that manufacturers report the test method (*i.e.*, calculation-based or testing-based) used to determine the PEI for each model and that DOE would use the same method used by the manufacturer to generate the rating when performing assessment or enforcement testing. *Id.* at 17628.

DOE requested comment on its proposal to establish calculation-based test methods as the required test method for bare pumps and testing-based methods as the required test method for pumps sold with motors that are not regulated by DOE's electric motor energy conservation standards, except for submersible motors, or for pumps sold with any motors and with non-continuous controls. DOE also requested comment on the proposal to allow either testing-based methods or calculation-based methods to be used to rate pumps sold with continuous control-equipped motors that are either (1) regulated by DOE's electric motor standards or (2) submersible motors. In addition, DOE requested comment on the level of burden associated with reporting the test method used by a manufacturer to certify a given pump basic model as

compliant with any energy conservation standards DOE may set.

HI commented that it agrees with these proposals, and that it is not too burdensome to note the test method in the certification report, as proposed in the April 2015 pumps test procedure NOPR. (HI, No. 8 at p. 23) Wilo commented that the calculation-based test methods should be eliminated entirely. Wilo indicated that one problem is that DOE is not responsible for providing tools to determine compliance, so each manufacturer will be responsible for creating its own potentially erroneous evaluation tool. Wilo also indicated that a second problem is that there are no standard efficiencies for VFDs, so a manufacturer could use a minimally performing VFD to create a better performing PEI value for a given pump sold with motor and controls. (Wilo, Docket No. EERE–2011–BT–STD–0031, No. 44 at pp. 3–4)

In response to Wilo's comment regarding the calculation-based approach, DOE notes that DOE developed the calculation-based approach with extensive feedback and input from the CIP Working Group and believes that it is appropriate for the categories and configurations of pumps for which DOE proposed it would be applicable. DOE also notes that, as described in the April 2015 pumps test procedure NOPR, the calculation-based approach is significantly less burdensome than the testing-based approach since a manufacturer may elect to determine the PEI rating for several pump models sold with different combinations of motors and/or continuous controls based on the physical test of the bare pump only. That is, manufacturers may test a representative sample of bare pumps (see section III.G for a description of DOE's sampling provisions for pumps) and all subsequent ratings of that bare pump sold with any combination of motors that are covered by DOE's energy conservation standards, submersible motors, and continuous controls may be calculated using the calculation-based approach with no additional physical testing. Due to the potentially large burden associated with requiring physical testing of each potential combination of a bare pump, motor, and continuous control, as well as the existing concerns of manufacturers and other interested parties regarding the proposed test procedure (see section IV.B), DOE is electing to maintain the calculation-based procedure as an option for applicable pumps.

DOE also notes that the calculation-based procedure is required for bare pumps, as testing-based methods do not

apply to bare pumps because a PEI rating (which includes the efficiency of the motor) cannot be determined based on a test of the bare pump alone. For all other pump configurations, the calculation-based method is only offered as an option, should manufacturers choose to employ it. Therefore, if Wilo prefers to use the testing-based approach to certify their equipment, it may do so for all configurations of pumps except bare pumps.

Regarding the accuracy or validity of any evaluation tools to implement any calculations associated with either the calculation-based or testing-based approach, DOE notes that manufacturers must rate pumps in accordance with the test procedure. The calculation-based approach required by the regulations provides sufficient detail for manufacturers to develop reliable tools. Nonetheless, manufacturers are responsible for ensuring that any calculations are performed correctly, whether performed using an evaluation tool or by hand, for both the calculation-based and the testing-based approaches.

In response to Wilo's comment regarding the potential for a manufacturer to improve the PEI rating of a given pump model sold with a motor, but without continuous controls, by pairing the pump with continuous controls, DOE acknowledges that the PEI for pumps sold with continuous controls tested using either the calculation-based or testing-based approach will be better (*i.e.*, lower) than that of the same pump sold and tested with a motor only. However, consistent with the feedback provided by the CIP Working Group, DOE believes that decreased PEI is reflective and representative of the improved energy performance customers are likely to observe in the field. That is, the load points and, in the case of controlled-motors, the system curve, assumed for these pumps (discussed in section III.B and III.E.2.c, respectively) are representative of the operation of such pumps in the field. DOE also notes that, as mentioned in the April 2015 pumps test procedure NOPR, the testing-based method is intended to allow for more granular differentiation of equipment performance, including differentiation of the performance of different models or styles of continuous controls. In particular, DOE noted in the April 2015 pumps test procedure NOPR that the ability of the testing-based method to differentiate among the performance of various continuous controls was particularly important for pumps sold with motors and continuous controls, since DOE is only assuming a single

system performance curve to represent all applicable continuous controls, as described in section III.E.1.c, and the testing-based method may provide an opportunity for manufacturers to differentiate among the performance of different continuous control technologies. *Id.* at 17627–28.

In this test procedure final rule, DOE is adopting the test method applicability proposed in the April 2015 pumps test procedure NOPR and shown in Table III.8 with no modifications. As proposed in the NOPR, DOE is also adopting requirements that manufacturers report the test method used to determine the ratings for applicable pump models and provisions that when conducting assessment and enforcement testing DOE will use the same method reported by manufacturers.

The specific test methods, any comments DOE received on the proposed methods and applicability, and the final test methods DOE is adopting in this final rule are discussed in the following sections:

- Section III.E.1.a: The calculation-based approach for bare pumps (method A.1),
- section III.E.1.b: The calculation-based approach for pumps sold with applicable motors,
- section III.E.1.c: The calculation-based approach for pumps sold with applicable motors and continuous controls,
- section III.E.2.b: The testing-based approach for pumps sold with motors, and

- section III.E.2.c: The testing-based approach for pumps sold with motors and continuous or non-continuous controls.

#### 1. Calculation-Based Test Methods

In the April 2015 pumps test procedure NOPR, DOE proposed that the following calculation-based test methods would be used to rate (1) pumps sold as bare pumps (method A.1); (2) pumps sold either with (a) motors that are regulated by DOE's electric motor standards or (b) submersible motors (method B.1); and (3) pumps sold with motors that are either (a) regulated by DOE's electric motor standards or (b) submersible motors, and that are equipped with continuous controls<sup>66 67</sup> (method C.1). 80 FR 17586, 17616 (April 1, 2015).

Regardless of the pump configuration or characteristics, the calculation-based test method for the applicable pump types includes the following steps:

- (1) Physical testing of the bare pump, in accordance with HI 40.6–2014, to determine the pump BEP and pump shaft input power at 75, 100, and 110 percent of actual BEP flow, adjusted to nominal speed;
- (2) Determining the part load losses of the motor (or default motor) and any continuous or non-continuous controls applicable to the rated pump model at each load point;
- (3) Taking the sum of the pump shaft input power at nominal speed and the calculated part load motor losses at each load point in the constant load or variable load profiles, as applicable, to

determine the input power to the pump at each load point;

(4) Determining the  $PER_{CL}$  or  $PER_{VL}$ , as applicable, for the given pump as the weighted average of the input power to the pump at the applicable load points;

(5) Determining the  $PER_{STD}$  for the minimally compliant pump, as described in section III.B.2; and

(6) Dividing the  $PER_{CL}$  or  $PER_{VL}$  from step 4 by the  $PER_{STD}$  for that pump model to determine  $PEI_{CL}$  or  $PEI_{VL}$ , respectively.

The specific test methods for bare pumps, pumps sold with motors, and pumps sold with motors and continuous controls are described in more detail in the following sections III.E.1.a, III.E.1.b, and III.E.1.c, respectively.

#### a. Calculation-Based Test Method A.1: Bare Pump

As described previously, DOE proposed in the April 2015 pumps test procedure NOPR that the bare pump  $PER_{CL}$  would be determined based on the measured pump shaft input power at 75, 100, and 110 percent of BEP flow. 80 FR 17586, 17616–17 (April 1, 2015). Section III.C of this final rule describes the test method for determining pump shaft input power at the specified load points, which is based on HI 40.6–2014. DOE proposed that the measured pump shaft input power at the three constant-load flow points would then be combined with the part load motor losses at each load point and equally weighted to determine  $PER_{CL}$  for that bare pump, as shown in equation (16):

$$PER_{CL} = \omega_{75\%}(P_{75\%}^{in,m}) + \omega_{100\%}(P_{100\%}^{in,m}) + \omega_{110\%}(P_{110\%}^{in,m}) \\ = \omega_{75\%}(P_{75\%} + L_{75\%}) + \omega_{100\%}(P_{100\%} + L_{100\%}) + \omega_{110\%}(P_{110\%} + L_{110\%}) \quad (16)$$

Where:

$\omega_i$  = weighting at load point *i* (equal weighting or 1/3 in this case),

$P_i^{in,m}$  = calculated input power to the motor at load point *i* (hp),

$P_i$  = the shaft input power to the bare pump at load point *i* (hp),

$L_i$  = default motor losses at load point *i* (hp), and

*i* = load point corresponding to 75, 100, or 110 percent of BEP flow as determined

in accordance with the DOE test procedure.

*Id.*

The part load motor losses for the bare pump would be determined for the bare pump based on a default nominal full load motor efficiency, representative of a motor that is minimally compliant with DOE's electric motor energy conservation standards (or the default minimum motor efficiency for

submersible motors), as described in section III.D.1, and the default motor loss curve, as described in section III.D.2. *Id.*

As presented in section III.B, the  $PEI_{CL}$  for a bare pump can then be calculated as the  $PER_{CL}$  for a given pump divided by the  $PER_{STD}$  for a pump that is minimally compliant with DOE's pump standards sold without controls, as shown in equation (17):

<sup>66</sup> The calculation-based test method was designed to capture the dynamic response of a control that can continuously respond to changes in load and reduce power consumption at all load points below BEP. Therefore, pumps sold with non-continuous controls would instead use the testing-based method described in section III.E.2.c, which captures some reduction in power consumption at

some reduced flow rates. DOE discussed this approach with the CIP Working Group, which generally agreed with it, although such a recommendation was not specifically included in the CIP Working Group recommendations. (Docket No. EERE–2013–BT–NOC–0039, No. 107 at pp. 49–50)

<sup>67</sup> DOE notes that some pumps sold with continuous controls, such as pumps sold with ECMs, may not be eligible to apply the calculation-based method based on the fact that ECMs are not: (1) A type of motor covered by DOE's energy conservation standards for covered motors or (2) a submersible motor (*see* section III.E). These pumps would instead apply a testing-based method.

$$PEI_{CL} = \left[ \frac{PER_{CL}}{PER_{STD}} \right] \quad (17)$$

Where:

$PER_{STD}$  = the  $PER_{CL}$  for a pump of the same equipment class with the same flow and specific speed characteristics that is minimally compliant with DOE's energy conservation standards serving the same hydraulic load (hp). The procedure for determining  $PER_{STD}$  is described in detail in section III.B.2.

For bare pumps, DOE proposed establishing the calculation-based approach (method A.1) as the only applicable test procedure, as testing-based methods do not apply to bare pumps because a PEI rating (which includes the efficiency of the motor) cannot be determined based on a test of the bare pump alone.

DOE received no specific comments on the proposed test procedure for bare pumps and is adopting the calculation-based test procedure, as proposed.

#### b. Calculation-Based Test Method B.1: Pump Sold With a Motor

For pumps sold with motors that either are regulated by DOE's electric motor standards or are submersible motors, DOE proposed to allow the use of the applicable calculation-based method (method B.1), in addition to the testing-based method (method B.2, discussed in section III.E.2.b). In these cases, DOE proposed that the calculation-based test procedure would be similar to that for pumps sold alone (method A.1) except that the represented nominal full load motor efficiency, or losses, would be that of the motor with which the pump is sold when determining  $PER_{CL}$ , as opposed to the default nominal full load motor efficiency assumed in the bare pump case. For motors covered by DOE's electric motor standards, DOE proposed that the represented nominal full load motor efficiency be determined in accordance with the DOE electric motor test procedure specified at 10 CFR 431.16 and appendix B to subpart B of part 431 (see section III.D.2) and applicable procedures for determining the represented value (also specified in 10 CFR part 429 and 431). For pumps sold with submersible motors rated using the calculation-based method, the default nominal full load submersible motor efficiency would be determined from Table III.6 (see section III.D.1.b). DOE also reiterated that this calculation-based method would not apply to

pumps sold with motors that are not subject to DOE's electric motor standards (except for submersible motors). 80 FR 17586, 17618 (April 1, 2015).

The  $PEI_{CL}$  for pumps sold with motors would then be calculated using a similar approach that would be applied to bare pumps shown in equations (16) and (17), above, except that the default part load losses of the motor at each load point would be determined based on the represented nominal full load motor efficiency, as described in section III.D.2. *Id.*

As previously discussed in section III.B.2, in determining  $PER_{STD}$ , DOE proposed to use the electric motor efficiency standards listed at 10 CFR 431.25 for polyphase NEMA Design B motors as the default nominal full load motor efficiency of the minimally compliant pump for pumps sold with motors other than submersible motors. Similarly, for pumps sold with submersible motors, the default nominal full load motor efficiency would be that specified in Table III.6 in section III.D.1.b for both the rated pump model and  $PER_{STD}$ . *Id.*

In the April 2015 pump test procedure NOPR, DOE requested comment on several specific items related to the proposed calculation-based test procedure for pumps sold with applicable motors. Specifically, DOE requested comment on its proposal to determine the part load losses of motors covered by DOE's electric motor energy conservation standards using the represented nominal full load motor efficiency, as determined in accordance with DOE's electric motor test procedure, and the same default motor part load loss curve used in test method A.1. In response, HI commented that it could not comment on this issue. (HI, No. 8 at p. 21) DOE received no additional comments on this proposal.

DOE requested comment on its proposal that pumps sold with motors that are not addressed by DOE's electric motors test procedure (except submersible motors) would be rated based on the testing-based approach, and HI commented that it agrees with this proposal. (HI, No. 8 at p. 21) DOE received no additional comments on this proposal and has determined that no revisions are necessary.

DOE also requested comment on its proposal to determine the  $PER_{CL}$  of pumps sold with submersible motors using the proposed default nominal full load efficiency values for submersible motors and to apply the same default motor part load loss curve to the default motor in test method A.1 to the bare pump. HI commented that it agrees with the proposal as long its concerns regarding submersible motor efficiency, as detailed in section III.D.1.b of this final rule, are addressed. (HI, No. 8 at p. 21) DOE received no other comments on this proposal.

Based on the comments received from interested parties, DOE is adopting the proposed test method B.1 for pumps sold with motors covered by DOE's electric motor test procedure. For pumps sold with submersible motors, the default nominal full load submersible motor efficiency values used in the calculation of  $PER_{CL}$  and  $PER_{STD}$  are the values shown in Table III.7, which are revised based on the input from HI.

#### c. Calculation-Based Test Method C.1: Pump Sold With a Motor and Continuous Controls

For pumps sold with continuous controls and motors that are either (a) regulated by DOE's electric motor standards for electric motors or (b) submersible motors, DOE proposed, in the April 2015 pumps test procedure NOPR, to allow use of either the applicable calculation-based method (method C.1, discussed in this section III.E.1.c) or the testing-based method (method C.2, discussed in section III.E.2.c). 80 FR 17618–19. The proposed calculation-based approach for pumps sold with motors and continuous controls determines the  $PEI_{VL}$  metric, which accounts for the power reduction resulting from reducing speed to achieve a given flow rate, as opposed to throttling. In this case, DOE proposed that the  $PEI_{VL}$  would be determined as the  $PER_{VL}$  of the given pump divided by the  $PER_{STD}$ , where the  $PER_{STD}$  would be determined in accordance with the procedures in section III.B.2, and the  $PER_{VL}$  would be determined as the weighted average input power to the pump at 25, 50, 75, and 100 percent of BEP flow, as shown in equation (18):

$$PER_{VL} = \omega_{25\%}(P_{25\%}^{in,c}) + \omega_{50\%}(P_{50\%}^{in,c}) + \omega_{75\%}(P_{75\%}^{in,c}) + \omega_{100\%}(P_{100\%}^{in,c}) \quad (18)$$

Where:

$\omega_i$  = weighting at load point *i* (equal weighting or 1/4 in this case),  
 $P_i^{in,c}$  = measured or calculated driver power input to the continuous or non-continuous controls at load point *i* (hp), and  
*i* = 25, 50, 75, and 100 percent of BEP flow, as determined in accordance with the DOE test procedure.

*Id.*

Similar to the calculation-based approaches for bare pumps and pumps sold with motors, the input power to the

pump when sold with motors and continuous controls would be determined by adding together the pump shaft input power and the combined losses from the motor and continuous controls at each of the load points. However, in the case of determining  $PER_{VL}$  for pumps sold with motors and continuous controls, DOE proposed that only the input power at the 100 percent of BEP flow load point would be determined through testing, and the remaining 25, 50, and 75

percent of BEP flow load points would be calculated based on an assumed system curve. In particular, consistent with CIP Working Group discussions (Docket No. EERE-2013-BT-NOC-0039, No. 107 at pp. 49-50), DOE proposed to use a quadratic reference system curve, which goes through the BEP and an offset on the y-axis, representative of a static head component to the system curve. The reference system curve equation is shown in equation (19) and depicted in Figure III.1:

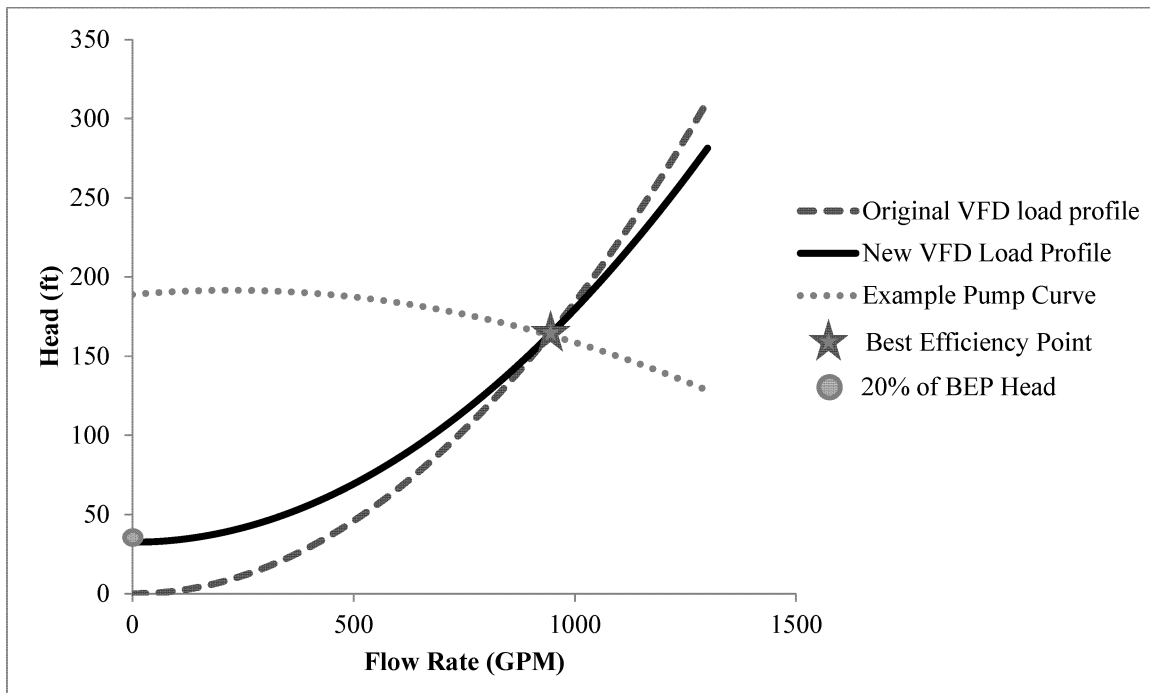
$$H = \left[ 0.8 * \left( \frac{Q}{Q_{100\%}} \right)^2 + 0.2 \right] * H_{100\%} \quad (19)$$

Where:

$H$  = the total system head (ft),

$Q$  = the flow rate (gpm),  
 $Q_{100\%}$  = flow rate at 100 percent of BEP flow (gpm), and

$H_{100\%}$  = total pump head at 100 percent of BEP flow (ft).



**Figure III.1 System Control Curve for Head with Respect to Flow for Pumps Sold with Continuous Controls. Statically offset curve and pure quadratic curve plotted with identical BEP flows. Static offset set at 20 percent of BEP head.**

DOE’s approach for developing the proposed system curve is discussed in detail in the April 2015 pump test procedure NOPR. *Id.* at 17619-20.

To determine the pump shaft input power at 25, 50, and 75 percent of BEP

flow, DOE proposed to apply the reference system curve discussed in section III.E.1.c and assume that continuous speed reduction is applied to achieve the reduced load points. Specifically, the reduction in pump

shaft input power at part loadings was assumed to be equivalent to the relative reduction in pump hydraulic output power assumed by the system curve, as shown in equation (20):

$$P_i = \left( 0.8 \frac{Q_i^3}{Q_{100\%}^3} + 0.2 \frac{Q_i}{Q_{100\%}} \right) \times P_{100\%} \tag{20}$$

Where:

- $P_i$  = shaft input power to the bare pump at load point  $i$  (hp),
- $P_{100\%}$  = shaft input power to the bare pump at 100 percent of BEP flow (hp),
- $Q_i$  = flow rate at load point  $i$  (gpm),
- $Q_{100\%}$  = flow rate at 100 percent of BEP flow (gpm), and
- $i$  = 25, 50, and 75 percent of BEP flow as determined in accordance with the DOE test procedure.

*Id.* at 17620–21.

Finally, to calculate the  $PER_{VL}$  for pumps sold with applicable motors and continuous controls, DOE proposed to apply a separate algorithm for determining the part load losses of the motor and continuous controls together, to account for the additional losses as a result of inefficiencies from the continuous control and increased inefficiencies in the speed-controlled motor due to harmonic distortion. Based on data DOE collected regarding VFD

performance, DOE determined that four part load loss equations would be the most appropriate way to represent the combined efficiency of the motor and continuous control as a function of the output power of the motor and, therefore, proposed to use the polynomial expression shown in equation (21) to estimate the aggregate part load losses of motors and continuous controls at each load point:

$$z_i = \left( a * \left( \frac{P_i}{MotorHP} \right)^2 + b * \left( \frac{P_i}{MotorHP} \right) + c \right) \tag{21}$$

Where:

- $z_i$  = the part load loss factor for the motor and continuous controls at load point  $i$ ;

- $a, b, c$  = coefficients based on motor horsepower, see Table III.9;
- $P_i$  = the shaft input power to the bare pump at load point  $i$  (hp);

MotorHP = the horsepower of the motor with which the pump is being rated (hp); and  $i$  = 25, 50, 75, and 100 percent of BEP flow as determined in accordance with the DOE test procedure.

TABLE III.9—MOTOR AND CONTINUOUS CONTROL PART LOAD LOSS FACTOR EQUATION COEFFICIENTS FOR EQUATION (21)

Motor horsepower (hp)	Coefficients for equation (21)		
	a	b	c
≤5 .....	−0.4658	1.4965	0.5303
>5 and ≤20 .....	−1.3198	2.9551	0.1052
>20 and ≤50 .....	−1.5122	3.0777	0.1847
>50 .....	−0.8914	2.8846	0.2625

The development of DOE’s part load loss factor equations for motors and continuous controls are also described in detail in the April 2015 pumps test procedure NOPR. 80 FR 17586, 17621 (April 1, 2015).

To determine the resultant  $PEI_{VL}$  rating for pumps sold with applicable motors and continuous controls and rated based on the calculation-based approach, the  $PER_{VL}$  determined based on the reference system curve and default motor and control losses would be divided by the  $PER_{STD}$ , determined in accordance with the procedure described in section III.B.2. DOE notes that, although the  $PER_{VL}$  of the tested pump only requires the 100 percent of BEP flow load point to be determined experimentally, the full HI 40.6–2014 test would still be required, and the pump hydraulic output power at 75, 100, and 110 percent of BEP flow would still be necessary for determining the  $PER_{STD}$  of the given pump. *Id.* at 17621–22.

In response to DOE’s proposed calculation-based approach for pumps sold with application motors and

continuous controls, HI commented that it is in agreement with the calculation-based test method for pumps sold with motors and continuous controls, provided that the corrected version of NOPR equation (6) presented at the April 2015 NOPR public meeting is used. (HI, No. 8 at pp. 21–22) HI also specifically indicated that it agrees with the proposed system curve shape, and that it agrees that the curve should go through the statically loaded offset.

Regal Beloit commented that it accepts the structure of the pump energy conservation standards NOPR and the April 2015 pumps test procedure NOPR as presented with respect to motor-drive efficiency testing and evaluation, and encouraged the use of the forthcoming industry standard IEC 61800–9–2 once it is published and at such time as the DOE seeks to revise the pumps test procedure. (Regal Beloit, No. 9 at p. 1) DOE understands that the IEC standard will serve as a 60 Hz version of the 50 Hz European industry standard BS EN 50598. DOE will review the IEC standard once it is available,

and may consider it for future rulemaking activity.

DOE received no other comments on this test method, and confirms that the final rule uses the corrected equation for determining the minimum standard pump efficiency presented at the April 2015 NOPR public meeting.

d. Other Calculation Methods for Determination of Pump Performance

In the April 2015 pumps test procedure NOPR, DOE proposed that each bare pump model be physically tested in accordance with the test procedure and that calculations alone could not be used to determine bare pump performance. DOE noted that the calculation-based test procedure for certain applicable pumps already contains provisions for tested bare pump performance to be combined with default or tested performance data regarding the motor or motor with continuous or non-continuous controls to calculate the PER of multiple pump basic models. Therefore, DOE proposed that, beyond the calculations proposed in the April 2015 pumps test procedure

NOPR, DOE would not permit use of other algorithms or alternative efficiency determination methods to determine the rated performance of covered pumps or pump components (*i.e.*, motors or controls). 80 FR 17586, 17622–23 (April 1, 2015).

DOE requested comment on its proposal to require testing of each individual bare pump as the basis for a certified PEI<sub>CL</sub> or PEI<sub>VL</sub> rating for one or more pump basic models. DOE also requested comment on its proposal to limit the use of calculations and algorithms in the determination of pump performance to the calculation-based methods proposed in the NOPR. HI commented that it agrees with these proposals. (HI, No. 8 at p. 22) DOE received no additional comments on these proposals and, consistent with the comments submitted by HI, is adopting such calculation methods as discussed in this section III.E.1 in this final rule.

## 2. Testing-Based Methods

Testing-based methods directly measure the input power to the motor, continuous control, or non-continuous control at the load points of interest (*i.e.*, 75, 100, and 110 percent of BEP flow for uncontrolled pumps and 25, 50, 75, and 100 percent of BEP flow for pumps sold with a motor and speed controls). As such, as discussed previously, these methods cannot be applied to bare pumps. In addition, these test methods are the only test methods applicable to pumps sold with motors that are not addressed by DOE's electric motor test procedure (except submersible motors) or that are sold with non-continuous controls and are an optional procedure for all pumps sold with motors or motors with continuous controls.

The following sections describe DOE's proposals, any comments received from interested parties, and the final test provisions DOE is adopting in this final rule on the following topics:

- How to determine BEP for pumps rated using the testing-based method (section III.E.2.a),
- the testing-based approach for pumps sold with motors (method B.2; described in section III.E.2.b), and
- the testing-based approach for pumps sold with motors and continuous or non-continuous controls (method B.3; described in section III.E.2.c).

### a. The Best Efficiency Point for Pumps Testing Using Testing-Based Methods

In the April 2015 pumps test procedure NOPR, DOE noted that when testing some pumps using testing-based methods, it is not possible to determine BEP as a ratio of pump input power over pump hydraulic power unless

additional measurements are made of bare pump performance or pump shaft input power, in addition to input power to the motor. *See* section III.C.2.d. Specifically, in the case of pumps sold with motors or motors with continuous or non-continuous controls measured using testing-based methods, DOE noted that input power to the pump shaft is not measured directly in the proposed test procedure. As such, DOE proposed that the BEP for such pumps be determined using a similar procedure to that discussed in section III.C.2.d for calculation-based methods; however, BEP would be determined using the maxima of what is typically known as overall efficiency (*i.e.*, the input power to the driver or continuous control, if any, divided by the pump hydraulic output power at the nominal speed), rather than pump efficiency. 80 FR 17586, 17623 (April 1, 2015).

DOE requested comment on its proposal to require manufacturers to determine BEP for pumps rated with a testing-based method by using the ratio of input power to the driver or continuous control, if any, over pump hydraulic output. DOE also requested input on the degree to which this method may yield significantly different BEPs from the case in which BEP is determined based on pump efficiency. HI commented that BEP can only be determined when testing the bare pump. HI also indicated that determining BEP through a wire-to-water (*i.e.*, testing-based) method will cause the manufacturers to have to test each motor configuration sold with the bare pump, increasing the burden. HI recommended that the manufacturer be given the option to determine BEP by testing as a bare pump or by testing using a wire to water test. HI also recommended that BEP be instead defined as the pump hydraulic power operating point consisting of both flow and head conditions that result in the maximum efficiency of the certified unit. (HI, No. 8 at pp. 22–23).

After review, DOE has determined that the HI proposal would yield different efficiency ratings for the same pump. In response to HI's comment, DOE notes that DOE initially proposed that the BEP when applying the testing-based methods would be based on the overall efficiency in order to reduce burden when conducting testing. That is, when testing a pump in accordance with the testing-based method, DOE proposed that the overall efficiency would be used to determine pump efficiency so that the pump shaft input power would not have to be separately determined, since measurements of pump shaft input power are not

otherwise needed when conducting the test procedure. If DOE were instead to specify that BEP be determined based on the pump efficiency only, pumps tested using the testing-based approaches would either need to have additional instrumentation installed (*e.g.*, a torque sensor) to measure pump shaft input power or, in some cases, would require duplicative testing of the pump with a calibrated motor if a torque sensor could not be inserted between the bare pump and motor based on the pump design. For example, ESCC and VTS pumps would not be able to be tested using the testing-based methods to determine BEP based on pump efficiency in the same test, unless a calibrated motor with the same characteristics as the motor with which the pump model was to be distributed in commerce was used.

In response to HI's concern regarding the increased burden of determining the BEP based on overall efficiency, DOE finds this statement to be erroneous, since the determination of BEP based on overall efficiency would only be required for the testing-based approaches and the testing-based approaches already require each basic model to be tested. Under the proposed approach, no incremental testing would be necessary. To the extent that manufacturers wish to use the calculation-based methods to determine the PEI of applicable pumps, the BEP of the bare pump, based on pump efficiency, must be used. However, these data are irrelevant to determining the PEI of pumps under the testing-based approach, since the two methods are mutually exclusive. That is, the PEI of a given pump cannot be determined via both calculation-based and testing-based approaches. DOE has ensured that this is clear in the regulatory text included in this final rule.

Regarding HI's proposal to optionally allow manufacturers to use either pump efficiency or overall efficiency, DOE believes that such an approach could potentially result in variability in the BEP, and thus PEI, for the same pump model. This is unacceptable since each pump model can have only one certified PEI value associated with it and that value must be repeatable and consistent among test facilities.

DOE believes that the approach proposed in the April 2015 pumps test procedure NOPR will result in representations that are more straightforward and consistent, as well as less burdensome, for those pumps rated using the testing-based approach. As such, DOE is adopting, in this final rule, the approach proposed in the April 2015 pump test procedure NOPR to

determine the BEP of pumps rated using the testing-based approach based on overall efficiency, as opposed to pump efficiency.

Regarding HI's comment that BEP should be determined as the load point associated with maximum efficiency, which consists of both head and flow points, DOE acknowledges HI's comments and agrees that the BEP for each pump represents the flow and head points representing maximum efficiency at full impeller diameter. In particular, DOE notes that DOE's definition of BEP, as adopted in this final rule, specifies BEP with respect to a load point, consisting of both flow and head conditions. However, in this test procedure final rule, DOE in general refers to BEP flow, since DOE's specified load points are characterized with respect to BEP flow only. DOE understands that the head and flow of a given pump, at full impeller diameter and without throttling, are inextricably linked, so it is not necessary to

independently account for and specify both parameters. That is, for example, by specifying the flow at 100 percent of BEP, the power calculated at that load point will, necessarily, also be reflective of head at 100 percent of BEP flow, since the data are all based on the same curve. It is not possible to determine the power input at, for example, 50 percent of BEP flow and 100 percent of BEP head without throttling the pump, trimming the impeller, or otherwise physically altering the tested equipment or test set-up such that the data generated would no longer be reflective of the pump model being tested. As such, DOE does not believe that any additional specifications or clarifications regarding the BEP load point are necessary in the pumps test procedure.

#### b. Testing-Based Test Method B.2: Pump Sold With a Motor

For pumps sold with motors that are not regulated by DOE's electric motor

standards (except for submersible motors), DOE proposed that use of the testing-based method B.2, discussed in this section III.E.2.b, would be required because the nominal full load efficiency of the motor, as determined using a specific standardized procedure, is not available for those motors. For pumps sold with motors subject to DOE's electric motor standards or submersible motors, the testing-based approach discussed in this section III.E.2.b would be optional.

In the April 2015 pumps test procedure NOPR, DOE also proposed that, for pumps sold with motors, the  $PEI_{CL}$  could be determined by wire-to-water testing, as specified in HI 40.6–2014, section 40.6.4.4. In this case, the  $PER_{CL}$  would become an average of the measured power input to the motor at the three specified load points, as shown in equation (22):

$$\begin{aligned} PER_{CL} &= \sum_{i=75\%,100\%,110\%} \omega_i P_i^{in,m} \\ &= \omega_{75\%} (P_{75\%}^{in,m}) + \omega_{100\%} (P_{100\%}^{in,m}) + \omega_{110\%} (P_{110\%}^{in,m}) \end{aligned} \quad (22)$$

Where:

$\omega_i$  = weighting at load point  $i$  (equal weighting or  $1/3$  in this case),

$P_i^{in,m}$  = measured or calculated driver power input to the motor at load point  $i$  (hp), and

$i$  = load point at 75, 100, or 110 percent of BEP flow as determined in accordance with the DOE test procedure.

80 FR 17586, 17623 (April 1, 2015).

DOE received no comments on the proposed testing-based approach for pumps sold with motors and, as such, is adopting the provisions discussed in the April 2015 pumps test procedure NOPR with no changes.

#### c. Testing-Based Test Method C.2: Pump Sold With a Motor and Speed Controls

For pumps sold with non-continuous control-equipped motors that are either (1) regulated by DOE's electric motor standards for electric motors or (2) submersible motors, as defined in section III.E.1.c, DOE proposed in the April 2015 pumps test procedure NOPR that the calculation-based method C.1 would not be applicable because these controls are not able to follow the reference system curve described in section III.E.1.c. Instead, pumps sold with non-continuous controls would have to be tested using the testing-based

method C.2. For pumps sold with motors not regulated by DOE's electric motor standards (excluding submersible motors) that are equipped with either continuous or non-continuous controls, DOE also noted that only these testing-based methods (method C.2) would apply, as is the case for pumps sold with motors not regulated by DOE's electric motor standards (excluding submersible motors) without controls (discussed in section III.E.2.b). 80 FR 17586, 17627 (April 1, 2015).

For pumps sold with continuous controls and motors that are (1) regulated by DOE's electric motor standards for electric motors or (2) submersible motors, the testing-based approach discussed herein (method C.2) would be optional, and such pumps may also be tested under the calculation-based approach, as discussed in section III.E.1.c. *Id.*

Regarding the specific procedures contained in the testing-based approach for pumps sold with motors and continuous or non-continuous controls, DOE proposed that the  $PEI_{VL}$  may be determined by wire-to-water testing, based on the procedure specified in HI 40.6, section 40.6.4.4, except that the input power:

- Is the "driver input power" defined in table 40.6.2.1 of HI 40.6–2014 and referenced in table 40.6.3.2.3, section 40.6.4.4, and section 40.6.6.2,
  - refers to the input power to the continuous or non-continuous control, and
  - is determined in accordance with the tolerances and requirements for measuring electrical power described in section III.C.2.e.
- 80 FR 17623–24.

DOE clarified that, with the proposed approach, pump manufacturers would determine the BEP of the pump, inclusive of motor and continuous or non-continuous controls, as described in section III.E.2.a, and then adjust the operating speed of the motor and the head until the specified head and flow conditions are reached (*i.e.*, 25, 50, and 75 percent of BEP flow and the associated head pressures determined by the reference system curve in section III.E.1.c). To ensure this method C.2 results in consistent and repeatable ratings, DOE also proposed tolerances around each load point of 10 percent about (*i.e.*, above and below) the target flow and head load points defined on the reference system curve for each pump. Similarly, DOE also proposed that the measured data would be



extrapolated to the exact load points specified by the reference system curve using the following equation (23):

$$P_i^{in,c} = \left( \frac{H_{sp,i}}{H_{M,j}} \right) \left( \frac{Q_{sp,i}}{Q_{M,j}} \right) P_{M,i} \quad (23)$$

Where:

$P_i$  = the corrected driver power input to the continuous or non-continuous controls at load point  $i$  (hp),

$H_{sp,i}$  = the specified total system head at load point  $i$  based on the reference system curve (ft),<sup>68</sup>

$H_{M,j}$  = the measured total system head at load point  $j$  (ft),

$Q_{sp,i}$  = the specified total system flow rate at load point  $i$  based on the reference system curve (gpm),

$Q_{M,j}$  = the measured total system flow rate at load point  $j$  (gpm),

$P_{M,j}$  = the measured shaft input power to the bare pump at load point  $j$ ,

$i$  = specified load point at 25, 50, 75, or 100 percent of BEP flow as determined in accordance with the DOE test procedure, and

$j$  = measured load point corresponding to specified load point  $i$ .

*Id.* at 17624–25.

Under DOE's proposed approach, the PER would become the mean of the measured power input to the continuous or non-continuous control at the four specified load points based on the assumed system curve (as in method C.1), as shown in equation (24):

$$\begin{aligned} PER_{VL} &= \sum_{i=25\%,50\%,75\%,100\%} (\omega_i P_i^{in,c}) \\ &= \omega_{25\%} (P_{25\%}^{in,c}) + \omega_{50\%} (P_{50\%}^{in,c}) + \omega_{75\%} (P_{75\%}^{in,c}) + \omega_{100\%} (P_{100\%}^{in,c}) \end{aligned} \quad (24)$$

Where:

$\omega_i$  = weighting at load point  $i$  (equal weighting or  $\frac{1}{4}$  in this case),

$P_i^{in,c}$  = measured or calculated driver power input to the continuous or non-continuous controls at load point  $i$  (hp), and

$i$  = load point at 25, 50, 75, or 100 percent of BEP flow, as determined in accordance with the DOE test procedure.

*Id.* at 17625.

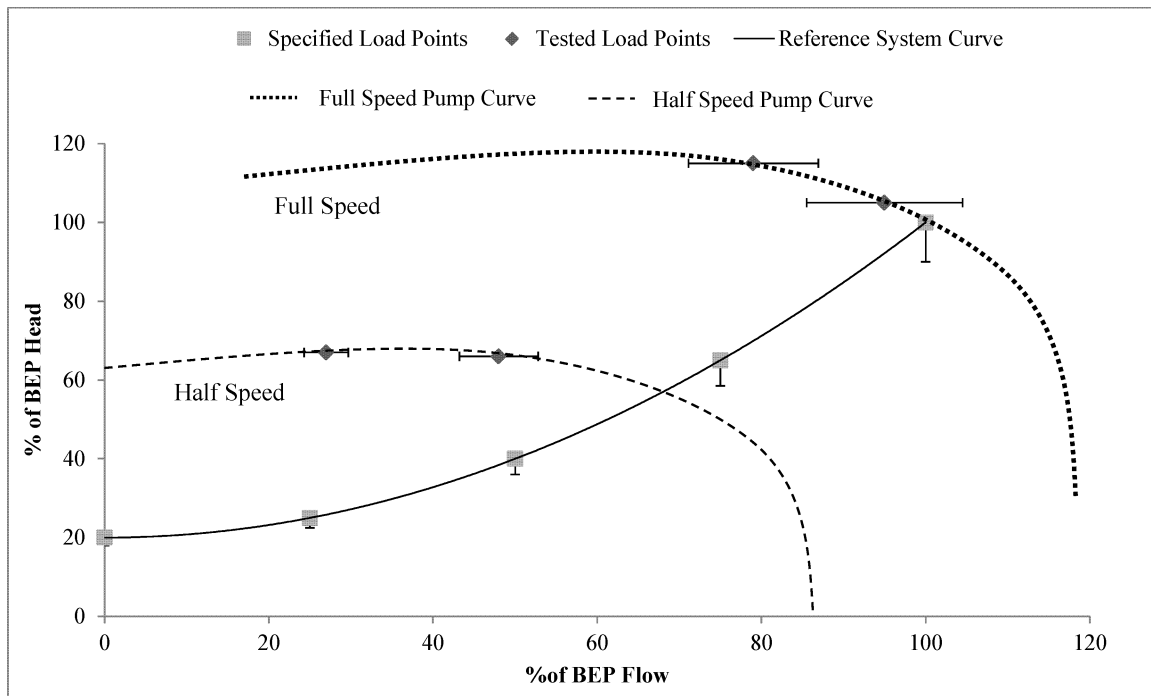
In the April 2015 pumps test procedure NOPR proposal, DOE also noted that some pumps are sold with non-continuous controls, such as multi-

speed motors, that are not able to follow the reference system curve directly at all load points. For example, in the case of a pump sold with a two-speed motor, the pump will operate at full speed (*i.e.*, the nominal speed) for some of the load points and reduced speed at the other load points, as shown in Figure III.2.

<sup>68</sup>DOE notes that in the April 2015 pumps test procedure NOPR, DOE proposed to define the tested and "reference" head and flow values using the subscript "T" for tested and "R" for rated (*e.g.*,  $H_R$ ,  $H_T$ ,  $Q_R$ ,  $Q_T$ ). DOE notes that Table 40.6.2.2b of

HI 40.6–2014 provides a list of subscripts for use in applying the HI 40.6–2014 test method. Specifically, Table 40.6.2.2b defines the subscript "sp" as denoting "specified" values and the subscript "M" as denoting measured values. For the

sake of clarity and continuity, in this final rule, DOE is adopting subscripts consistent with the defined HI nomenclature.



**Figure III.2 Load Points Compared to Reference System Curve and Full Speed Pump Curve for a Theoretical Two-Speed Motor.**

For pumps sold with non-continuous controls, DOE proposed to modify this testing-based method C.2 for pumps sold with motors and continuous or non-continuous controls to specify that the head measurements associated with each of the specified flow points would not have to be achieved within 10 percent of the specified head, as described by the reference system curve—only the flow rate would need to be achieved within 10 percent of the specified value. *Id.* at 17626. Instead, DOE proposed to require that the measured pump total head corresponding to the 25, 50, 75 and 100 percent of BEP flow points could not be lower than 10 percent below that defined by referenced system curve. DOE also proposed that, in this case, the measured head and flow rate would not be corrected to the reference system curve. Instead, the tested load points would be used directly in further calculations of  $PEI_{VL}$ . *Id.*

DOE requested comment on the proposed testing-based method for pumps sold with motors and continuous or non-continuous controls, as well as the proposed testing-based method for determining the input power to the pump for pumps sold with motors and non-continuous controls. In addition, DOE requested comment on any other type of non-continuous control that may be sold with a pump and for which the

proposed test procedure would not apply.

HI commented that it agrees with the optional testing-based methods, but also indicated that any pump sold with an ON/OFF control should be tested or calculated using a  $PEI_{CL}$  method. (HI, No. 8 at p. 23) DOE agrees with HI that ON/OFF switches do not constitute a type of continuous or non-continuous control for which the calculation-based or testing-based methods (C.1 and C.2, respectively) or the  $PEI_{VL}$  metric, would be applicable. Consistent with the April 2015 pumps test procedure NOPR section III.A.1.a and public meeting slide 45, DOE has revised Table 1 in appendix A accordingly to clarify that (1) the calculation-based and testing-based methods to determine  $PEI_{VL}$  apply to pumps sold with motors and continuous or non-continuous controls only; whereas, (2) the test methods for pumps sold with motors (methods B.1 and B.2) apply to pumps sold with motors and controls other than continuous and non-continuous controls.

#### F. Representations of Energy Use and Energy Efficiency

As noted previously, manufacturers of any pumps within the scope of the pump test procedure will be required to use the test procedure established in this rulemaking when making representations about the energy efficiency or energy use of their

equipment. Specifically, 42 U.S.C. 6314(d) provides that “[n]o manufacturer . . . may make any representation . . . respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.”

In the April 2015 pumps test procedure NOPR, DOE noted that performing the proposed test procedure for pumps requires a key component (C-value) that is being addressed through the parallel standards rulemaking for pumps (Docket No. EERE-2011-BT-STD-0031). 80 FR 17586, 17628 (April 1, 2015). Because of this dependency, DOE clarified that manufacturers of equipment that are addressed by this test procedure and any applicable standards that DOE may set would have 180 days after the promulgation of those standards to begin using the DOE procedure.

With respect to representations, generally, DOE stated its understanding that manufacturers often make representations (graphically or in numerical form) of energy use metrics, including pump efficiency, overall (wire-to-water) efficiency, bowl efficiency, driver power input, pump power input (brake or shaft horsepower), and/or pump power output (hydraulic horsepower) and may

make these representations at multiple impeller trims, operating speeds, and number of stages for a given pump. DOE proposed in the April 2015 pumps test procedure NOPR to allow manufacturers to continue making these representations. *Id.*

DOE also proposed that any representations of PEI and PER must be made in accordance with the DOE test procedure, and there may only be one PEI or PER representation for each basic model. In other words, representations of PEI and PER that differ from the full impeller PEI and PER cannot be made at alternate speeds, stages, or impeller trims. Additionally, if the PEI and PER for a basic model is rated using any method other than method A.1, “bare pump with default motor efficiency and default motor part load loss curve,” such a basic model may not include individual models with alternate stages or impeller trims.

If a manufacturer wishes to make unique representations of PEI or PER based on a trimmed impeller, the manufacturer must certify the trimmed impeller as a separate basic model. In such a case, the “trimmed impeller” being rated would become the “full impeller” for the new basic model (*i.e.*, the maximum diameter impeller distributed in commerce for that pump model) (see section III.A.1.c). 80 FR 17586, 17628 (April 1, 2015).

In response to DOE’s language regarding representations in the April 2015 pumps test procedure NOPR, HI stated its concern with the somewhat vague language used around 42 U.S.C. 6314(d) prohibited representation. HI emphasized that it is imperative that pump manufacturers be allowed to continue using pre-existing efficiency curves and sizing software that is used directly by end users and distributors to purchase pumps. HI noted its interpretation that the following text: “Manufacturers often make these representations at multiple impeller trims, operating speeds, and number of stages for a given pump. DOE proposes to allow manufacturers to continue making these representations.” indicates that existing performance and efficiency data can continue to be used and that only representations of PER and PEI fall under [the requirements of] 42 U.S.C. 6314(d) “Prohibited Representation.” HI requested that DOE clearly articulate in the final rule that prohibited representation under 42 U.S.C. 6314(d) applies only to PER and PEI representations. (HI, No. 8 at p. 1)

In response to HI’s comment regarding the nature of representations manufacturers are allowed to make regarding the performance of their

equipment under 42 U.S.C. 6314(d), DOE reiterates that, beginning 180 days after publication of this final rule in the **Federal Register**, all representations regarding  $PER_{CL}$  and  $PER_{VL}$  must be made in accordance with the DOE test procedure. Similarly, all representations regarding  $PEI_{CL}$  and  $PEI_{VL}$  must be made in accordance with the DOE test procedure beginning 180 days after publication of a final rule in the **Federal Register** that sets C-values (*i.e.*, a final rule in the parallel energy conservation standards rulemaking). However, regarding other measures of energy use, energy efficiency, or related performance metrics for pumps, DOE clarifies that such representations must be made using methods that will generate values consistent with the DOE test procedure, as finalized in this final rule. DOE acknowledges that manufacturers have large amounts of pre-existing data that they currently use to market and make representations about the performance of their equipment and that regenerating all of this data within the 180 day timeframe would be burdensome. As such, manufacturers may continue to use such data to make representations about the performance of applicable pump models after the 180 day timeframe, provided manufacturers are confident that the values are consistent with those that would be generated under the adopted test procedure.

In the April 2015 NOPR public meeting, the EEAs noted that it would be helpful if DOE could have its certification materials available prior to the compliance date so that manufacturers can make early representations of PEI. (EEAs, NOPR public meeting transcript, No. 7 at pp. 191–192) The EEAs also noted that it would be helpful for all the fields in the certification report to show up in the database, or that they would determine which items the utility programs would need. (EEAs, NOPR public meeting transcript, No. 7 at pp. 206–207) DOE discusses compliance certification reporting in the parallel energy conservation standards rulemaking, and has considered the stakeholder comments in that rule.

### G. Sampling Plans for Pumps

DOE provides in subpart B to 10 CFR part 429 sampling plans for all covered equipment. The purpose of these sampling plans is to provide uniform statistical methods for determining compliance with prescribed energy conservation standards and for making representations of energy consumption and energy efficiency on labels and in other locations such as marketing

materials. In the April 2015 pumps test procedure NOPR, DOE proposed that, for pumps, the same statistical sampling plans used for other commercial and industrial equipment would be applicable and proposed to add the sampling plan to 10 CFR 429.59. 80 FR 17586, 17628–29 (April 1, 2015).

Under the proposal, DOE proposed that a sample of sufficient size must be randomly selected and tested to ensure compliance and that a minimum of two units must be tested to certify a basic model as compliant. DOE also proposed to apply the same statistical sampling procedures, including the confidence limit and derating factor, that are applicable to many other types of commercial and industrial equipment, as DOE believes equipment variability and measurement repeatability associated with the measurements proposed for rating pumps are similar to the variability and measurement repeatability associated with energy efficiency or consumption measurement required for other commercial equipment. *Id.*

Finally, DOE proposed that DOE would determine compliance in an enforcement matter based on the arithmetic mean of a sample not to exceed four units. *Id.*

DOE received no comments on this proposal. However, upon reviewing the April 2015 pump test procedure NOPR proposals, DOE identified several provisions that require clarification to ensure that DOE’s certification and enforcement provisions are clear and consistent.

First, in the April 2015 pumps test procedure NOPR, the equations for the upper confidence limit (UCL) and lower confidence limit (LCL) in section 429.60 both referenced a confidence limit of 0.95. 80 FR 17586, 17640 (April 1, 2015). However, the UCL and LCL were proposed to be divided by a de-rating factor of 1.01 and 0.99, respectively. *Id.* DOE notes that the confidence limit of the t-statistic and the de-rating factor in the denominator, collectively, are intended to capture the likely variability in pump testing resulting from the allowable test tolerances and instrument accuracy (discussed in sections III.C), lab-to-lab variability, and manufacturing tolerances contained within each model. In the April 2015 pumps test procedure NOPR, DOE had proposed a confidence limit of 99 percent, expecting a 95 percent confidence limit would exceed the amount of variability in PEI that would occur in pump ratings. Specifically, because PEI is an indexed value, with values that range from zero to one, this decreases the amount of

variability that may occur in each individual measurement.

DOE received no comments from interested parties in response to the proposal in the April 2015 pumps test procedure NOPR. However, DOE reevaluated the April 2015 pumps test procedure NOPR proposal and determined that the resultant values may yield overly conservative results that would effectively require such pumps to meet a more stringent standard than that considered in the associated pumps energy conservation standards rule (Docket No. EERE-2011-BT-STD-0031). Therefore, in this final rule, DOE is correcting the confidence limit and derating factor adopted in this final rule to better reflect the likely variability in test results expected to result from the pumps test procedure, lab-to-lab variability, and manufacturing tolerances. Specifically, for the purpose of regulating pumps, a confidence limit of 0.95 and de-rating factor of 1.05 or 0.95 is required due to the combined impacts of test tolerances, experimental variability in conducting the test procedure, and manufacturing variability for this equipment. That is, given the likely variation of measured PEIs within a sample of pump units of the same model, a confidence limit of 0.95 is necessary to ensure that the statistical requirements in the sampling plan for pumps are consistent with the magnitude of the variance between tested units within a sample resulting from manufacturing tolerances and experimental uncertainty inherent in the test procedure. Therefore, DOE is adopting a confidence limit of 0.95 and de-rating factors of 1.05 and 0.95 as applicable to pumps in this test procedure final rule.

Also, regarding testing pumps for enforcement purposes, DOE is clarifying, in this final rule, the procedure for determining BEP when the “expected BEP” may not be known to DOE. As discussed in section III.C.2.d, the procedure for determining BEP described in section 40.6.5.5.1 of HI 40.6-2014 requires that the flow points are to be 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP of the pump model and that if the BEP rate of flow is displaced by more than 5 percent, the test must be repeated. In the case of enforcement testing, DOE will follow the same procedure as manufacturers in determining the BEP of the pump. In this final rule, DOE is clarifying that DOE will use the volume rate of flow (flow rate) at BEP and nominal speed certified by the manufacturer for that pump model as the expected BEP when performing the BEP test. In the case that the BEP rate

of flow is more than 5 percent displaced from the certified value, DOE will also retest the pump as required by the test procedure. However, if the retested BEP rate of flow is still more than 5 percent displaced from the manufacturer’s certified value, DOE will use the mean of the tested values as the volume rate of flow (flow rate) at BEP and nominal speed in subsequent calculations when determining the PEI for that model.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s Web site: <http://energy.gov/gc/office-general-counsel>.

DOE reviewed today’s final rule, which establishes new test procedures for pumps, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE concludes that the final rule DOE is adopting will not result in a significant impact on a substantial number of small entities. The factual basis set forth in the following sections.

##### 1. The Need for, and Objectives of, Today’s Rule

While DOE is currently evaluating whether to establish energy conservation standards for pumps, DOE must first establish a test procedure that

measures the energy use, energy efficiency, or estimated operating costs of a given type of covered equipment before establishing any new energy conservation standards for that equipment. *See, generally*, 42 U.S.C. 6295(r) and 6316(a). To fulfill these requirements, DOE is establishing the test procedure for pumps, described in this final rule, concurrent with its ongoing energy conservation standards rulemaking for this equipment. *See* Docket No. EERE-2011-BT-STD-0031.

In this test procedure, DOE prescribes test methods for measuring the energy consumption of certain pumps, inclusive of motors and controls (continuous or non-continuous), if they are included with the pump when distributed in commerce. In addition, this final rule establishes a new subpart Y to part 431 of Title 10 of the Code of Federal Regulations that contains DOE’s new test procedure for pumps, as well as definitions pertinent to establishing the scope of pumps to which the adopted test procedure is applicable. This final rule also contains sampling plans for pumps for the purposes of demonstrating compliance with any energy conservation standards that DOE adopts.

DOE’s test procedure contains methods to determine the energy consumption for all equipment for which this test procedure applies using either calculation-based methods and/or testing-based methods. While both methods include some amount of testing and some amount of calculation, the terms “calculation-based” and “testing-based” are used to distinguish between methods in which the input power to the pump is determined either by (a) measuring the bare pump shaft input power<sup>69</sup> and calculating efficiency, or losses, of the motor and any continuous control<sup>70</sup> (*i.e.*, calculation-based method) or (b) measuring the input power to the driver,<sup>71</sup> or motor, and any continuous or non-continuous controls<sup>72</sup> for a given pump directly

<sup>69</sup>The term “pump shaft input power” is referred to as “pump power input” in HI 40.6-2014. The term “pump shaft input power” is used synonymously with that term in this document.

<sup>70</sup>DOE notes that for non-continuous controls, as defined in section III.E.1.c, PEI<sub>VL</sub> can only be determined using a “testing-based” method. If a calculation-based method is desired, the pump would instead be rated as a pump sold with a motor and without speed controls using the PEI<sub>CL</sub> metric. See section III.E.1.c for further discussion.

<sup>71</sup>The input power to the driver is referred to as “driver power input” in HI 40.6-2014. The term “input power to the driver” is used synonymously with that term in this document.

<sup>72</sup>In the case that a pump is sold with a motor equipped with either continuous or non-continuous controls and is rated using the testing-based method, the input power to the pump would be

(i.e., testing-based method). As such, the test procedure includes measurements and calculations of the produced hydraulic power, pump shaft input power, electric input power to the motor, and electrical input power to the continuous or non-continuous controls, as applicable, which are substantially based on the test methods contained in the industry test standard HI Standard 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing,” (“HI 40.6–2014”), with slight modifications as noted in section III.C.2.

This test procedure final rule also contains requirements regarding (1) the characteristics, categories, and configurations of pumps to which the adopted test procedure is applicable; (2) the specific manner in which pumps must be tested to determine any applicable representations regarding the performance of pumps subject to the test procedure; and (3) the number of pump units that must be tested to determine the representative value for each basic model. As noted in the April 2015 pump test procedure NOPR and further elaborated in section III.F, DOE’s new pumps test procedure requires a key component (C-value) that is being addressed through the parallel standards rulemaking for pumps (Docket No. EERE–2011–BT–STD–0031). 80 FR 17586, 17628 (April 1, 2015). As such, the use of this test procedure as the basis for any representations regarding the energy efficiency or energy use of pumps would not be required until 180 days after the publication of any energy conservation standards final rule in the **Federal Register**. Therefore, DOE notes that the test methods, definitions, and sampling plans contained in this final rule do not introduce any incremental burden to any manufacturers, since the use of such test methods is not required by this test procedure final rule by itself. That is, any burden associated with testing pumps in accordance with the requirements of this test procedure final rule is not be required until the promulgation of any energy conservation standards final rule for pumps. On this basis, DOE maintains that this final rule has no incremental burden associated with it and a final regulatory flexibility analysis is not required.

While DOE maintains that this final rule has no incremental burden associated with it when viewed as a stand-alone rulemaking, DOE recognizes that pump energy conservation standards are currently being

considered in an associated rulemaking (Docket No. EERE–2011–BT–STD–0031) and may be proposed or promulgated in the near future. Therefore, to consider the aggregate impacts of developing certified ratings for applicable pump models for the purposes of making representations regarding the energy use of such equipment or certifying compliance to DOE under any future energy conservation standards, DOE is also estimating the full burden of conducting the testing required by this test procedure final rule for each pump model. Therefore, while such is not required yet, DOE is presenting the results from conducting the regulatory flexibility analysis to develop estimates of the costs associated with testing equipment consistent with the requirements of this test procedure final rule, as would be required to certify compliance with the potential energy conservation standard. DOE presents the results of such analysis in the following sections.

However, DOE is not determining the significance of that burden with respect to manufacturers’ financial situation or status as a small entity. As the use of the testing requirements contained in this final rule is contingent upon the energy conservation standards rulemaking, DOE is analyzing the effect of the combined burden associated with both the test procedure and energy conservation standard rulemakings in the manufacturer impact analysis performed as part of the energy conservation standard rulemaking (see docket EERE–2011–BT–STD–0031). The costs described in the following subsections are referenced in the manufacturer impact analysis in the pumps energy conservation standard rulemaking to estimate the burden associated with testing. However, DOE reiterates that the estimates provided in this test procedure regulatory flexibility analysis serve only to provide information about the possible burden manufacturers may incur while testing pumps using this DOE test procedure; they do not represent actual burden incurred by the industry as there is no incremental burden associated with this test procedure final rule until and unless the associated pumps energy conservation standard final rule is published.

## 2. Significant Issues From Interested Parties in Response to IRFA

Within the April 2015 pumps test procedure NOPR, DOE conducted an initial regulatory flexibility analysis (IRFA). 80 FR 17586, 17629–33 (April 1, 2015). In response to DOE’s April 2015 pumps test procedure NOPR estimate of

testing burden, DOE received written and verbal comments at the April 2015 NOPR public meeting, as well as throughout the comment period. Comments related to the potential burden include comments related to potential anticompetitive effects of the proposed test procedure; cost of test facility(s); labor costs; quantity of manufacturers potentially affected; and manufacturer sales to assess burden. In this final rule, DOE addresses these comments and presents a revised assessment of potential burden related to test procedure final rule.

## Anticompetitive Effects of Burden and Expense

Consistent with DOE’s requirements to comply with section 32(c) of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788; see section IV.L), DOE is required to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the proposed test procedure on competition in the pumps industry. The U.S. Department of Justice (DOJ) reviewed the April 2015 pumps test procedure NOPR, attended the April 2015 NOPR public meeting, and consulted with members of the industry in preparing their comments and conclusions regarding any anticompetitive effects of the pumps test procedure. In response to the proposed test procedure, DOJ commented that it is not able to determine whether or not the proposed test procedure (or associated energy conservation standard) will lessen competition within the industry. However, DOJ noted that it is concerned about the possibility of anticompetitive effects resulting from the burden and expense of compliance. (DOJ, No. 14 at p. 2)

In this final rule, DOE reviews the potential burden and expense related to testing, but does not analyze the potential effects on competition. However, DOE notes that it has taken steps, in the test procedure adopted in this final rule to minimize burden on manufacturers related to testing and rating equipment in accordance with such procedures.

## Burden of Test Facility(s)

In the April 2015 pumps test procedure NOPR, DOE estimated the burden to manufacturers associated with performing testing in accordance with the proposed test procedure. 80 FR 17586, 17629–33 (April 1, 2015). DOE estimated that in order to determine the performance of any covered pump models for the purposes of making

determined as the input power to the continuous or non-continuous control. See section III.E.2.c.

representations or certifying compliance under any future energy conservation standards for pumps, each manufacturer would have to either (a) have the units tested in-house or (b) have the units tested at a third party testing facility. In addition, if the manufacturer elected to test pumps in-house, each manufacturer would have to undertake the following burden-inducing activities:

- (1) Construct and maintain a test facility that is capable of testing pumps in compliance with the test procedure, including acquisition and calibration of any necessary measurement equipment, and
- (2) conduct the DOE test procedure on two units of each covered pump model. *Id.*

Because pumps are newly regulated equipment and there are no existing testing requirements for pumps, the capabilities of existing testing facilities may vary widely from one manufacturer to another. In the April 2015 pumps test procedure NOPR, DOE based its assessment of testing burden on the conservative assumption that pump manufacturers would have no existing testing infrastructure and would have to bear the full cost of constructing a new testing facility generally capable of conducting testing in accordance with the proposed test procedure. DOE estimated the capital cost of constructing the two types of facilities: A facility equipped to perform the calculation-based test methods (described in section, III.E.1), which varied between \$91,000 and \$277,000, and a facility equipped to perform the testing-based test methods (described in section, III.E.2), which varied between \$72,000 and \$213,000. DOE amortized these capital costs to determine an annual payment amount over an estimated 7-year loan period because DOE's research indicated this was the typical loan period for pump manufacturers. DOE's final calculations regarding the cost of constructing a test lab assumed that the majority of pump models would be certified based on the bare pump configuration and subsequent ratings for the same bare pump sold with any number of applicable motors and continuous controls could be generated using the calculation-based approach. In addition, DOE estimated the ongoing cost of testing between \$161.61 and \$430.96 per unit, plus calibration activities of \$1,241.67 per year. 80 FR 17586, 17632 (April 1, 2015) Based on these assumptions, DOE estimated the amortized total burden associated with the test procedure ranged between \$61,000 and \$221,000 annually for

small manufacturers affected by this rule. *Id.*

DOE requested specific comments and feedback on a number of assumptions made in the April 2015 pumps test procedure NOPR regulatory flexibility analysis. Regarding the cost of constructing a test facility capable of performing the test procedure presented in the April 2015 pumps test procedure NOPR, HI stated that the estimates of materials and costs to build a pump testing facility as presented are greatly underestimated and would be in excess of \$1 million. HI indicated that DOE's facility description leaves out many expensive machines and other equipment that would be required for this testing. (HI, No. 0008 at pp. 24–25)

DOE disagrees with the comments from HI regarding the cost of the testing facility and the effect of burden on manufacturers and the industry. DOE notes that, in the April 2015 pumps test procedure NOPR initial regulatory flexibility analysis (IRFA), DOE used the most burdensome assumptions to estimate the burden associated with complying with the test procedure, resulting in estimates lower than the \$1 million HI suggested. DOE notes that the estimated costs in the IRFA were based on the construction of a facility capable of conducting the DOE test procedure for pumps within the scope of the rulemaking. Because of a lack of information on existing testing facilities in the industry, as well as the potential variability in the capabilities of these existing facilities, DOE assumed that no manufacturers would have existing test capabilities and all manufacturers would have to construct new test laboratories in order to comply with the test procedure. DOE also assumed in the IRFA that no third party laboratories were available to conduct testing in accordance with the DOE test procedure. 80 FR 17586, 17631 (April 1, 2015).

DOE recognizes that many pump manufacturers already have pump test facilities and conduct pump testing as part of an existing manufacturing quality control process, to develop pump performance information for new and existing products, and to demonstrate the performance of specific pump units for customers. As such, for the purposes of estimating testing burden associated with this test procedure final rule, DOE has revised the baseline assumptions regarding the existing test lab capabilities of manufacturers and has estimated the incremental burden associated with just those test procedure requirements that would not typically exist in current manufacturer facilities. DOE describes

these updated assumptions and analysis in section IV.B.3.

Regarding the capabilities of existing test laboratories, HI commented that it disagrees with DOE's assumption in the NOPR that the use of a non-calibrated test motor and VFD with a torque meter would be the most common and least costly approach for testing bare pumps in accordance with the proposed DOE test procedure. (HI, No. 0008 at p. 24) Additionally, HI noted that it did not find anything in the NOPR preamble that mentions recertification requirements. (HI, No. 0008 at p. 25)

DOE acknowledges comments from HI on the underestimated cost estimates to build a pump testing facility and suggestions of components. DOE disagrees with HI that a VFD control would not be the most common approach for testing pumps in accordance with the DOE test procedure. DOE conducted a literature search for pump configurations and determined that almost all controls available to be paired with pumps are VFD controls. DOE also reiterates that the estimates used in the IRFA were not meant to be the least costly for manufacturers. The cost estimates for constructing a test facility were meant to be the most burdensome on manufacturers to show the most costly approach to building a test facility. DOE acknowledges the comment from HI regarding recertification requirements and clarifies that the estimates for recertification requirements in the April 2015 pumps test procedure NOPR IRFA are for pumps which have been redesigned to capture market preferences or other customer requirements. DOE estimates that 10 percent of basic models per manufacturer will be redesigned and tested each year, and the Department has included the costs of testing newly redesigned pumps in this DOE test procedure final rule regulatory flexibility analysis (see section IV.B.3). To further clarify these costs, DOE has removed the terminology used in the April 2015 pumps test procedure NOPR IRFA regarding recertification that was unclear. Instead, in this final rule, DOE uses redesigned and tested to refer to pumps that would require new certifications each year, as their energy performance will have changed as a result of the equipment redesign. DOE notes that only those pump models for which the energy consumption characteristics have changed necessitate a new basic model certification and that pump models whose energy consumption characteristics have not changed do not need to be recertified.

HI agreed that, for most pump models, only physical testing of the underlying bare pump model is required, and subsequent rating for that bare pump sold with a motor or motor and continuous control can be based on calculations only. (HI, No. 0008 at p. 24) HI also stated that all pumps listed within the scope as outlined in the term sheet can be evaluated in accordance with the methodology described in the April 2015 pumps test procedure NOPR if the corrected equation presented by DOE at the April 29, 2015 public meeting is used. (HI, No. 0008 at p. 24) HI stated that it could not comment on the number of pump models per manufacturer that would be required to use the test (wire-to-water) method to certify pump performance based on a lack of data, but stated that 100 percent of pumps would need to be tested to certify because of the new testing requirements and sampling provisions. (HI, No. 0008 at p. 25)

DOE appreciates the comment from HI that only physical testing of the underlying bare pump is required and that subsequent configurations can be based on calculations. DOE agrees with HI that 100 percent of pumps would need to be tested to certify compliance with a proposed PEI standard, if adopted in a standards final rule. This is true for  $PEI_{CL}$  and  $PEI_{VL}$  because these values cannot be calculated without the finalized C-Values from the energy conservation standards rulemaking. In addition, the  $PER_{CL}$  and  $PER_{VL}$  metrics contain specific assumptions regarding the representative performance of pumps and pump components that are not part of the industry's current test methods. However, as noted in section III.F, DOE recognizes that manufacturers already make some representations regarding the performance of relevant pumps (e.g., pump efficiency, BEP efficiency, and pump total head or volume rate of flow (flow rate) at BEP and full impeller) based on testing using test standards consistent with or similar to HI 40.6–2014, which DOE is incorporating by reference as the basis for the DOE test procedure. As such, DOE notes that, while all  $PEI_{CL}$ ,  $PEI_{VL}$ ,  $PER_{CL}$ , and  $PER_{VL}$  ratings must be newly-generated, some existing test data that were collected consistent with the methods DOE is incorporating by reference into the DOE test procedure may be used, provided manufacturers are confident any such values are equivalent to those that would be generated using the new DOE test procedure.

#### Quantity of Manufacturers Potentially Affected

To calculate the burden associated with testing pumps on a per manufacturer or per model basis, DOE collected information on the number of manufacturers in the pumps industry, and the numbers of models per manufacturer. DOE then focused this analysis on the small entities as part of the regulatory flexibility analysis. To determine which pump manufacturers were small entities, DOE referenced the Small Business Administration (SBA) size threshold for “Pump and Pumping Equipment Manufacturing” (North American Industry Classification System code 333911).<sup>73</sup> The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category, as established at 13 CFR 121.201.

In the April 2015 pumps test procedure NOPR, DOE conducted a focused inquiry into small business manufacturers of equipment covered by this rulemaking. DOE identified 68 distinct manufacturers of covered pump products sold in the U.S. DOE then analyzed those 68 to determine which would be considered a small business. After removing entities that are foreign owned or operated, DOE determined that there were 25 small businesses in the analysis. These 25 companies represent 29 percent of pump manufacturers with facilities in the United States. 80 FR 17586, 17629 (April 1, 2015).

In response to DOE's assessment of the number of small manufacturers subject to the pumps test procedure rule, HI commented that the HI organization currently has 106 member companies (pump manufacturers and associate members) and is aware of more entities within the market. HI believes that the identification of 68 distinct pump manufacturers in the U.S. is low. (HI, No. at pp. 23–24)

DOE appreciates the comment from HI that there are more manufacturers in the pump manufacturing industry that are not included in this analysis. DOE notes that although HI might have associate members, if the member does not manufacture a pump, the associate member is not part of the analysis. During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved the review of individual company Web sites and marketing research tools (e.g., Dun and Bradstreet reports, Manta, Hoovers) to create a list of companies that

manufacture pumps covered by this rulemaking. DOE also contacted HI to obtain information about pump manufacturing companies that participate in the national association. DOE identified 86 potential businesses of covered pump products sold in the U.S., but reduced that number to 68 by determining which businesses were located in the United States. From these manufacturers, DOE eliminated 29 from the analysis because they had more than 500 employees. DOE removed an additional 16 manufacturers because they either had foreign parent companies or had domestic parent companies with 500 or more employees. After removing entities that are foreign owned or operated, DOE determined that there were 25 small businesses to investigate for this analysis. The regulatory flexibility analysis investigated manufacturers who manufacture pumps within the scope of this rulemaking, are considered a small business according to SBA standards, and are not foreign-owned or operated. Thus, there are fewer manufacturers analyzed in the regulatory flexibility analysis than are present in the industry.

In summary, DOE agrees with HI that 68 distinct manufacturers is low on an industry-wide basis, but that is because the number was reduced by other criteria before being presented in the April 2015 pumps test procedure NOPR. DOE notes that HI is not disagreeing with DOE's assessment of the quantity of small businesses, but rather the potential size of total pump manufacturers in the U.S. Following the April 2015 pumps test procedure NOPR, DOE has not identified any more (or different) manufacturers that meet the criteria (domestic headquarters, not owned by another entity, meets the SBA threshold of 500 employees or fewer) to be considered a small business. Therefore, in this final rule, DOE maintains the quantity of 25 small businesses for purposes of analyzing the potential burden. Within the 25 small businesses, DOE has, however, identified an additional manufacturer that produces pumps that are within the scope of this rulemaking and have included this manufacturer in this DOE pumps test procedure final rule regulatory flexibility analysis (raising the total from 15 to 16).

#### Manufacturer Sales To Assess Burden

In the April 2015 pumps test procedure NOPR, DOE used average sales to assist in assessing the potential burden. 80 FR 17586, 17629 (April 1, 2015). HI commented that it has no alternative to offer other than using the

<sup>73</sup> See [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

average sales, but noted that it does not understand what DOE is presenting in Table IV.2 [of the April 2015 pumps test procedure NOPR]. (HI, No. 0008 at p. 25)

DOE agrees with HI that there is no better alternative to using average sales as the financial indicator for assessing the burden on manufacturers. DOE notes that Table IV.2 in the April 2015 pumps test procedure NOPR displays the results of the initial regulatory flexibility analysis. 80 FR 17586, 17633 (April 1, 2015). The columns indicate the range of number of employees in each row; the number of small businesses within each employee size range; the average number of basic models produced by manufacturers in each employee size range; and the average sales of the manufacturers in each employee size range as determined from available data sources. Using the estimated potential testing burden, number of basic models, and the average annual sales, DOE determined the potential burden as a percentage of sales of each group of small businesses (as defined by ranges of numbers of employees). Because DOE maintains that this final rule has no incremental burden associated with it when viewed as a stand-alone rulemaking, DOE is only presenting the estimates of the costs associated with testing equipment consistent with the requirements of this test procedure final rule, as would be required to certify compliance with potential energy conservation standards. As such, this table of impacts on manufacturers as a result of conducting this test procedure is no longer included in this regulatory flexibility analysis.

HI commented that there will be a significant burden on both small and large entities and believes that this estimated value would vary depending on the size of the pump manufacturer. (HI, No. 0008 at pp. 25–26)

DOE agrees that the estimated burden may vary based on the size of the manufacturers if energy conservation standards are promulgated. DOE only considered the aggregate effects on small manufacturers of developing certified ratings for applicable pump models for the purposes of making representations regarding the energy use of such equipment or certifying compliance to DOE under any future energy conservation standards. The estimated burden of conducting the DOE test procedure presented in the April 2015 pumps test procedure NOPR showed that, as the number of employees increased, so did the number of basic models and average sales. As a result, as the number of employees increased, the average estimated burden,

as a percentage of average annual sales, decreased. Based on this analysis, it is likely that the burden may vary based on the size of manufacturer.

DOE cannot confirm HI's comment that there will be a significant burden on large manufacturers because the regulatory flexibility analysis aims to assess whether there is a significant economic impact on a substantial number of small entities. DOE did not assess the impact of the rule on large entities. However, DOE notes that the parallel energy conservation standards rulemaking includes a full manufacturer impact analysis (Docket No. EERE–2011–BT–STD–0031).

### 3. Revised Assessment of Burden Associated With This Test Procedure Final Rule

In the initial regulatory flexibility analysis portion of the April 2015 pumps test procedure NOPR, DOE estimated the most burdensome costs for manufacturers to conduct the DOE test procedure. In the initial regulatory flexibility analysis DOE recognized that, because testing is not currently required or standardized, testing facilities may vary widely from one pump manufacturer to another. For the purposes of estimating testing burden in the initial regulatory flexibility analysis, DOE estimated the burden associated with a situation where a given pump manufacturer did not have existing test facilities at all and would be required to construct such facilities to test equipment in accordance with the test procedure. In light of comments received regarding the burden associated with testing, DOE revised the analysis and gathered additional information to better characterize the expected burden associated with testing basic models in accordance with the DOE test procedure.

DOE is analyzing the effect of the combined burden associated with both the test procedure and energy conservation standards rulemakings in the manufacturer impact analysis performed as part of the energy conservation standards rulemaking (see docket EERE–2011–BT–STD–0031). The costs described in the following subsection are referenced in the manufacturer impact analysis in the pumps energy conservation standards rulemaking to estimate the burden associated with testing. However, DOE reiterates that the estimates provided serve only to provide information about the possible burden manufacturers may incur while testing pumps using this DOE test procedure; they do not represent actual burden incurred by the industry as there is no incremental

burden associated with this test procedure final rule until and unless the associated pumps energy conservation standards final rule is published.

The DOE test procedure will require pump manufacturers to conduct the calculation-based method or the testing-based method, depending on the type and configuration of the pump(s) being tested. DOE is adopting the less burdensome calculation-based test method as the required test method for bare pumps, and as optional test methods for pumps other than bare pumps. This includes pumps sold with motors that are covered by DOE's electric motor energy conservation standards or submersible motors and pumps sold with either of these two motor styles that are also sold with continuous controls (see section III.E for a more thorough description of the applicability of the calculation-based approach to different pump configurations). DOE is also requiring that manufacturers use a testing-based method where pumps are sold either with motors that are not covered by DOE's electric motor energy conservation standards (except submersible motors) or with non-continuous controls.

Both the calculation-based method and the testing-based method require physical testing of pumps at some level and, as such, utilize a similar basic testing facility. DOE recognizes that all manufacturers, regardless of HI membership, have access to test facilities to be able to produce pump curves that characterize the performance of their equipment. As such, DOE estimated that all manufacturers would be able to conduct the DOE test procedure in an available test facility.

Sixteen of 25 small manufacturers identified in DOE's survey of manufacturers produce pumps that fall within the scope of this rulemaking and would be required to perform testing; the other 9 produce pump types that are not within the scope of pumps for which this test procedure is applicable. Of the 16 manufacturers that produce pumps within the scope of this rulemaking, 8 are members of HI according to their listing on HI's Web site.<sup>74</sup>

As member companies of HI, DOE assumes that manufacturers with pumps within the scope of this test procedure would test pumps in accordance with HI's most current industry testing standards. That is, DOE assumes that manufacturers that are HI members already conduct testing in accordance

<sup>74</sup> See [http://www.pumps.org/member\\_companies.aspx](http://www.pumps.org/member_companies.aspx).



with HI 40.6–2014. In HI 40.6–2014, manufacturers are required to test their pumps in an ISO 9906 Grade 2B test facility, which is the same grade test facility prescribed in HI 14.6–2011. Because the calculation-based method described in this test procedure is equivalent to HI 40.6–2014, as recommended by the Working Group, manufacturers who are members of HI would already be capable of testing pumps in accordance to the testing-based method in this test procedure. There is no incremental cost to calibrate measurement instrumentation for these manufacturers because HI 40.6–2014 prescribes calibration intervals for all instruments in the test facility. The testing-based method in this test procedure requires electrical measurement equipment capable of measuring true RMS current, true RMS voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency with an accuracy level of  $\pm 2.0$  percent of full scale when measured at the fundamental supply source frequency, as discussed in section III.C.2.e. Electrical equipment accuracy of  $\pm 2.0$  percent of reading is consistent with the value specified in section 40.6.3.2.3 of HI 40.6–2014. Therefore, there is no incremental cost to conduct testing for HI member companies when testing pumps pursuant to the testing-based method or the calculation-based method.

Manufacturers who are not members of HI need to purchase electrical measurement equipment with  $\pm 2.0$  percent accuracy to conduct the testing-based method of the DOE test procedure. DOE determined that the average cost of such equipment is approximately \$5,218.42 based on a review of available products on the market. Unlike the manufacturers who are HI members, the non-HI manufacturers may not perform regular equipment calibration and, as such, will incur an additional cost to calibrate the instruments in the test facility. DOE assumed that each testing facility would need to calibrate the instrumentation used in the test loop as specified in HI 40.6–2014 appendix D. The flowmeter, torque sensor, and power quality meter all should be calibrated once a year. The pressure transducer should be calibrated every 4 months and a laser tachometer should be calibrated every 3 years. These calibrations, together, cost a manufacturer about \$1,241.67 per year.

DOE analyzed the estimated burden for 7 years for the 16 small manufacturers that produce pumps within the scope of the DOE test procedure. DOE used an analysis period of 7 years based on the assumption that

the machinery qualifies for a 7-year depreciation schedule under the Modified Accelerated Cost Recovery System (MACRS).<sup>75</sup> The average, and representative, of the likely burden to manufacturers is \$6,334 for the capital costs associated with constructing a test facility capable of conducting the DOE test procedure. This burden ranges between \$0 and \$12,668.

Both methods of the test procedure require test personnel to set up, conduct, and remove each pump in accordance with that procedure. DOE estimated the cost of labor using the median hourly wage of \$41.44 for the overall category of an engineer.<sup>76</sup> Including fringe benefits, which are estimated to be nominally 30 percent of total compensation, the total hourly cost to an employer is estimated to be \$53.87.<sup>77</sup>

Based on conversations with test engineers, DOE estimates it would take between 1 and 2 hours of an engineer's time to complete the test procedure per unit tested, which would result in a cost of \$53.87 to \$107.74 per unit based on an engineer's labor rate of \$53.87 per hour. DOE estimates that setting up and removing the pumps from the test stand would require 2 to 6 hours of the engineer's time depending on the size of the pump and any other fittings that need to be configured to enable testing, resulting in a cost between \$107.74 to \$323.22 per unit based on the labor rate of \$53.87 per hour for an engineer. The total cost of testing a pump, including setup, tests, and takedown ranges between \$161.61 and \$430.96 per unit. DOE estimates that the time required to conduct the calculation-based method of test would be the same as the time required to conduct the test-based method (wire-to-water test).

DOE also estimates that pump manufacturers would redesign covered pump models or introduce new pump models each year. As such, DOE estimates that a certain portion of the pump models that a given pump manufacturer offers for sale would need to be tested each year. DOE estimates that approximately 10 percent of manufacturers' unique pump models would need to be tested each year.

<sup>75</sup> Department of the Treasury, Internal Revenue Service. *How to Depreciate Property*. IRS Pub. 926.

<sup>76</sup> U.S. Department of Labor, Bureau of Labor Statistics. 2012. *National Occupational Employment and Wage Estimates*. Washington, DC Available at [http://www.bls.gov/oes/2012/may/oes\\_nat.htm#17-0000](http://www.bls.gov/oes/2012/may/oes_nat.htm#17-0000).

<sup>77</sup> U.S. Department of Labor, Bureau of Labor Statistics. 2014. *Employer Costs for Employee Compensation—Management, Professional, and Related Employees*. Washington, DC Available at: <http://www.bls.gov/news.release/pdf/ecec.pdf>.

DOE amortized the capital costs against the recurring burden of testing pumps described in this analysis for each small manufacturer identified to produce pumps covered under the scope of the DOE test procedure. DOE notes that the labor component represents the majority of the overall cost associated with testing, while the much more variable capital costs are only 23 percent of the total test cost. The representative amortized burden for testing each unit of a basic model is \$561.16. As discussed in the sampling provisions in section III.G, this test procedure will require manufacturers to test at least two units of each pump basic model to develop a certified rating. This results in an average cost of \$1,122.32 to test two units of each basic model.

While analyzing the potential burdens of testing pumps in-house, DOE recognized that the price per basic model was higher for some manufacturers than for others. For manufacturers with higher costs of testing per basic model may elect to send their pumps to a third-party test facility to mitigate these costs. DOE anticipates that third party testing facilities will update their test facilities to be able to provide testing for pump manufacturers in accordance with the DOE test procedure. Based on market research and discussions with third party test lab personnel, DOE estimates that testing pumps in a third party test facility according to the DOE test procedure will cost approximately \$2,500 per unit.

#### 4. Calculator Comments

Wilo indicated that one problem is that DOE is not responsible for providing tools to determine compliance, so each manufacturer would be responsible for creating its own potentially erroneous evaluation tool. (Wilo, No. 0044 at p. 3–4) HI requested that DOE share the latest version of the PEI calculator with the pump industry as an easy means of determining whether their products fall within or outside the scope of the efficiency levels specified in the rulemaking. (HI, No. 0002 at p. 1) HI also requested that DOE provide a PEI calculator so that all calculations for PEI are performed exactly the same way by all members of the pump industry, government agencies and interested parties. (HI, No. 0007 at p. 2) HI commented that the calculator could be used to report data to interested utilities. (HI, No. 0007 at p. 10) HI also commented that the complexity of the rating systems will cause a significant burden on all manufacturers to develop

a tool which quickly evaluates product. This is even more important for small and medium-sized companies that may not have the resources to develop such an analytic tool on their own. (HI, No. 0008 at p. 2)

In response to the comments submitted by Wilo and HI, DOE made the PEI calculator available on the pumps test procedure rulemaking Web site.<sup>78</sup> Under the provisions in this pumps test procedure final rule, the PEI calculations must be performed using measured values—that is, using results from testing actual pumps in accordance with the proposed test method and sampling plan. The PEI calculator provided to the public is not considered an Alternative Efficiency Determination Method (AEDM) by the Department and is not to be used to simulate or estimate the efficiency of a pump. DOE has provided this “calculator” as a convenience at the request of interested parties. DOE notes that manufacturers should consult section III.B of this final rule and the adopted regulatory text at 10 CFR 431.464 and appendix A of subpart Y for the formulas for calculating PEI and should not rely on this spreadsheet. DOE also notes that while this calculator is an excel-based version of the calculations in the test procedure proposal, DOE did not rely on this document to develop the proposal itself.

Based on the estimates presented, DOE believes that the test procedure amendments will not have a significant economic impact on a substantial number of small entities, and the preparation of a final regulatory flexibility analysis is not required. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### C. Review Under the Paperwork Reduction Act of 1995

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. DOE published a NOPR proposing energy conservation standards for pumps on April 24, 2015. 80 FR 22938. In an application to renew the OMB information collection approval for DOE's certification and recordkeeping requirements, DOE

included an estimated burden for manufacturers of pumps in case DOE ultimately sets energy conservation standards for this equipment. OMB has approved the revised information collection for DOE's certification and recordkeeping requirements. 80 FR 5099 (January 30, 2015). In the April 2015 pumps test procedure NOPR, DOE estimated that it will take each respondent approximately 30 hours total per company per year to comply with the certification and recordkeeping requirements based on 20 hours of technician/technical work and 10 hours clerical work to actually submit the Compliance and Certification Management System templates. 80 FR 17586, 17633 (April 15, 2015).

In response to DOE's April 2015 pump test procedure NOPR, HI commented that the hours shown are low and will vary by the number of basic models covered. (HI, No. at p. 26)

DOE appreciates the comment submitted by HI regarding the burden estimate to comply with the proposed recordkeeping requirements. DOE recognizes that recordkeeping burden may vary substantially based on company preferences and practices as well as the number of basic models each manufacturer will test. However, DOE maintains that, on average, it will take manufacturers approximately 30 hours to comply with the certification and recordkeeping requirements. In addition, DOE notes that, while this test procedure rulemaking includes recordkeeping requirements that are associated with executing and maintaining the test data for this equipment, the certification requirements would be established in a final rule establishing energy conservation standards for pumps.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

### D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not

result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

### F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically

<sup>78</sup> [https://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/44#testprocedures](https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/44#testprocedures).

requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in

any year, so these requirements do not apply.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any

adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The final rule incorporates by reference the testing methods contained in HI 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing,” except section 40.6.5.3, “Test report;” section A.7, “Testing at temperatures exceeding 30 °C (86 14;°F);” and appendix B, “Reporting of test results.” In addition, the final rule’s definitions incorporate by reference the following standards:

(1) Sections 1.1, “types and nomenclature,” and 1.2.9, “rotodynamic pump icons,” of the 2014 version of ANSI/HI 1.1–1.2–2014, “American National Standard for Rotodynamic Centrifugal Pumps for Nomenclature and Definitions;”

(2) section 2.1, “types and nomenclature,” of the 2014 version of ANSI/HI 2.1–2.2, “American National Standard for Rotodynamic Vertical Pumps of Radial, Mixed, and Axial Flow Types for Nomenclature and Definitions.”

(3) FM Class Number 1319, “Approval Standard for Centrifugal Fire Pumps

(Horizontal, End Suction Type),” approved January 2015.

(4) NFPA 20–2016, “Standard for the Installation of Stationary Pumps for Fire Protection,” approved 2016.

(5) ANSI/UL 448–2013, “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” approved 2013.

While this test procedure is not exclusively based on these industry testing standards, some components of the DOE test procedure adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. The Department has evaluated these industry testing standards and is unable to conclude whether they would fully comply with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard, as well as the effects of the rule in general, if promulgated. Regarding any impact on competition that the adopted test procedure may have, the DOJ reviewed the April 2015 pumps test procedure NOPR, attended the April 2015 NOPR public meeting, and consulted with members of the industry in preparing their comments and conclusions regarding any anticompetitive effects of the pumps test procedure. In response to the proposed test procedure, DOJ commented that it is not able to determine whether or not the proposed test procedure (or associated energy conservation standard) will lessen competition within the industry. However, DOJ noted that it is concerned about the possibility of anticompetitive effects resulting from the burden and expense of compliance. (DOJ, No. 14 at p. 2) In response to DOJ’s concern regarding the burden of conducting the test procedure, DOE has revised several of the requirements, which DOE believes will mitigate DOJ’s (and manufacturers’) concerns. DOE addresses these concerns regarding the burden related to testing pumps in accordance with the test procedure in section IV.B.

#### *M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *N. Description of Materials Incorporated by Reference*

In this final rule, DOE is incorporating by reference specific sections from a method of test published by HI, titled “Methods for Rotodynamic Pump Efficiency Testing.” Specifically, the test procedure codified by this final rule references HI 40.6–2014, except section 40.6.5.3, “Test report;” section A.7, “Testing at temperatures exceeding 30 °C (86 °F);” and appendix B, “Reporting of test results.” HI 40.6–2014 is an industry-accepted standard used to specify methods of testing for determining the head, flow rate, pump power input, driver power input, pump power output, and other relevant parameters necessary to determine the  $PEI_{CL}$  or  $PEI_{VL}$  of applicable pumps, as described in this final rule.

In addition, the final rule’s definitions incorporate by reference the following sections of the following standards:

(1) Sections 1.1, “types and nomenclature,” and 1.2.9, “rotodynamic pump icons,” of the 2014 version of ANSI/HI 1.1–1.2–2014, “American National Standard for Rotodynamic Centrifugal Pumps for Nomenclature and Definitions;” and

(2) section 2.1, “types and nomenclature,” of the 2014 version of ANSI/HI 2.1–2.2, “American National Standard for Rotodynamic Vertical Pumps of Radial, Mixed, and Axial Flow Types for Nomenclature and Definitions.”

(3) FM Class Number 1319, “Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type),” approved January 2015.

(4) NFPA 20–2016, “Standard for the Installation of Stationary Pumps for Fire Protection,” approved 2015.

(5) ANSI/UL 448–2013, “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” ANSI approved 2013.

ANSI/HI 1.1–1.2–2014 and ANSI/HI 2.1–2.2–2014 describe and define specific pump characteristics relevant to the differentiation of pump categories and configurations when applying the DOE test procedure. The FM, NFPA, and ANSI/UL standards describe the relevant technical characteristics and testing requirements to certify certain pumps as fire pumps.

Copies of all HI standards may be purchased from the Hydraulic Institute at 6 Campus Drive, First Floor North, Parsippany, NJ, 07054–4406, or by going to [www.pumps.org](http://www.pumps.org).

Copies of FM Class Number 1319 can be obtained from: FM Global, 1151 Boston-Providence Turnpike, P.O. Box 9102, Norwood, MA 02062, (781) 762–4300. [www.fmglobal.com](http://www.fmglobal.com).

Copies of NFPA 20–2016 can be obtained from: the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, (617) 770–3000. [www.nfpa.org](http://www.nfpa.org).

Copies of ANSI/UL 448–2013 can be obtained from: UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800. <http://ul.com>.

#### **V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

#### **List of Subjects**

##### *10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

##### *10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 30, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II, subchapter D of Title 10, Code of Federal Regulations as set forth below:

#### **PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. In § 429.2 revise paragraph (a) to read as follows:

##### **§ 429.2 Definitions.**

(a) The definitions found in §§ 430.2, 431.2, 431.62, 431.72, 431.82, 431.92, 431.102, 431.132, 431.152, 431.172, 431.192, 431.202, 431.222, 431.242, 431.262, 431.282, 431.292, 431.302, 431.322, 431.442 and 431.462 of this chapter apply for purposes of this part.

\* \* \* \* \*

##### **§ 429.11 [Amended]**

■ 3. In paragraphs (a) and (b) remove “429.54” and add “429.62” in its place.

■ 4. Add § 429.59 to read as follows:

**§ 429.59 Pumps.**

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model by testing (which includes the calculation-based methods in the test procedure), in conjunction with the following sampling provisions. Manufacturers must update represented values to account for any change in the applicable motor standards in § 431.25 of this chapter and certify amended values as of the next annual certification.

(1) Units to be tested. The requirements of § 429.11 are applicable to pumps; and for each basic model, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any value of the constant or variable load pump energy index or other measure of energy consumption must be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

and  $\bar{x}$  is the sample mean;  $n$  is the number of samples; and  $x_i$  is the maximum of the  $i^{\text{th}}$  sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95} \left( \frac{s}{\sqrt{n}} \right)$$

and  $\bar{x}$  is the sample mean;  $s$  is the sample standard deviation;  $n$  is the number of samples; and  $t_{0.95}$  is the  $t$  statistic for a 95 percent one-tailed confidence interval with  $n-1$  degrees of freedom (from appendix A to subpart B of part 429);

and

(ii) Any measure of energy efficiency of a basic model must be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

and  $\bar{x}$  is the sample mean;  $n$  is the number of samples; and  $x_i$  is the maximum of the  $i^{\text{th}}$  sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95} \left( \frac{s}{\sqrt{n}} \right)$$

and  $\bar{x}$  is the sample mean;  $s$  is the sample standard deviation;  $n$  is the number of samples; and  $t_{0.95}$  is the  $t$  statistic for a 95 percent one-tailed confidence interval with  $n-1$  degrees of freedom (from appendix A of subpart B).  
(b) [Reserved]

**§ 429.70 [Amended]**

■ 5. Amend § 429.70(a) by removing “429.54” and adding “429.62” in its place.

■ 6. In § 429.71, add paragraph (d) to read as follows:

**§ 429.71 Maintenance of records.**

\* \* \* \* \*

(d) When considering if a pump is subject to energy conservation standards under part 431 of this chapter, DOE may need to determine if a pump was designed and constructed to the requirements set forth in Military Specifications: MIL-P-17639F, MIL-P-17881D, MIL-P-17840C, MIL-P-18682D, or MIL-P-18472G. In this case, a manufacturer must provide DOE with copies of the original design and test data that were submitted to appropriate design review agencies, as required by MIL-P-17639F, MIL-P-17881D, MIL-P-17840C, MIL-P-18682D, or MIL-P-18472G. Military specifications and standards are available for review at <http://everyspec.com/MIL-SPECS>.

**§ 429.72 [Amended]**

■ 7. Amend § 429.72(a) by removing “429.54” and adding in its place “429.62”.

**§ 429.102 [Amended]**

■ 8. Amend § 429.102(a)(1) by removing “429.54” and adding in its place “429.62”.

■ 9. Section 429.110 is amended by:

■ a. Redesignating paragraphs (e)(1)(iv) through (vi) as (e)(1)(v) through (vii), respectively; and

■ b. Adding a new paragraph (e)(1)(iv).

The addition reads as follows:

**§ 429.110 Enforcement testing.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) For pumps, DOE will use an initial sample size of not more than four units and will determine compliance based on the arithmetic mean of the sample.

\* \* \* \* \*

■ 10. Section 429.134 is amended by adding paragraph (h) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

\* \* \* \* \*

(h) *Pumps.* (1) The volume rate of flow (flow rate) at BEP and nominal

speed of rotation of each tested unit of the basic model will be measured pursuant to the test requirements of § 431.464 of this chapter, where the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer will be treated as the expected BEP flow rate. The results of the measurement(s) will be compared to the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer. The certified volume rate of flow (flow rate) at BEP and nominal speed of rotation will be considered valid only if the measurement(s) (either the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation for a single unit sample or the average of the measured flow rates for a multiple unit sample) is within five percent of the certified volume rate of flow (flow rate) at BEP and nominal speed of rotation.

(i) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be valid, the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation will be used in subsequent calculations of constant load pump energy rating (PER<sub>CL</sub>) and constant load pump energy index (PEI<sub>CL</sub>) or variable load pump energy rating (PER<sub>VL</sub>) and variable load pump energy index (PEI<sub>VL</sub>) for that basic model.

(ii) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be invalid, the mean of all the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation values determined from the tested unit(s) will serve as the new expected BEP flow rate and the unit(s) will be retested until such time as the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation is within 5 percent of the expected BEP flow rate.

(2) DOE will test each pump unit according to the test method specified by the manufacturer in the certification report submitted pursuant to § 429.59(b).

**PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 11. The authority citation for part 431 continues to read as follows:

*Authority:* 42 U.S.C. 6291–6317.

■ 12. Add subpart Y to part 431 to read as follows:

**Subpart Y—Pumps**  
Sec.

- 431.461 Purpose and scope.  
 431.462 Definitions.  
 431.463 Materials incorporated by reference.  
 431.464 Test procedure for measuring and determining energy consumption of pumps.  
 Appendix A to Subpart Y of Part 431—  
 Uniform Test Method for the  
 Measurement of Energy Consumption of  
 Pumps

## Subpart Y—Pumps

### § 431.461 Purpose and scope.

This subpart contains definitions, test procedures, and energy conservation requirements for pumps, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

### § 431.462 Definitions.

The following definitions are applicable to this subpart, including appendix A. In cases where there is a conflict, the language of the definitions adopted in this section takes precedence over any descriptions or definitions found in the 2014 version of ANSI/HI 1.1–1.2, “American National Standard for Rotodynamic Centrifugal Pumps for Nomenclature and Definitions” (ANSI/ HI 1.1–1.2–2014) (incorporated by reference, see § 431.463), or the 2014 version of ANSI/HI 2.1–2.2, “American National Standard for Rotodynamic Vertical Pumps of Radial, Mixed, and Axial Flow Types for Nomenclature and Definitions” (ANSI/ HI 2.1–2.2–2014) (incorporated by reference, see § 431.463). In cases where definitions reference design intent, DOE will consider marketing materials, labels and certifications, and equipment design to determine design intent.

*Bare pump* means a pump excluding mechanical equipment, driver, and controls.

*Basic model* means all units of a given class of pump manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; except that:

- (1) For RSV and ST pumps, all variations in numbers of stages of the bare pump must be considered a single basic model;
- (2) Pump models for which the bare pump differs in impeller diameter, or impeller trim, may be considered a single basic model; and
- (3) Pump models for which the bare pump differs in number of stages or impeller diameter and which are sold with motors (or motors and controls) of

varying horsepower may only be considered a single basic model if:

- (i) for ESCC, ESFM, IL, and RSV pumps, each motor offered in the basic model has a nominal full load motor efficiency rated at the Federal minimum (see the current table for NEMA Design B motors at 10 CFR 431.25) or the same number of bands above the Federal minimum for each respective motor horsepower (see Table 3 of Appendix A to Subpart Y of Part 431); or
- (ii) for ST pumps, each motor offered in the basic model has a full load motor efficiency at the default nominal full load submersible motor efficiency shown in Table 2 of appendix A to subpart Y of part 431 or the same number of bands above the default nominal full load submersible motor efficiency for each respective motor horsepower (see Table 3 of Appendix A to Subpart Y of Part 431).

*Best efficiency point (BEP)* means the pump hydraulic power operating point (consisting of both flow and head conditions) that results in the maximum efficiency.

*Bowl diameter* means the maximum dimension of an imaginary straight line passing through and in the plane of the circular shape of the intermediate bowl of the bare pump that is perpendicular to the pump shaft and that intersects the outermost circular shape of the intermediate bowl of the bare pump at both of its ends, where the intermediate bowl is as defined in ANSI/ HI 2.1–2.2–2014.

*Clean water pump* means a pump that is designed for use in pumping water with a maximum non-absorbent free solid content of 0.016 pounds per cubic foot, and with a maximum dissolved solid content of 3.1 pounds per cubic foot, provided that the total gas content of the water does not exceed the saturation volume, and disregarding any additives necessary to prevent the water from freezing at a minimum of 14 °F.

*Close-coupled pump* means a pump in which the motor shaft also serves as the impeller shaft for the bare pump.

*Continuous control* means a control that adjusts the speed of the pump driver continuously over the driver operating speed range in response to incremental changes in the required pump flow, head, or power output.

*Control* means any device that can be used to operate the driver. Examples include, but are not limited to, continuous or non-continuous controls, schedule-based controls, on/off switches, and float switches.

*Driver* means the machine providing mechanical input to drive a bare pump directly or through the use of mechanical equipment. Examples

include, but are not limited to, an electric motor, internal combustion engine, or gas/steam turbine.

*Dry rotor pump* means a pump in which the motor rotor is not immersed in the pumped fluid.

*End suction close-coupled (ESCC) pump* means a close-coupled, dry rotor, end suction pump that has a shaft input power greater than or equal to 1 hp and less than or equal to 200 hp at BEP and full impeller diameter and that is not a dedicated-purpose pool pump. Examples include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/ HI nomenclature OH7, as described in ANSI/ HI 1.1–1.2–2014.

*End suction frame mounted/own bearings (ESFM) pump* means a mechanically-coupled, dry rotor, end suction pump that has a shaft input power greater than or equal to 1 hp and less than or equal to 200 hp at BEP and full impeller diameter and that is not a dedicated-purpose pool pump. Examples include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/ HI nomenclature OH0 and OH1, as described in ANSI/ HI 1.1–1.2–2014.

*End suction pump* means a single-stage, rotodynamic pump in which the liquid enters the bare pump in a direction parallel to the impeller shaft and on the side opposite the bare pump’s driver-end. The liquid is discharged through a volute in a plane perpendicular to the shaft.

*Fire pump* means a pump that is compliant with NFPA 20–2016 (incorporated by reference, see § 431.463), “Standard for the Installation of Stationary Pumps for Fire Protection,” and is either:

- (1) UL listed under ANSI/UL 448–2013 (incorporated by reference, see § 431.463), “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” or
- (2) FM Global (FM) approved under the January 2015 edition of FM Class Number 1319, “Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type),” (incorporated by reference, see § 431.463).

*Full impeller diameter* means the maximum diameter impeller with which a given pump basic model is distributed in commerce.

*Horizontal motor* means a motor that requires the motor shaft to be in a horizontal position to function as designed, as specified in the manufacturer literature.

*In-line (IL) pump* means a pump that is either a twin-head pump or a single-stage, single-axis flow, dry rotor, rotodynamic pump that has a shaft

input power greater than or equal to 1 hp and less than or equal to 200 hp at BEP and full impeller diameter, in which liquid is discharged through a volute in a plane perpendicular to the shaft. Such pumps do not include pumps that are mechanically coupled or close-coupled, have a pump power output that is less than or equal to 5 hp at BEP at full impeller diameter, and are distributed in commerce with a horizontal motor. Examples of in-line pumps include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/HI nomenclature OH3, OH4, or OH5, as described in ANSI/HI 1.1–1.2–2014.

*Magnet driven pump* means a pump in which the bare pump is isolated from the motor via a containment shell and torque is transmitted from the motor to the bare pump via magnetic force. The motor shaft is not physically coupled to the impeller or impeller shaft.

*Mechanical equipment* means any component of a pump that transfers energy from the driver to the bare pump.

*Mechanically-coupled pump* means a pump in which the bare pump has its own impeller shaft and bearings and so does not rely on the motor shaft to serve as the impeller shaft.

*Non-continuous control* means a control that adjusts the speed of a driver to one of a discrete number of non-continuous preset operating speeds, and does not respond to incremental reductions in the required pump flow, head, or power output.

*Prime-assist pump* means a pump that:

- (1) Is designed to lift liquid that originates below the centerline of the pump inlet;
- (2) Requires no manual intervention to prime or re-prime from a dry-start condition; and
- (3) Includes a device, such as a vacuum pump or air compressor and venturi eductor, to remove air from the suction line in order to automatically perform the prime or re-prime function at any point during the pump's operating cycle.

*Pump* means equipment designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls.

*Radially split, multi-stage, vertical, in-line diffuser casing (RSV) pump* means a vertically suspended, multi-stage, single axis flow, dry rotor, rotodynamic pump:

(1) That has a shaft input power greater than or equal to 1 hp and less than or equal to 200 hp at BEP and full impeller diameter and at the number of stages required for testing and

(2) In which liquid is discharged in a plane perpendicular to the impeller shaft; and

(3) For which each stage (or bowl) consists of an impeller and diffuser;

(4) For which no external part of such a pump is designed to be submerged in the pumped liquid; and

(5) Examples include, but are not limited to, pumps complying with ANSI/HI nomenclature VS8, as described in ANSI/HI 2.1–2.2–2014.

*Rotodynamic pump* means a pump in which energy is continuously imparted to the pumped fluid by means of a rotating impeller, propeller, or rotor.

*Self-priming pump* means a pump that:

(1) Is designed to lift liquid that originates below the centerline of the pump inlet;

(2) Contains at least one internal recirculation passage; and

(3) Requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve.

*Single axis flow pump* means a pump in which the liquid inlet of the bare pump is on the same axis as the liquid discharge of the bare pump.

*Submersible turbine (ST) pump* means a single-stage or multi-stage, dry rotor, rotodynamic pump that is designed to be operated with the motor and stage(s) fully submerged in the pumped liquid; that has a shaft input power greater than or equal to 1 hp and less than or equal to 200 hp at BEP and full impeller diameter and at the number of stages required for testing; and in which each stage of this pump consists of an impeller and diffuser, and liquid enters and exits each stage of the bare pump in a direction parallel to the impeller shaft. Examples include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/HI nomenclature VS0, as described in ANSI/HI 2.1–2.2–2014.

*Twin head pump* means a dry rotor, single-axis flow, rotodynamic pump that contains two impeller assemblies, which both share a common casing, inlet, and discharge, and each of which

(1) Contains an impeller, impeller shaft (or motor shaft in the case of close-coupled pumps), shaft seal or packing, driver (if present), and mechanical equipment (if present);

(2) Has a shaft input power that is greater than or equal to 1 hp and less

than or equal to 200 hp at best efficiency point (BEP) and full impeller diameter;

(3) Has the same primary energy source (if sold with a driver) and the same electrical, physical, and functional characteristics that affect energy consumption or energy efficiency;

(4) Is mounted in its own volute; and

(5) Discharges liquid through its volute and the common discharge in a plane perpendicular to the impeller shaft.

#### § 431.463 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into subpart Y of part 431. The material listed has been approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. 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, call 202–741–6030, or go to: [www.archives.gov/federal-register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html). Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: [http://www1.eere.energy.gov/buildings/appliance\\_standards](http://www1.eere.energy.gov/buildings/appliance_standards). These standards can be obtained from the sources below.

(b) *FM.* FM Global, 1151 Boston-Providence Turnpike, P.O. Box 9102, Norwood, MA 02062, (781) 762–4300. [www.fmglobal.com](http://www.fmglobal.com).

(1) FM Class Number 1319, “Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type),” January 2015, IBR approved for § 431.462.

(2) [Reserved]

(c) *HI.* Hydraulic Institute, 6 Campus Drive, First Floor North, Parsippany, NJ 07054–4406, 973–267–9700. [www.Pumps.org](http://www.Pumps.org).

(1) ANSI/HI 1.1–1.2–2014, (“ANSI/HI 1.1–1.2–2014”), “American National Standard for Rotodynamic Centrifugal Pumps for Nomenclature and Definitions,” approved October 30, 2014, section 1.1, “Types and



nomenclature,” and section 1.2.9, “Rotodynamic pump icons,” IBR approved for § 431.462.

(2) ANSI/HI 2.1–2.2–2014, (“ANSI/HI 2.1–2.2–2014”), “American National Standard for Rotodynamic Vertical Pumps of Radial, Mixed, and Axial Flow Types for Nomenclature and Definitions,” approved April 8, 2014, section 2.1, “Types and nomenclature,” IBR approved for § 431.462.

(3) HI 40.6–2014, (“HI 40.6–2014”), “Methods for Rotodynamic Pump Efficiency Testing,” (except section 40.6.5.3, “Test report;” Appendix A, section A.7, “Testing at temperatures exceeding 30 °C (86 °F);” and Appendix B, “Reporting of test results (normative);”) copyright 2014, IBR approved for appendix A to subpart Y of part 431.

(d) NFPA. National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471, (617) 770–3000. [www.nfpa.org](http://www.nfpa.org).

(1) NFPA 20, (“NFPA 20–2016”), “Standard for the Installation of Stationary Pumps for Fire Protection,” 2016 Edition, approved June 15, 2015, IBR approved for § 431.462.

(2) [Reserved]

(e) UL. UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800. [ul.com](http://ul.com).

(1) UL 448, (“ANSI/UL 448–2013”), “Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service,” 10th Edition, June 8, 2007, including revisions through July 12, 2013, IBR approved for § 431.462.

(2) [Reserved]

**§ 431.464 Test procedure for measuring and determining energy consumption of pumps**

(a) *Scope.* This section provides the test procedures for determining the constant and variable load pump energy index for:

(1) The following categories of clean water pumps:

- (i) End suction close-coupled (ESCC);
- (ii) End suction frame mounted/own bearings (ESFM);
- (iii) In-line (IL);
- (iv) Radially split, multi-stage, vertical, in-line casing diffuser (RSV); and

(v) Submersible turbine (ST) pumps  
 (2) With the following characteristics:  
 (i) Flow rate of 25 gpm or greater at BEP and full impeller diameter;

(ii) Maximum head of 459 feet at BEP and full impeller diameter and the number of stages required for testing (see section 1.2.2 of appendix A of this subpart);

(iii) Design temperature range from 14 to 248 °F;

(iv) Designed to operate with either:  
 (1) a 2- or 4-pole induction motor, or (2) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute and/or 1,440 and 2,160 revolutions per minute, and in either case, the driver and impeller must rotate at the same speed;

(v) For ST pumps, a 6-inch or smaller bowl diameter; and

(vi) For ESCC and ESFM pumps, a specific speed less than or equal to 5000 when calculated using U.S. customary units.

(3) Except for the following pumps:

- (i) Fire pumps;
- (ii) Self-priming pumps;
- (iii) Prime-assist pumps;
- (iv) Magnet driven pumps;
- (v) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities;” and

(vi) Pumps meeting the design and construction requirements set forth in Military Specifications: MIL–P–17639F, “Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use” (as amended); MIL–P–17881D, “Pumps, Centrifugal, Boiler Feed, (Multi-Stage)” (as amended); MIL–P–17840C, “Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)” (as amended); MIL–P–18682D, “Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard” (as amended); and MIL–P–18472G, “Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant” (as amended). Military specifications and standards are available for review at <http://everyspec.com/MIL-SPECS>.

(b) *Testing and calculations.* Determine the applicable constant load

pump energy index (PEI<sub>CL</sub>) or variable load pump energy index (PEI<sub>VL</sub>) using the test procedure set forth in appendix A of this subpart Y.

**Appendix A to Subpart Y of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Pumps**

**Note:** Starting on July 25, 2016, any representations made with respect to the energy use or efficiency of pumps subject to testing pursuant to 10 CFR 431.464 must be made in accordance with the results of testing pursuant to this appendix.

**I. Test Procedure for Pumps**

A. *General.* To determine the constant load pump energy index (PEI<sub>CL</sub>) for bare pumps and pumps sold with electric motors or the variable load pump energy index (PEI<sub>VL</sub>) for pumps sold with electric motors and continuous or non-continuous controls, perform testing in accordance with HI 40.6–2014, except section 40.6.5.3, “Test report;” section A.7, “Testing at temperatures exceeding 30 °C (86 °F);” and appendix B, “Reporting of test results;” (incorporated by reference, see § 431.463) with the modifications and additions as noted throughout the provisions below. Where HI 40.6–2014 refers to “pump,” the term refers to the “bare pump,” as defined in § 431.462. Also, for the purposes of applying this appendix, the term “volume per unit time,” as defined in section 40.6.2, “Terms and definitions,” of HI 40.6–2014 shall be deemed to be synonymous with the term “flow rate” used throughout that standard and this appendix. In addition, the specifications of section 40.6.4.1 of HI 40.6–2014 do not apply to ST pumps and the performance of ST bare pumps considers the bowl performance only.

A.1 *Scope.* Section II of this appendix is applicable to all pumps and describes how to calculate the pump energy index (section II.A) based on the pump energy rating for the minimally compliant reference pump (PER<sub>STD</sub>; section II.B) and the constant load pump energy rating (PER<sub>CL</sub>) or variable load pump energy rating (PER<sub>VL</sub>) determined in accordance with one of sections III through VII of this appendix, based on the configuration in which the pump is distributed in commerce and the applicable testing method specified in sections III through VII and as described in Table 1 of this appendix.

**TABLE 1—APPLICABILITY OF CALCULATION-BASED AND TESTING-BASED TEST PROCEDURE OPTIONS BASED ON PUMP CONFIGURATION**

Pump configuration	Pump sub-configuration	Applicable test methods
Bare Pump .....	Bare Pump ..... OR Pump + Single-Phase Induction Motor ..... OR Pump + Driver Other Than Electric Motor .....	Section III: Test Procedure for Bare Pumps.



TABLE 1—APPLICABILITY OF CALCULATION-BASED AND TESTING-BASED TEST PROCEDURE OPTIONS BASED ON PUMP CONFIGURATION—Continued

Pump configuration	Pump sub-configuration	Applicable test methods
Pump + Motor *	Pump + Polyphase Motor Covered by DOE's Electric Motor Energy Conservation Standards **. OR Pump + Submersible Motor	Section IV: Testing-Based Approach for Pumps Sold with Motors OR Section V: Calculation-Based Approach for Pumps Sold with Motors.
Pump + Motor + Continuous Controls. OR Pump + Motor + Non-Continuous Controls.	Pump + Motor Not Covered by DOE's Electric Motor Energy Conservation Standards (Except Submersible Motors) ***. Pump + Polyphase Motor Covered by DOE's Electric Motor Energy Conservation Standards** + Continuous Control. OR Pump + Submersible Motor + Continuous Control ..... Pump + Polyphase Motor Covered by DOE's Electric Motor Energy Conservation Standards** + Non-Continuous Control. OR Pump + Submersible Motor + Non-Continuous Control Pump + Motor Not Covered by DOE's Electric Motor Energy Conservation Standards (Except Submersible Motors) **** + Continuous or Non-Continuous Controls.	Section IV: Testing-Based Approach for Pumps Sold with Motors. Section VI: Testing-Based Approach for Pumps Sold with Motors and Controls OR Section VII: Calculation-Based Approach for Pumps Sold with Motors Controls. Section VI: Testing-Based Approach for Pumps Sold with Motors and Controls.  Section VI: Testing-Based Approach for Pumps Sold with Motors and Controls.

\* Also applies if unit is sold with controls other than continuous or non-continuous controls (e.g., ON/OFF switches).

\*\* All references to "Motors Covered by DOE's Electric Motor Energy Conservation Standards" refer to those listed at § 431.25(g) of this chapter.

\*\*\* Includes pumps sold with single-phase induction motors.

A.2 Section III of this appendix addresses the test procedure applicable to bare pumps. This test procedure also applies to pumps sold with drivers other than motors and pumps sold with single-phase induction motors.

A.3 Section IV of this appendix addresses the testing-based approach for pumps sold with motors, which is applicable to all pumps sold with electric motors, including single-phase induction motors. This test procedure also applies to pumps sold with controls other than continuous or non-continuous controls (e.g., on/off switches).

A.4 Section V of this appendix addresses the calculation-based approach for pumps sold with motors, which applies to:

(1) Pumps sold with polyphase electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25(g), and

(2) Pumps sold with submersible motors.

A.5 Section VI of this appendix addresses the testing-based approach for pumps sold with motors and controls, which is applicable to all pumps sold with electric motors (including single-phase induction motors) and continuous or non-continuous controls.

A.6 Section VII of this appendix discusses the calculation-based approach for pumps sold with motors and controls, which applies to:

(1) Pumps sold with polyphase electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25(g) and continuous controls and

(2) Pumps sold with submersible motors and continuous controls.

B. *Measurement Equipment.* For the purposes of measuring pump power input, driver power input to the motor or controls,

and pump power output, the equipment specified in HI 40.6–2014 Appendix C (incorporated by reference, see § 431.463) necessary to measure head, speed of rotation, flow rate, temperature, torque, and electrical power must be used and must comply with the stated accuracy requirements in HI 40.6–2014 Table 40.6.3.2.3 except as noted in sections III.B, IV.B, V.B, VI.B, and VII.B of this appendix. When more than one instrument is used to measure a given parameter, the combined accuracy, calculated as the root sum of squares of individual instrument accuracies, must meet the specified accuracy requirements.

C. *Test Conditions.* Conduct testing at full impeller diameter in accordance with the test conditions, stabilization requirements, and specifications of HI 40.6–2014 (incorporated by reference, see § 431.463) section 40.6.3, "Pump efficiency testing;" section 40.6.4, "Considerations when determining the efficiency of a pump;" section 40.6.5.4 (including appendix A), "Test arrangements;" and section 40.6.5.5, "Test conditions." For ST pumps, head measurements must be based on the bowl assembly total head as described in section A.5 of 40.6–2014 and the pump power input or driver power input, as applicable, must be based on the measured input power to the driver or bare pump, respectively; section 40.6.4.1, "vertically suspended pumps," does not apply to ST pumps.

C.1 *Nominal Speed of Rotation.* Determine the nominal speed of rotation based on the range of speeds of rotation at which the pump is designed to operate, in accordance with sections I.C.1.1, I.C.1.2, I.C.1.3, I.C.1.4, or I.C.1.5 of this appendix, as applicable. When determining the range of speeds at which the pump is designed to

operate, DOE will refer to published data, marketing literature, and other publically-available information about the pump model and motor, as applicable.

C.1.1 For pumps sold without motors, select the nominal speed of rotation based on the speed for which the pump is designed. For bare pumps designed for speeds of rotation including 2,880 to 4,320 revolutions per minute (rpm), the nominal speed of rotation shall be 3,600 rpm. For bare pumps designed for speeds of rotation including 1,440 to 2,160 rpm, the nominal speed of rotation shall be 1,800 rpm.

C.1.2 For pumps sold with 4-pole induction motors, the nominal speed of rotation shall be 1,800 rpm.

C.1.3 For pumps sold with 2-pole induction motors, the nominal speed of rotation shall be 3,600 rpm.

C.1.4 For pumps sold with non-induction motors where the operating range of the pump and motor includes speeds of rotation between 2,880 and 4,320 rpm, the nominal speed of rotation shall be 3,600 rpm.

C.1.5 For pumps sold with non-induction motors where the operating range of the pump and motor includes speeds of rotation between 1,440 and 2,160 rpm, the nominal speed of rotation shall be 1,800 rpm.

C.2 *Multi-stage Pumps.* For RSV and ST pumps, perform testing on the pump with three stages for RSV pumps and nine stages for ST pumps. If the basic model of pump being tested is only available with fewer than the required number of stages, test the pump with the maximum number of stages with which the basic model is distributed in commerce in the United States. If the basic model of pump being tested is only available with greater than the required number of stages, test the pump with the lowest number

of stages with which the basic model is distributed in commerce in the United States. If the basic model of pump being tested is available with both fewer and greater than the required number of stages, but not the required number of stages, test the pump with the number of stages closest to the required number of stages. If both the next lower and next higher number of stages are equivalently close to the required number of stages, test the pump with the next higher number of stages.

**C.3 Twin Head Pumps.** For twin head pumps, perform testing on an equivalent single impeller IL pump, constructed by incorporating one of the driver and impeller assemblies of the twin head pump being rated into an adequate, IL style, single impeller volute and casing. An adequate, IL style, single impeller volute and casing means a volute and casing for which any physical and functional characteristics that affect energy consumption and energy efficiency are the same to their corresponding characteristics for a single impeller in the twin head pump volute and casing.

#### D. Data Collection and Analysis

**D.1 Damping Devices.** Use of damping devices, as described in section 40.6.3.2.2 of HI 40.6–2014 (incorporated by reference, see § 431.463), are only permitted to integrate up to the data collection interval used during testing.

**D.2 Stabilization.** Record data at any tested load point only under stabilized conditions, as defined in HI 40.6–2014 section 40.6.5.5.1 (incorporated by reference, see § 431.463), where a minimum of two measurements are used to determine stabilization.

**D.3 Calculations and Rounding.** Normalize all measured data to the nominal speed of rotation of 3,600 or 1,800 rpm based on the nominal speed of rotation selected for the pump in section I.C.1 of this appendix, in accordance with the procedures specified in section 40.6.6.1.1 of HI 40.6–2014 (incorporated by reference, see § 431.463). Except for the “expected BEP flow rate,” all terms and quantities refer to values determined in accordance with the

procedures set forth in this appendix for the rated pump. Perform all calculations using raw measured values without rounding. Round  $PER_{CL}$  and  $PER_{VL}$  to three significant digits, and round  $PEI_{CL}$  and  $PEI_{VL}$  values, as applicable, to the hundredths place (*i.e.*, 0.01).

#### D.4 Pumps with BEP at Run Out.

Test pumps for which the expected BEP corresponds to a volume rate of flow that is within 20 percent of the expected maximum flow rate at which the pump is designed to operate continuously or safely (*i.e.*, pumps with BEP at run-out) in accordance with the test procedure specified in this appendix, but with the following exceptions:

(1) Use the following seven flow points for determination of BEP in sections III.D, IV.D, V.D, VI.D, and VII.D of this appendix instead of those specified in those sections: 40, 50, 60, 70, 80, 90, and 100 percent of the expected.

(2) Use flow points of 60, 70, 80, 90, and 100 percent of the expected maximum flow rate of the pump to determine pump power input or driver power input at the specified load points in section III.E.1.1, IV.E.1, V.E.1.1, VI.E.1, and VII.E.1.1 of this appendix instead of those specified in those sections.

(3) To determine of  $PER_{CL}$  and  $PER_{STD}$ , use load points of 65, 90, and 100 percent of the BEP flow rate determined with the modified flow points specified in this section I.D.4 of this appendix instead of 75, 100, and 110 percent of BEP flow.

## II. Calculation of the Pump Energy Index

A. Determine the PEI of each tested pump based on the configuration in which it is sold, as follows:

A.1. For pumps rated as bare pumps or pumps sold with motors, determine the  $PEI_{CL}$  using the following equation:

$$PEI_{CL} = \frac{PER_{CL}}{PER_{STD}}$$

Where:

$PEI_{CL}$  = the pump energy index for a constant load (hp),

$PER_{CL}$  = the pump energy rating for a constant load (hp), determined in

$$PER_{STD} = \sum_{i=75\%,100\%,110\%} \omega_i P_i^{in,m}$$

Where:

$PER_{STD}$  = the  $PER_{CL}$  for a pump that is minimally compliant with DOE's energy conservation standards with the same flow and specific speed characteristics as the tested pump (hp),

$\omega_i = 0.3333$ ,

$P_i^{in,m}$  = calculated driver power input to the motor at load point *i* for the minimally compliant pump (hp), calculated in accordance with section II.B.1 of this appendix, and

*i* = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

B.1. Determine the driver power input at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$P_i^{in,m} = P_i + L_i$$

Where:

$P_i^{in,m}$  = driver power input to the motor at load point *i* (hp),

$P_i$  = pump power input to the bare pump at load point *i* (hp), calculated in accordance with section II.B.1.1 of this appendix,

$L_i$  = the part load motor losses at load point *i* (hp), calculated in accordance with section II.B.1.2 of this appendix, and

accordance with either section III (for bare pumps, pumps sold with single-phase induction motors, and pumps sold with drivers other than electric motors), section IV (for pumps sold with motors and rated using the testing-based approach), or section V (for pumps sold with motors and rated using the calculation-based approach) of this appendix, and

$PER_{STD}$  = the  $PER_{CL}$  for a pump that is minimally compliant with DOE's energy conservation standards with the same flow and specific speed characteristics as the tested pump (hp), as determined in accordance with section II.B of this appendix.

A.2. For pumps rated as pumps sold with motors and continuous controls or non-continuous controls, determine the  $PEI_{VL}$  using the following equation:

$$PEI_{VL} = \frac{PER_{VL}}{PER_{STD}}$$

Where:

$PEI_{VL}$  = the pump energy index for a variable load,

$PER_{VL}$  = the pump energy rating for a variable load (hp) determined in accordance with section VI (for pumps sold with motors and continuous or non-continuous controls rated using the testing-based approach) or section VII of this appendix (for pumps sold with motors and continuous controls rated using the calculation-based approach), and

$PER_{STD}$  = the  $PER_{CL}$  for a pump that is minimally compliant with DOE's energy conservation standards with the same flow and specific speed characteristics as the tested pump (hp), as determined in accordance with section II.B of this appendix.

B. Determine the pump energy rating for the minimally compliant reference pump ( $PER_{STD}$ ), according to the following equation:

*i* = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

B.1.1. Determine the pump power input to the minimally compliant pump at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$P_i = \frac{P_{u,i}}{\alpha_i \times \left( \eta_{pump,STD} / 100 \right)}$$

Where:

$P_i$  = pump power input to the bare pump at load point *i* (hp),

$\alpha_i = 0.947$  for 75 percent of the BEP flow rate, 1.000 for 100 percent of the BEP flow rate, and 0.985 for 110 percent of the BEP flow rate;

$P_{u,i}$  = the pump power output at load point  $i$  of the tested pump (hp), as determined in accordance with section II.B.1.1.2 of this appendix;

$\eta_{\text{pump,STD}}$  = the minimally compliant pump efficiency (%), calculated in accordance with section II.B.1.1.1 of this appendix; and

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

B.1.1.1 Calculate the minimally compliant pump efficiency based on the following equation:

$$\eta_{\text{pump,STD}} = -0.8500 \times \ln(Q_{100\%})^2 - 0.3800 \times \ln(N_s) \times \ln(Q_{100\%}) - 11.480 \times \ln(N_s)^2 + 17.800 \times \ln(Q_{100\%}) + 179.80 \times \ln(N_s) - (C + 555.60)$$

Where:

$\eta_{\text{pump,STD}}$  = minimally compliant pump efficiency (%),

$Q_{100\%}$  = the BEP flow rate of the tested pump at full impeller and nominal speed of rotation (gpm),

$N_s$  = specific speed of the tested pump determined in accordance with section II.B.1.1.1.1 of this appendix, and

$C$  = the appropriate  $C$ -value for the category and nominal speed of rotation of the tested pump, as listed at § 431.466.

B.1.1.1.1 Determine the specific speed of the rated pump using the following equation:

$$N_s = \frac{n_{sp} \times \sqrt{Q_{100\%}}}{(H_{100\%}/S)^{0.75}}$$

Where:

$N_s$  = specific speed,

$n_{sp}$  = the nominal speed of rotation (rpm),

$Q_{100\%}$  = the measured BEP flow rate of the tested pump at full impeller and nominal speed of rotation (gpm),

$H_{100\%}$  = pump total head at 100 percent of the BEP flow rate of the tested pump at full impeller and nominal speed of rotation (ft), and

$S$  = the number of stages with which the pump is being rated.

B.1.1.2 Determine the pump power output at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate using the following equation:

$$P_{u,i} = \frac{Q_i \times H_i \times SG}{3956}$$

Where:

$P_{u,i}$  = the measured pump power output at load point  $i$  of the tested pump (hp),

$Q_i$  = the measured flow rate at load point  $i$  of the tested pump (gpm),

$H_i$  = pump total head at load point  $i$  of the tested pump (ft),

$SG$  = the specific gravity of water at specified test conditions, which is equivalent to 1.00, and

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

B.1.2 Determine the motor part load losses at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$L_i = L_{\text{full}} \times y_i$$

Where:

$L_i$  = part load motor losses at load point  $i$  (hp),

$L_{\text{full}}$  = motor losses at full load (hp), as determined in accordance with section II.B.1.2.1 of this appendix,

$y_i$  = part load loss factor at load point  $i$  determined in accordance with section II.B.1.2.2 of this appendix, and

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

B.1.2.1 Determine the full load motor losses using the appropriate motor efficiency value and horsepower as shown in the following equation:

$$L_{\text{full}} = \frac{\text{MotorHP}}{\left[ \frac{\eta_{\text{motor,full}}}{100} \right]} - \text{MotorHP}$$

Where:

$L_{\text{full}}$  = motor losses at full load (hp),

$\text{MotorHP}$  = the motor horsepower as determined in accordance with section II.B.1.2.1.1 of this appendix (hp), and

$\eta_{\text{motor,full}}$  = the default nominal full load motor efficiency as determined in accordance with section II.B.1.2.1.2 of this appendix (%).

B.1.2.1.1 Determine the motor horsepower as follows:

- For bare pumps other than ST pumps, the motor horsepower is determined as the horsepower rating listed in Table 2 of this appendix that is either equivalent to, or the next highest horsepower greater than, the pump power input to the bare pump at 120 percent of the BEP flow rate of the tested pump.

- For ST bare pumps, the motor horsepower is determined as the horsepower

rating listed in Table 2 of this appendix that, is either equivalent to, or the next highest horsepower greater than, the pump power input to the bare pump at 120 percent of the BEP flow rate of the tested pump divided by a service factor of 1.15.

- For pumps sold with motors, pumps sold with motors and continuous controls, or pumps sold with motors and non-continuous controls, the motor horsepower is the rated horsepower of the motor with which the pump is being tested.

B.1.2.1.2 Determine the default nominal full load motor efficiency as described in section II.B.1.2.1.2.1 of this appendix for pumps other than ST pumps or II.B.1.2.1.2.2 of this appendix for ST pumps.

B.1.2.1.2.1. For pumps other than ST pumps, the default nominal full load motor efficiency is the minimum of the nominal full load motor efficiency standards (open or

enclosed) from the table containing the current energy conservation standards for NEMA Design B motors at § 431.25, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower determined in section II.B.1.2.1.1 of this appendix.

B.1.2.1.2.2. For ST pumps, the default nominal full load motor efficiency is the default nominal full load submersible motor efficiency listed in Table 2 of this appendix, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower determined in section II.B.1.2.1.1 of this appendix.

B.1.2.2 Determine the part load loss factor at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$y_i = -0.4508 \times \left( \frac{P_i}{\text{MotorHP}} \right)^3 + 1.2399 \times \left( \frac{P_i}{\text{MotorHP}} \right)^2 - 0.4301 \times \left( \frac{P_i}{\text{MotorHP}} \right) + 0.6410$$

Where:

$y_i$  = the part load loss factor at load point  $i$ ,

$P_i$  = pump power input to the bare pump at load point  $i$  (hp),

$\text{MotorHP}$  = the motor horsepower (hp), as determined in accordance with section II.B.1.2.1.1 of this appendix,

i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate, and

$$\frac{P_i}{\text{MotorHP}} \leq 1.000; \text{ if } \frac{P_i}{\text{MotorHP}} > 1.000, \text{ then set } \frac{P_i}{\text{MotorHP}} = 1.000 \text{ in the equation in this}$$

section II.B.1.2.2 to calculate the part load loss factor at each load point i.

**III. Test Procedure for Bare Pumps**

- A. *Scope.* This section III applies only to:  
 (1) Bare pumps,  
 (2) Pumps sold with drivers other than electric motors, and  
 (3) Pumps sold with single-phase induction motors.

B. *Measurement Equipment.* The requirements regarding measurement equipment presented in section I.B of this appendix apply to this section III, and in addition, when testing pumps using a calibrated motor:

- (1) Electrical measurement equipment must be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and  
 (2) Any instruments used to measure a particular parameter specified in paragraph (1) must have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the root sum of squares of individual instrument accuracies.

C. *Test Conditions.* The requirements regarding test conditions presented in section I.C of this appendix apply to this section III. When testing pumps using a calibrated motor the following conditions also apply to the mains power supplied to the motor:

- (1) Maintain the voltage within ±5 percent of the rated value of the motor,  
 (2) Maintain the frequency within ±1 percent of the rated value of the motor,  
 (3) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and  
 (2) Maintain total harmonic distortion below 12 percent throughout the test.

D. *Testing BEP for the Pump.* Determine the best efficiency point (BEP) of the pump as follows:

D.1. Adjust the flow by throttling the pump without changing the speed of rotation of the

pump and conduct the test at a minimum of the following seven flow points: 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate of the pump at the nominal speed of rotation, as specified in HI 40.6–2014, except section 40.6.5.3, section A.7, and appendix B (incorporated by reference, see § 431.463).

D.2. Determine the BEP flow rate as the flow rate at the operating point of maximum pump efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2014 (incorporated by reference, see § 431.463), where the pump efficiency is the ratio of the pump power output divided by the pump power input, as specified in Table 40.6.2.1 of HI 40.6–2014, disregarding the calculations provided in section 40.6.6.2.

E. *Calculating the Constant Load Pump Energy Rating.* Determine the PER<sub>CL</sub> of each tested pump using the following equation:

$$\text{PER}_{\text{CL}} = \sum_{i=75\%,100\%,110\%} \omega_i P_i^{\text{in,m}}$$

Where:

- PER<sub>CL</sub> = the pump energy rating for a constant load (hp),  
 $\omega_i = 0.3333$ ,  
 $P_i^{\text{in,m}}$  = calculated driver power input to the motor at load point i (hp), as determined in accordance with section III.E.1 of this appendix, and  
 i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1 Determine the driver power input at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$P_i^{\text{in,m}} = P_i + L_i$$

Where:

$$L_{\text{full}} = \frac{\text{MotorHP}}{\left[ \frac{\eta_{\text{motor,full}}}{100} \right]} - \text{MotorHP}$$

Where:

- $L_{\text{full}}$  = motor losses at full load (hp);  
 MotorHP = the motor horsepower (hp), as determined in accordance with section II.E.1.2.1.1 of this appendix, and  
 $\eta_{\text{motor,full}}$  = the default nominal full load motor efficiency (%), as determined in accordance with section III.E.1.2.1.2 of this appendix.

E.1.2.1.1 Determine the motor horsepower as follows:

- For bare pumps other than ST pumps, determine the motor horsepower by selecting the horsepower rating listed in Table 2 of this appendix that is either equivalent to, or the next highest horsepower greater than, the pump power input to the bare pump at 120 percent of the BEP flow rate of the tested pump.

$P_i^{\text{in,m}}$  = driver power input to the motor at load point i (hp),

$P_i$  = pump power input to the bare pump at load point i (hp), as determined in section III.E.1.1 of this appendix,

$L_i$  = the part load motor losses at load point i (hp), as determined in accordance with section III.E.1.2 of this appendix, and  
 i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1.1 Determine the pump power input at 75, 100, 110, and 120 percent of the BEP flow rate by employing a least squares regression to determine a linear relationship between the pump power input at the nominal speed of rotation of the pump and the measured flow rate at the following load points: 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate. Use the linear relationship to determine the pump power input at the nominal speed of rotation for the load points of 75, 100, 110, and 120 percent of the BEP flow rate.

E.1.2 Determine the motor part load losses at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$L_i = L_{\text{full}} \times y_i$$

Where:

- $L_i$  = motor losses at load point i (hp),  
 $L_{\text{full}}$  = motor losses at full load (hp), as determined in accordance with section III.E.1.2.1 of this appendix,  
 $y_i$  = loss factor at load point i as determined in accordance with section III.E.1.2.2 of this appendix, and  
 i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1.2.1 Determine the full load motor losses using the appropriate motor efficiency value and horsepower as shown in the following equation:

- For ST bare pumps, determine the motor horsepower by selecting the horsepower rating listed in Table 2 of this appendix that, is either equivalent to, or the next highest horsepower greater than, the pump power input to the bare pump at 120 percent of the BEP flow rate of the tested pump divided by a service factor of 1.15.
- For pumps sold with motors, pumps sold with motors and continuous controls, or

pumps sold with motors and non-continuous controls, the motor horsepower is the rated horsepower of the motor with which the pump is being tested.

E.1.2.1.2 Determine the default nominal full load motor efficiency as described in section III.E.1.2.1.2.1 of this appendix for pumps other than ST pumps or III.E.1.2.1.2.2. of this appendix for ST pumps.

E.1.2.1.2.1. For pumps other than ST pumps, the default nominal full load motor efficiency is the minimum of the nominal full

load motor efficiency standards (open or enclosed) from the table containing the current energy conservation standards for NEMA Design B motors at § 431.25, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower determined in section III.E.1.2.1.1 of this appendix.

E.1.2.1.2.2. For ST pumps, the default nominal full load motor efficiency is the default nominal full load submersible motor

efficiency listed in Table 2 of this appendix, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower determined in section III.E.1.2.1.1 of this appendix;

E.1.2.2 Determine the loss factor at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$y_i = -0.4508 \times \left( \frac{P_i}{\text{MotorHP}} \right)^3 + 1.2399 \times \left( \frac{P_i}{\text{MotorHP}} \right)^2 - 0.4301 \times \left( \frac{P_i}{\text{MotorHP}} \right) + 0.6410$$

Where:

$y_i$  = the part load loss factor at load point  $i$ ,

$P_i$  = pump power input to the bare pump at load point  $i$  (hp), as determined in accordance with section III.E.1.1 of this appendix,

MotorHP = as determined in accordance with section III.E.1.2.1 of this appendix (hp),

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate, and

$\frac{P_i}{\text{MotorHP}} \leq 1.000$ ; if  $\frac{P_i}{\text{MotorHP}} > 1.000$ , then set  $\frac{P_i}{\text{MotorHP}} = 1.000$  in the equation in this

section III.E.1.2.2 of this appendix to calculate the part load loss factor at each load point

i.

#### IV. Testing-Based Approach for Pumps Sold With Motors

A. *Scope*. This section IV applies only to pumps sold with electric motors, including single-phase induction motors.

B. *Measurement Equipment*. The requirements regarding measurement equipment presented in section I.B of this appendix apply to this section IV, and in addition, the electrical measurement equipment must:

(1) Be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and

(2) For all instruments used to measure a given parameter, have a combined accuracy of  $\pm 2.0$  percent of the measured value at the fundamental supply source frequency, where combined accuracy is the root sum of squares of individual instrument accuracies.

C. *Test Conditions*. The requirements regarding test conditions presented in section I.C of this appendix apply to this section IV. The following conditions also apply to the mains power supplied to the motor:

(1) Maintain the voltage within  $\pm 5$  percent of the rated value of the motor,

(2) Maintain the frequency within  $\pm 1$  percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within  $\pm 3$  percent of the rated values of the motor, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

D. *Testing BEP for the Pump*. Determine the BEP of the pump as follows:

D.1 Adjust the flow by throttling the pump without changing the speed of rotation of the pump to a minimum of seven flow points: 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate of the pump at the nominal speed of rotation, as specified in HI 40.6–2014, except section 40.6.5.3, section A.7, and appendix B (incorporated by reference, see § 431.463).

D.2. Determine the BEP flow rate as the flow rate at the operating point of maximum overall efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2014 (incorporated by reference, see § 431.463), where the overall efficiency is the ratio of the pump power output divided by the driver power input, as specified in Table 40.6.2.1 of HI 40.6–2014, disregarding the calculations provided in section 40.6.6.2.

E. *Calculating the Constant Load Pump Energy Rating*. Determine the  $PER_{CL}$  of each tested pump using the following equation:

$$PER_{CL} = \sum_{i=75\%,100\%,110\%} \omega_i P_i^{in,m}$$

Where:

$PER_{CL}$  = the pump energy rating for a constant load (hp),

$\omega_i$  = 0.3333,

$P_i^{in}$  = measured driver power input to the motor at load point  $i$  (hp) for the tested pump as determined in accordance with section IV.E.1 of this appendix, and

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1 Determine the driver power input at 75, 100, and 110 percent of the BEP flow rate by employing a least squares regression to determine a linear relationship between the driver power input at the nominal speed of rotation of the pump and the measured flow rate at the following load points: 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate. Use the linear relationship to determine the driver power input at the nominal speed of rotation for the load points of 75, 100, and 110 percent of the BEP flow rate.

#### V. Calculation-Based Approach for Pumps Sold With Motors

A. *Scope*. This section V can only be used in lieu of the test method in section IV of this appendix to calculate the index for pumps sold with motors listed in section V.A.1 or V.A.2 of this appendix.

A.1 Pumps sold with motors subject to DOE's energy conservation standards for polyphase electric motors at § 431.25(g), and

A.2. Pumps sold with submersible motors.

A.3. Pumps sold with motors not listed in sections V.A.1 or V.A.2 of this appendix cannot use this section V and must apply the test method in section IV of this appendix.

B. *Measurement Equipment*. The requirements regarding measurement equipment presented in section I.B of this appendix apply to this section V, and in addition, when testing pumps using a calibrated motor electrical measurement equipment must:

(1) Be capable of measuring true RMS current, true RMS voltage, and real power up

to the 40th harmonic of fundamental supply source frequency, and

(2) For all instruments used to measure a given parameter, have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the root sum of squares of individual instrument accuracies.

C. *Test Conditions.* The requirements regarding test conditions presented in section I.C of this appendix apply to this section V. When testing pumps using a calibrated motor the following conditions also apply to the mains power supplied to the motor:

(1) Maintain the voltage within ±5 percent of the rated value of the motor,

(2) Maintain the frequency within ±1 percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

D. *Testing BEP for the Bare Pump.*

Determine the best efficiency point (BEP) of the pump as follows:

D.1 Adjust the flow by throttling the pump without changing the speed of rotation of the pump to a minimum of seven flow points: 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate of the pump at the nominal speed of rotation, as specified in HI 40.6–2014, except section 40.6.5.3, section A.7, and appendix B (incorporated by reference, see § 431.463).

D.2. Determine the BEP flow rate as the flow rate at the operating point of maximum pump efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2014 (incorporated by reference, see § 431.463), where pump efficiency is the ratio of the pump power output divided by the pump power input, as specified in Table 40.6.2.1 of HI 40.6–2014 and the calculations provided in section 40.6.6.2 are to be disregarded.

E. *Calculating the Constant Load Pump Energy Rating.* Determine the PER<sub>CL</sub> of each tested pump using the following equation:

$$PER_{CL} = \sum_{i=75\%,100\%,110\%} \omega_i P_i^{in,m}$$

Where:

PER<sub>CL</sub> = the pump energy rating for a constant load (hp),

ω<sub>i</sub> = 0.3333,

P<sub>i</sub><sup>in,m</sup> = calculated driver power input to the motor at load point i for the tested pump as determined in accordance with section V.E.1 of this appendix (hp), and

i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1 Determine the driver power input at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$P_i^{in,m} = P_i + L_i$$

Where:

P<sub>i</sub><sup>in,m</sup> = driver power input to the motor at load point i (hp),

P<sub>i</sub> = pump power input to the bare pump at load point i, as determined in section V.E.1.1 of this appendix (hp),

L<sub>i</sub> = the part load motor losses at load point i as determined in accordance with section V.E.1.2 of this appendix (hp), and

i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1.1 Determine the pump power input at 75, 100, 110, and 120 percent of the BEP flow rate by employing a least squares regression to determine a linear relationship between the pump power input at the nominal speed of rotation of the pump and the measured flow rate at the following load points: 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate. Use the linear relationship to determine the pump power input at the nominal speed of rotation for the load points of 75, 100, 110, and 120 percent of the BEP flow rate.

E.1.2 Determine the motor part load losses at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$L_i = L_{full} \times Y_i$$

Where:

L<sub>i</sub> = motor losses at load point i (hp),

L<sub>full</sub> = motor losses at full load as determined in accordance with section V.E.1.2.1 of this appendix (hp),

y<sub>i</sub> = part load loss factor at load point i as determined in accordance with section V.E.1.2.2 of this appendix, and

i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate.

E.1.2.1 Determine the full load motor losses using the appropriate motor efficiency value and horsepower as shown in the following equation:

$$L_{full} = \left[ \frac{\text{MotorHP}}{\eta_{\text{motor,full}}/100} \right] - \text{MotorHP}$$

Where:

L<sub>full</sub> = motor losses at full load (hp),

MotorHP = the horsepower of the motor with which the pump model is being tested (hp), and

η<sub>motor,full</sub> = the represented nominal full load motor efficiency (i.e., nameplate/DOE-certified value) or default nominal full load submersible motor efficiency as determined in accordance with section V.E.1.2.1.1 of this appendix (%).

E.1.2.1.1 For pumps sold with motors other than submersible motors, determine the represented nominal full load motor efficiency as described in section V.E.1.2.1.1.1 of this appendix. For pumps sold with submersible motors determine the default nominal full load submersible motor efficiency as described in section V.E.1.2.1.1.2 of this appendix.

E.1.2.1.1.1 For pumps sold with motors other than submersible motors, the represented nominal full load motor efficiency is that of the motor with which the given pump model is being tested, as determined in accordance with the DOE test procedure for electric motors at § 431.16 and applicable representation procedures in parts 429 and 430.

E.1.2.1.1.2 For pumps sold with submersible motors, the default nominal full load submersible motor efficiency is that listed in Table 2 of this appendix, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower of the pump being tested.

E.1.2.2 Determine the loss factor at each load point corresponding to 75, 100, or 110 percent of the BEP flow rate as follows:

$$y_i = -0.4508 \times \left( \frac{P_i}{\text{MotorHP}} \right)^3 + 1.2399 \times \left( \frac{P_i}{\text{MotorHP}} \right)^2 - 0.4301 \times \left( \frac{P_i}{\text{MotorHP}} \right) + 0.6410$$

Where:

y<sub>i</sub> = the part load loss factor at load point i,  
P<sub>i</sub> = the pump power input to the bare pump at load point i as determined in

accordance with section V.E.1.1 of this appendix (hp),  
MotorHP = the horsepower of the motor with which the pump model is being tested (hp),

i = load point corresponding to 75, 100, or 110 percent of the BEP flow rate, and

$i$  = load point corresponding to 75, 100, or 110 percent of the BEP flow rate, and

$$\frac{P_i}{\text{MotorHP}} \leq 1.000; \text{ if } \frac{P_i}{\text{MotorHP}} > 1.000 \text{ then set } \frac{P_i}{\text{MotorHP}} = 1.000 \text{ in the equation in this}$$

section V.E.1.2.2 of this appendix to calculate the part load loss factor at each load point

i.

in the equation in this section V.E.1.2.2. of this appendix to calculate the part load loss factor at each load point

#### VI. Testing-Based Approach for Pumps Sold with Motors and Controls

A. *Scope.* This section VI applies only to pumps sold with electric motors, including single-phase induction motors, and continuous or non-continuous controls. For the purposes of this section VI, all references to “driver input power” in this section VI or HI 40.6–2014 (incorporated by reference, see § 431.463) refer to the input power to the continuous or non-continuous controls.

B. *Measurement Equipment.* The requirements regarding measurement equipment presented in section I.B of this appendix apply to this section VI, and in addition electrical measurement equipment must:

(1) Be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and

(2) For all instruments used to measure a given parameter, have a combined accuracy of  $\pm 2.0$  percent of the measured value at the fundamental supply source frequency, where combined accuracy is the root sum of squares of individual instrument accuracies.

C. *Test Conditions.* The requirements regarding test conditions presented in section I.C of this appendix apply to this section VI. The following conditions also apply to the mains power supplied to the continuous or non-continuous control:

(1) Maintain the voltage within  $\pm 5$  percent of the rated value of the motor,

(2) Maintain the frequency within  $\pm 1$  percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within  $\pm 3$  percent of the rated values of the motor, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

D. *Testing BEP for the Pump.* Determine the BEP of the pump as follows:

D.1. Adjust the flow by throttling the pump without changing the speed of rotation of the pump to a minimum of seven flow points: 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate of the pump at the nominal speed of rotation, as specified in HI 40.6–2014, except section 40.6.5.3, section A.7, and appendix B (incorporated by reference, see § 431.463).

D.2. Determine the BEP flow rate as the flow rate at the operating point of maximum overall efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2014 (incorporated by reference, see § 431.463), where overall efficiency is the ratio of the pump power output divided by the driver power input, as specified in Table 40.6.2.1 of HI 40.6–2014 and the calculations provided in section 40.6.6.2 are to be disregarded.

E. *Calculating the Variable Load Pump Energy Rating.* Determine the  $PER_{VL}$  of each tested pump using the following equation:

$$PER_{VL} = \sum_{i=25\%,50\%,75\%,100\%} \omega_i P_i^{in,c}$$

Where:

$PER_{VL}$  = the pump energy rating for a variable load (hp);

$\omega_i = 0.25$ ;

$P_i^{in,c}$  = the normalized driver power input to continuous or non-continuous controls at load point  $i$  for the tested pump as determined in accordance with section VI.E.1 of this appendix; and

$i$  = load point corresponding 25, 50, 75, or 100 percent of the BEP flow rate.

E.1. Determine the driver power input at 100 percent of the measured BEP flow rate of the tested pump by employing a least squares regression to determine a linear relationship between the measured driver power input at the nominal speed of rotation of the pump and the measured flow rate, using the following load points: 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate. Use the linear relationship to determine the driver power input at the

nominal speed of rotation for the load point of 100 percent of the measured BEP flow rate of the tested pump.

E.2 Determine the driver power input at 25, 50, and 75 percent of the BEP flow rate by measuring the driver power input at the load points defined by:

(1) Those flow rates, and

(2) The associated head points calculated according to the following reference system curve equation:

$$H_i = \left( 0.80 \times \frac{Q_i^2}{Q_{100\%}^2} + 0.20 \right) \times H_{100\%}$$

Where:

$H_i$  = pump total head at load point  $i$  (ft),

$H_{100\%}$  = pump total head at 100 percent of the BEP flow rate and nominal speed of rotation (ft),

$Q_i$  = flow rate at load point  $i$  (gpm),

$Q_{100\%}$  = flow rate at 100 percent of the BEP flow rate and nominal speed of rotation (gpm), and

$i$  = load point corresponding to 25, 50, or 75 percent of the measured BEP flow rate of the tested pump.

E.2.1. For pumps sold with motors and continuous controls, the specific head and flow points must be achieved within 10 percent of the calculated values and the measured driver power input must be corrected to the exact intended head and flow conditions using the following equation:

$$P_i^{in,c} = \left( \frac{H_{sp,i}}{H_{M,j}} \right) \left( \frac{Q_{sp,i}}{Q_{M,j}} \right) P_{M,j}^{in,c}$$

Where:

- $P_i^{in,c}$  = the corrected driver power input to the continuous or non-continuous controls at load point i (hp),
- $H_{sp,i}$  = the specified total system head at load point i based on the reference system curve (ft),
- $H_{M,j}$  = the measured total system head at load point j (ft),
- $Q_{sp,i}$  = the specified total system flow rate at load point i based on the reference system curve (gpm),
- $Q_{M,j}$  = the measured total system flow rate at load point j (gpm),
- $P_{M,j}^{in,c}$  = the measured normalized driver power input to the continuous or non-continuous controls at load point j (hp),
- $i$  = specified load point at 25, 50, 75, or 100 percent of BEP flow, and
- $j$  = measured load point corresponding to specified load point i.

E.2.2. For pumps sold with motors and non-continuous controls, the head associated with each of the specified flow points shall be no lower than 10 percent below that defined by the reference system curve equation in section VI.E.2 of this appendix. Only the measured flow points must be achieved within 10 percent of the calculated values. Correct for flow and head as described in section VI.E.2.1, except do not correct measured head values that are higher than the reference system curve at the same flow rate; only correct flow rate and head values lower than the reference system curve at the same flow rate. For head values higher than the system curve, use the measured head points directly to calculate  $PEI_{VL}$ .

**VII. Calculation-Based Approach for Pumps Sold With Motors and Controls**

A. *Scope.* This section VII can only be used in lieu of the test method in section VI of this appendix to calculate the index for pumps listed in section VII.A.1 or VII.A.2 of this appendix.

A.1. Pumps sold with motors regulated by DOE's energy conservation standards for polyphase NEMA Design B electric motors at § 431.25(g) and continuous controls, and

A.2. Pumps sold with submersible motors and continuous controls.

A.3. Pumps sold with motors not listed in VII.A.1 or VII.A.2 of this appendix and pumps sold without continuous controls, including pumps sold with non-continuous controls, cannot use this section and must

apply the test method in section VI of this appendix.

B. *Measurement Equipment.* The requirements regarding measurement equipment presented in section I.B of this appendix apply to this section VII, and in addition, when testing pumps using a calibrated motor electrical measurement equipment must:

- (1) Be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and
- (2) For all instruments used to measure a given parameter, have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the root sum of squares of individual instrument accuracies.

C. *Test Conditions.* The requirements regarding test conditions presented in section I.C of this appendix apply to this section VII. When testing pumps using a calibrated motor the following conditions also apply to the mains power supplied to the motor:

- (1) Maintain the voltage within ±5 percent of the rated value of the motor,
- (2) Maintain the frequency within ±1 percent of the rated value of the motor,
- (3) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and
- (4) Maintain total harmonic distortion below 12 percent throughout the test.

D. *Testing BEP for the Bare Pump.* Determine the BEP of the pump as follows:

D.1. Adjust the flow by throttling the pump without changing the speed of rotation of the pump to a minimum of seven flow points: 40, 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate of the pump at the nominal speed of rotation, as specified in HI 40.6–2014, except section 40.6.5.3, section A.7, and appendix B (incorporated by reference, see § 431.463).

D.2. Determine the BEP flow rate as the flow rate at the operating point of maximum pump efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2014 (incorporated by reference, see § 431.463), where pump efficiency is the ratio of the pump power output divided by the pump power input, as specified in Table 40.6.2.1 of HI 40.6–2014 and the calculations provided in section 40.6.6.2 are to be disregarded.

E. *Calculating the Variable Load Pump Energy Rating.* Determine the  $PER_{VL}$  of each tested pump using the following equation:

$$PER_{VL} = \sum_{i=25\%,50\%,75\%,100\%} \omega_i P_i^{in,c}$$

Where:

- $PER_{VL}$  = the pump energy rating for a variable load (hp);
- $\omega_i = 0.25$ ;
- $P_i^{in,c}$  = the calculated driver power input to the continuous or non-continuous controls at load point i for the tested pump as determined in accordance with section VII.E.1 of this appendix; and
- $i$  = load point corresponding to 25, 50, 75, or 100 percent of the BEP flow rate.

E.1 Determine the driver power input at each load point corresponding to 25, 50, 75, or 100 percent of the BEP flow rate as follows:

$$P_i^{in,c} = P_i + L_i$$

Where:

- $P_i^{in,c}$  = driver power input at to the continuous or non-continuous controls at load point i (hp),
- $P_i$  = pump power input to the bare pump at load point i as determined in accordance with section VII.E.1.1 of this appendix (hp),
- $L_i$  = the part load motor and control losses at load point i as determined in accordance with section VII.E.1.2 of this appendix (hp), and
- $i$  = load point corresponding to 25, 50, 75, or 100 percent of the BEP flow rate.

E.1.1 Determine the pump power input at 100 percent of the measured BEP flow rate of the tested pump by employing a least squares regression to determine a linear relationship between the measured pump power input at the nominal speed of rotation and the measured flow rate at the following load points: 60, 75, 90, 100, 110, and 120 percent of the expected BEP flow rate. Use the linear relationship to determine the pump power input at the nominal speed of rotation for the load point of 100 percent of the BEP flow rate.

E.1.1.1 Determine the pump power input at 25, 50, and 75 percent of the BEP flow rate based on the measured pump power input at 100 percent of the BEP flow rate and using with the following equation:

$$P_i = \left( 0.80 \times \frac{Q_i^3}{Q_{100\%}^3} + 0.20 \times \frac{Q_i}{Q_{100\%}} \right) \times P_{100\%}$$

Where:

- $P_i$  = pump power input at load point i (hp);
- $P_{100\%}$  = pump power input at 100 percent of the BEP flow rate and nominal speed of rotation (hp);

- $Q_i$  = flow rate at load point i (gpm);
- $Q_{100\%}$  = flow rate at 100 percent of the BEP flow rate and nominal speed of rotation (gpm); and

$i$  = load point corresponding to 25, 50, or 75 percent of the measured BEP flow rate of the tested pump.

E.1.2 Calculate the motor and control part load losses at each load point corresponding



to 25, 50, 75, and 100 percent of the BEP flow rate as follows:

$$L_i = L_{full} \times z_i$$

Where:

$L_i$  = motor and control losses at load point  $i$  (hp),

$L_{full}$  = motor losses at full load as determined in accordance with section VII.E.1.2.1 of this appendix (hp),

$z_i$  = part load loss factor at load point  $i$  as determined in accordance with section VII.E.1.2.2 of this appendix, and

$i$  = load point corresponding to 25, 50, 75, or 100 percent of the BEP flow rate.

E.1.2.1 Determine the full load motor losses using the appropriate motor efficiency value and horsepower as shown in the following equation:

$$L_{full} = \left[ \frac{\text{MotorHP}}{\eta_{\text{motor,full}}/100} \right] - \text{MotorHP}$$

Where:

$L_{full}$  = motor losses at full load (hp),

MotorHP = the horsepower of the motor with which the pump model is being tested (hp), and

$\eta_{\text{motor,full}}$  = the represented nominal full load motor efficiency (*i.e.*, nameplate/DOE-certified value) or default nominal full load submersible motor efficiency as determined in accordance with section VII.E.1.2.1.1 of this appendix (%).

E.1.2.1.1 For pumps sold with motors other than submersible motors, determine the

represented nominal full load motor efficiency as described in section VII.E.1.2.1.1.1 of this appendix. For pumps sold with submersible motors, determine the default nominal full load submersible motor efficiency as described in section VII.E.1.2.1.1.2 of this appendix.

E.1.2.1.1.1 For pumps sold with motors other than submersible motors, the represented nominal full load motor efficiency is that of the motor with which the given pump model is being tested, as determined in accordance with the DOE test procedure for electric motors at § 431.16 and

applicable representation procedures in parts 429 and 430.

E.1.2.1.1.2 For pumps sold with submersible motors, the default nominal full load submersible motor efficiency is that listed in Table 2 of this appendix, with the number of poles relevant to the speed at which the pump is being tested (see section I.C.1 of this appendix) and the motor horsepower of the pump being tested.

E.1.2.2 For load points corresponding to 25, 50, 75, and 100 percent of the BEP flow rate, determine the part load loss factor at each load point as follows:

$$z_i = a \times \left( \frac{P_i}{\text{MotorHP}} \right)^2 + b \times \left( \frac{P_i}{\text{MotorHP}} \right) + c$$

Where:

$z_i$  = the motor and control part load loss factor at load point  $i$ ,

$a, b, c$  = coefficients listed in Table 4 of this appendix based on the horsepower of the

motor with which the pump is being tested,

$P_i$  = the pump power input to the bare pump at load point  $i$ , as determined in

accordance with section VII.E.1.1 of this appendix (hp).

MotorHP = the horsepower of the motor with which the pump is being tested (hp),

$i$  = load point corresponding to 25, 50, 75, or 100 percent of the BEP flow rate, and

$\frac{P_i}{\text{MotorHP}} \leq 1.000$ ; if  $\frac{P_i}{\text{MotorHP}} > 1.000$  then set  $\frac{P_i}{\text{MotorHP}} = 1.000$  in the equation in this

section VII.E.1.2.2 of this appendix to calculate the part load loss factor at load point  $i$ .

TABLE 2—DEFAULT NOMINAL FULL LOAD SUBMERSIBLE MOTOR EFFICIENCY BY MOTOR HORSEPOWER AND POLE

Motor horsepower (hp)	Default nominal full load submersible motor efficiency	
	2 poles	4 poles
1	55	68
1.5	66	70
2	68	70
3	70	75.5
5	74	75.5
7.5	68	74
10	70	74
15	72	75.5
20	72	77
25	74	78.5
30	77	80
40	78.5	81.5
50	80	82.5

TABLE 2—DEFAULT NOMINAL FULL LOAD SUBMERSIBLE MOTOR EFFICIENCY BY MOTOR HORSEPOWER AND POLE—Continued

Motor horsepower (hp)	Default nominal full load submersible motor efficiency	
	2 poles	4 poles
60	81.5	84
75	81.5	85.5
100	81.5	84
125	84	84
150	84	85.5
200	85.5	86.5
250	86.5	86.5

TABLE 3—NOMINAL FULL LOAD MOTOR EFFICIENCY VALUES

Nominal full load motor efficiency*
50.5
52.5
55.0
57.5
59.5
62.0
64.0
66.0
68.0
70.0
72.0
74.0
75.5
77.0
78.5
80.0
81.5
82.5
84.0

TABLE 3—NOMINAL FULL LOAD MOTOR EFFICIENCY VALUES—Continued

Nominal full load motor efficiency*
85.5
86.5
87.5
88.5
89.5
90.2
91.0
91.7
92.4
93.0
93.6
94.1
94.5
95.0
95.4
95.8
96.2
96.5

TABLE 3—NOMINAL FULL LOAD MOTOR EFFICIENCY VALUES—Continued

Nominal full load motor efficiency*
96.8
97.1
97.4
97.6
97.8
98.0
98.2
98.4
98.5
98.6
98.7
98.8
98.9
99.0

\* Note: Each consecutive incremental value of nominal efficiency represents one band.

TABLE 4—MOTOR AND CONTROL PART LOAD LOSS FACTOR EQUATION COEFFICIENTS FOR SECTION VII.E.1.2.2 OF THIS APPENDIX A

Motor horsepower (hp)	Coefficients for Motor and Control Part Load Loss Factor (z <sub>i</sub> )		
	a	b	c
≤5	− 0.4658	1.4965	0.5303
>5 and ≤20	− 1.3198	2.9551	0.1052
>20 and ≤50	− 1.5122	3.0777	0.1847
>50	− 0.8914	2.8846	0.2625

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