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FEDERAL REGISTER

Vol. 77 Friday,

No. 87 May 4, 2012

Pages 26413–26658

OFFICE OF THE FEDERAL REGISTER

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

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

WHEN: Tuesday, May 15, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Executive Order 13609 of May 1, 2012

Promoting International Regulatory Cooperation

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote international regulatory cooperation, it is hereby ordered as follows:

Section 1. *Policy.* Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13563.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Sec. 2. *Coordination of International Regulatory Cooperation.* (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:

(i) serve as a forum to discuss, coordinate, and develop a common understanding among agencies of U.S. Government positions and priorities with respect to:

(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;

(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils; and

(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and

(ii) examine, among other things:

(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;

(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and

(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.

(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management

and Budget (OMB) shall convene the Working Group as necessary to discuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, representatives from other agencies and offices.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies and coordination mechanisms. The Working Group shall consult with existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

Sec. 3. *Responsibilities of Federal Agencies.* To the extent permitted by law, and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency deems appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

Sec. 4. *Definitions.* For purposes of this order:

(a) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) ''International impact'' is a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) ''International regulatory cooperation'' refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 6(a)(ii), (iii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) ''Regulation'' shall have the same meaning as ''regulation'' or ''rule'' in section 3(d) of Executive Order 12866.

(e) ''Significant regulation'' is a proposed or final regulation that constitutes a significant regulatory action.

(f) ''Significant regulatory action'' shall have the same meaning as in section 3(f) of Executive Order 12866.

Sec. 5. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451) and section 141 of the Trade Act of 1974 (19 U.S.C. 2171);

(iii) international trade activities undertaken pursuant to section 3 of the Act of February 14, 1903 (15 U.S.C. 1512), subtitle C of the Export Enhancement Act of 1988, as amended (15 U.S.C. 4721 *et seq.*), and Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note);

(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 112b(c) and its implementing regulations (22 C.F.R. 181.4) and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 53 of title 31 of the United States Code, title 26 of the United States Code, or Public Law 111–203 and other laws relating to financial regulation; or (vi) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 1, 2012.

[FR Doc. 2012–10968
Filed 5–3–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 87
Friday, May 4, 2012

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1604, 1605, 1650, 1651, 1653, 1655, and 1690

Roth Feature to the Thrift Savings Plan and Miscellaneous Uniformed Services Account Amendments

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations to add a Roth feature to the Thrift Savings Plan. This final rule also reorganizes regulatory provisions pertaining to uniformed services accounts.

DATES: This rule is effective May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Agency) administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a defined-contribution retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to a private-sector ''401(k) plan,'' *i.e.,* a cash or deferred arrangement described in section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The Thrift Savings Plan Enhancement Act of 2009, Public Law 111–31, Division B, Title I, authorized the Agency to implement a qualified Roth contribution program described in section 402A of the Internal Revenue Code. This feature will allow participants to make TSP contributions on an after-tax basis and receive tax-free earnings upon distribution if (1) five years have passed since January 1 of the year in which they made their first Roth contribution, and (2) a qualifying event has occurred (*i.e.,* attainment of age 59½ permanent disability, or death). The TSP Roth feature is similar to a designated Roth account maintained by a 401(k) plan.

On February 8, 2012, the Agency published a proposed rule with request for comments in the **Federal Register** (77 FR 6504, February 8, 2012). The Agency received one or more comments from five individuals.

One individual commented that requiring distributions to be made pro rata from participants' Roth and traditional balances is disadvantageous to participants who wish to withdraw a portion of their account balance within five years after having made their first Roth contribution. The Agency is aware that this rule will have tax consequences for participants who wish to withdraw a portion of their account balance within five years after having made their first Roth contribution. The Agency also understands that this rule is unique to the TSP.

The Agency adopted this rule to facilitate the availability of Roth contributions as early as possible. To allow participants to designate the source of their distributions would require significant modifications to Optical Character Recognition (OCR) forms and system applications which would delay the availability of Roth contributions. The Agency intends to revisit this rule in three to five years.

Two individuals objected to the pro rata distribution of Roth contributions and earnings. The allocation of Roth contributions and earnings to a distribution from a Roth TSP balance is dictated by the Internal Revenue Code. A distribution from a Roth TSP balance is treated differently under the Internal Revenue Code than a distribution from a Roth IRA. Roth IRAs are governed by section 408A of the Internal Revenue Code, whereas the Roth TSP feature is governed by section 402A of the Internal Revenue Code. The ordering rules in section 408A(d)(4),which provide that the first distributions from a Roth IRA are a nontaxable return of contributions until all contributions have been returned, do not apply to distributions from a TSP Roth balance. Instead, the Agency is required treat distributions from a Roth balance as consisting proportionately of contributions and proportionately of earnings. *See* 26 CFR 1.402A–1, Q&A–3.

One individual suggested that Roth TSP balances should not be subject to the required minimum distribution rules provided in section 401(a)(9) of the Internal Revenue Code. Pursuant to guidance issued by the Internal Revenue Service, the Agency must apply the required minimum distribution rules with respect to a participant's Roth TSP balance in the same manner as any other portion of the participant's account balance. *See* 26 CFR 1.401(k)–1(f)(4).

Two individuals suggested that the TSP permit in-plan Roth rollovers. The Small Business Jobs Act of 2010, Public Law 111–240, allowed employer-sponsored plans to offer ''in-plan Roth rollovers.'' An in-plan Roth rollover in the context of the TSP would be a transfer or rollover of funds from a participant's traditional balance to the participant's Roth balance.[1] However, the Small Business Jobs Act of 2010 was not effective until September 27, 2010, well after the TSP began its work to implement the Roth feature. In addition, the Internal Revenue Code places significant limitations on in-plan Roth rollovers. For example, the Agency cannot permit a participant to transfer or rollover non-Roth TSP funds to a Roth TSP balance unless that participant is eligible to make an existing withdrawal election. Therefore, a TSP participant who is still employed by the Federal government could elect an in-plan Roth rollover only if he/she has attained age 59½. The Agency does not have the authority to expand its withdrawal elections without seeking an amendment to its governing statute. For these reasons, the Agency has decided to postpone any formal consideration of offering in-plan Roth rollovers until after the TSP Roth contribution feature is fully implemented.

Implementation Date

The Thrift Savings Plan will begin accepting Roth contributions from Federal agency and uniformed service payroll offices on May 7, 2012.

[1] The term ''transfer'' as it is used in the Agency's regulations, is synonymous with the term ''direct rollover'' as that term is used in IRS guidance. The Agency uses the term ''rollover'' to refer only to a rollover by the participant within 60 days after he/she receives a distribution.

However, not all agencies or services have completed the technical and programmatic modifications of their payroll systems required to implement Roth TSP. These agencies or services will require additional time to modify their payroll systems and will permit their employees to make Roth contributions as soon after May 7, 2012 as they are able.

Types of TSP Accounts and Balances

The TSP offers the following four types of accounts: Civilian accounts, uniformed services accounts, civilian beneficiary participant accounts, and uniformed services beneficiary participant accounts. A participant's Roth contributions and associated earnings may be one balance among several balances maintained in one or more of these four types of accounts. The Agency has adopted new terminology by which to refer to each of these balances.

Within each of these four types of accounts, the Agency may maintain a ''Roth balance.'' A Roth balance consists of (1) Roth contributions and associated earnings and (2) Roth money transferred into the TSP and associated earnings. No other contributions (*e.g.* matching or Agency Automatic (1%) Contributions) will be allocated to the participant's Roth balance. The Agency will separately account for all Roth balance contributions, gains, and losses in order to determine the taxable and nontaxable portions of a distribution from a participant's account.

Within each of these four types of accounts, the Agency may also maintain a ''traditional balance.'' A traditional balance consists of (1) Tax-deferred employee contributions and associated earnings; (2) tax-deferred amounts rolled over or transferred into the TSP and associated earnings; (3) tax-exempt contributions and associated earnings; (4) matching contributions and associated earnings; and (5) Agency Automatic (1%) Contributions and associated earnings.

Within a traditional balance, the Agency may maintain a ''tax-deferred balance'' and a ''tax-exempt balance.'' A tax-deferred balance consists of all amounts in a participant's traditional balance that would otherwise be includible in gross income if paid directly to the participant. A tax-exempt balance consists only of tax-exempt contributions made to a participant's traditional balance. Earnings on tax-exempt contributions will be included in the participant's tax-deferred balance. Because a tax-exempt balance includes only tax-exempt contributions, the terms ''tax-exempt balance'' and ''tax-exempt contributions'' are interchangeable.

Tax-exempt contributions are employee contributions made to a uniformed services participant's traditional balance from pay which is exempt from taxation under 26 U.S.C. 112 because it was earned in a combat zone. Consequently, only a traditional balance that is in a uniformed services account or a uniformed services beneficiary participant account may contain tax-exempt contributions.

The term ''tax-exempt contributions'' does not include contributions made to the participant's Roth balance from pay which is exempt from taxation under 26 U.S.C. 112. Whether a Roth contribution is made from taxable pay or tax-exempt pay, the Agency will maintain all Roth contributions in a participant's Roth balance.

After the effective date of this rule, any reference in the Agency's regulations to a participant's ''account balance'' will mean the aggregate of the participant's traditional balance and the participant's Roth balance.

Employee Contribution Elections

Section 1600.11 currently permits the following types of contribution elections: (1) To make employee contributions; (2) to change the amount of employee contributions; and (3) to terminate employee contributions. The Agency is amending § 1600.11 to add an election to change the *type* of employee contributions.

This final rule also adds a new section, 1600.20, to describe the types of employee contributions that a participant may make. Section 1600.20 permits employees to make traditional contributions, Roth contributions, or a combination of both. Paragraph (c) of § 1600.20 ensures that a uniformed services participant's tax-exempt pay will be contributed to his or her traditional or Roth balance (or a combination of both) in accordance with the contribution election made under § 1600.11.

Section 1690.1 contains definitions generally applicable to the TSP. This final rule adds definitions for the terms ''employee contributions,'' ''traditional contributions,'' and ''Roth contributions.'' Employee contributions are traditional contributions and Roth contributions made at the participant's election pursuant to § 1600.12 and deducted from compensation paid to the participant.[2]

Traditional contributions are tax-deferred employee contributions and tax-exempt employee contributions made to the participant's traditional balance. Roth contributions are employee contributions made to the participant's Roth balance. A participant's employing agency will deduct Roth contributions from taxable pay on an after-tax basis or from pay exempt from taxation under 26 U.S.C. 112.

Maximum Employee Contributions

Section 1600.22 currently provides that contributions, other than catch-up contributions, made at the participant's election are subject to the elective deferral limit contained in section 402(g) of the Internal Revenue Code. Like tax-deferred employee contributions, Roth contributions are subject to the Internal Revenue Code's elective deferral limit. *See* 26 U.S.C. 402A(c)(2); 26 CFR 1.402(g)–1(b)(5).

The Agency is revising § 1600.22 to provide that tax-deferred contributions and Roth contributions, but not tax-exempt contributions to a participant's traditional balance, are subject to the Internal Revenue Code's elective deferral limit. Elective deferrals are, by definition, tax-deferred contributions unless they are Roth contributions. *See* 26 CFR 1.402(g)–1(a). Tax-exempt contributions to a participant's traditional balance are neither tax-deferred contributions nor Roth contributions. These tax-exempt contributions are treated as basis for tax purposes and the Agency does not track them against the maximum elective deferral limit set forth in 26 U.S.C. 402(g).

A participant may make traditional contributions and Roth contributions during the same year, but the combined total of tax-deferred employee contributions and Roth contributions cannot exceed the Internal Revenue Code's elective deferral limit. Likewise, a participant may make employee contributions to both a civilian account and a uniformed services account during the same year, but the combined total of tax-deferred employee contributions and Roth contributions to both accounts cannot exceed the Internal Revenue Code's elective deferral limit.

This final rule also removes all references to the percentage limitation on contributions that existed prior to 2006. Those references are obsolete. The Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554, changed the limits on FERS and CSRS TSP employee contributions by raising the percentage limitation by one percent

[2] The term ''employee contributions'' as defined in § 1690.1 is not synonymous with the term ''employee contributions'' as defined in 26 CFR 1.401(m)–1(a)(3).

each year until 2006, when the limits were removed altogether. The maximum TSP employee contribution is now limited only by the provisions of the Internal Revenue Code.

Catch-Up Contributions

This final rule relocates the catch-up contribution rules from paragraph (b) of § 1600.22 to a new section numbered 1600.23.

FERSA provides that an eligible participant (as defined by section 414(v) of the Internal Revenue Code) may make catch-up contributions to the Thrift Savings Fund to the extent permitted by section 414(v) and Agency regulations. 5 U.S.C. 8432(a)(3). The Internal Revenue Code permits eligible participants to make Roth catch-up contributions. The Agency will therefore allow eligible participants to designate catch-up contributions as Roth catch-up contributions.

Under section 414(v) of the Internal Revenue Code, catch-up contributions must be elective deferrals. For reasons explained above, the Agency does not treat tax-exempt contributions to a traditional balance as elective deferrals. Therefore, members of the uniformed services are not permitted to make catch-up contributions to a traditional balance from tax-exempt pay. However, members of the uniformed services may make catch-up contributions to a Roth balance from tax-exempt pay. All catch-up contributions are subject to the limit described in section 414(v) of the Internal Revenue Code.

A participant may make traditional catch-up contributions and Roth catch-up contributions during the same year, but the combined total amount of catch-up contributions of both types cannot exceed the Internal Revenue Code's catch-up contribution limit. Likewise, a participant who has both a civilian account and a uniformed services account may make catch-up contributions to both accounts during the same year, but the combined total amount of catch-up contributions to both accounts cannot exceed the Internal Revenue Code's catch-up contribution limit.

Employing Agency Contributions

This final rule adds a new section, 1600.19, to address rules and procedures related to employing agency contributions. Section 1600.19 provides that a participant's eligibility to receive matching contributions is the same whether the participant chooses to make traditional contributions, Roth contributions, or a combination of both. Section 1600.19 also provides that the Agency will allocate all employing agency contributions to the tax-deferred balance within a participant's traditional balance.

For example, suppose a FERS participant elects to contribute 1% of his or her basic pay as a traditional contribution and 2% of his or her basic pay as a Roth contribution. The employing agency must contribute 3% of that employee's basic pay to the employee's tax-deferred balance as a matching contribution. Because the employee is a FERS participant, the employing agency must also contribute Agency Automatic (1%) Contributions to the employee's tax-deferred balance whether or not he or she continues to make employee contributions.

Transfers and Rollovers Into the TSP

The Agency is amending § 1690.1 to add a definition for the term ''trustee-to-trustee transfer'' (or ''transfer''). A trustee-to-trustee transfer is a payment of an eligible rollover distribution directly from one eligible employer plan, traditional IRA, or Roth IRA to another eligible employer plan, traditional IRA, or Roth IRA at the participant's request.[3]

Section 1600.32 provides two methods for transferring an eligible rollover distribution into the TSP: (1) Trustee-to-trustee transfer (*i.e.,* direct rollover), and (2) rollover by the participant within 60 days of receipt. The Agency is revising § 1600.32 by redesignating it as § 1600.31 and by providing the conditions under which the Agency will accept a transfer consisting of Roth money.

Specifically, the Agency must receive (1) a statement from the plan administrator indicating the first year of the participant's 5 year Roth non-exclusion period (as defined by 26 U.S.C. 402A(d)(2)(B)) under the distributing plan, and (2) *either* the portion of the transfer amount that represents Roth contributions (*i.e.,* tax basis) or a statement that the entire amount of the transfer is a qualified Roth distribution (as defined by 26 U.S.C. 402A(d)(2)(A)). This requirement is necessary to enable the TSP to determine whether the earnings portion of any subsequent distribution from the participant's Roth balance may be received tax-free.

The Agency is also revising § 1600.32 to provide that the TSP will not accept Roth money that is rolled over by a participant after the participant has received the distribution. A rollover by the participant in lieu of a transfer would result in several disadvantages to the participant. First, when a participant does a rollover after he or she receives a distribution of Roth money in lieu of doing a transfer, the first taxable year in which the participant made a Roth contribution to the distributing plan does not carry over to the TSP for purposes of determining whether the earnings portion of a subsequent distribution from the participant's Roth balance may be received tax-free. *See* 26 CFR 1.402A–1, Q&A–5(c). Second, the Internal Revenue Service prohibits participants from rolling over any nontaxable portion of a distribution from a designated Roth account (*i.e.,* a Roth 401(k), Roth 403(b), or Roth 457(b) account) after the participant has received the distribution. *See* 26 CFR 1.402A–1, Q&A–5(a). For these reasons, the TSP will accept Roth money only if the TSP receives the money via trustee-to-trustee transfer (*i.e.,* direct rollover).

FERSA provides that the maximum amount permitted to be transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the participant's gross income for Federal income tax purposes. *See* 5 U.S.C. 8432(j)(2). In accordance with FERSA, § 1600.31 prohibits the transfer of after-tax or tax-exempt money into the TSP. This final rule redesignates § 1600.31 as § 1600.30 and revises paragraph (c)(1)(vi) of redesignated § 1600.30 to clarify that FERSA's prohibition against transferring after-tax money or tax-exempt money into the TSP does not apply to Roth money. Although FERSA's prohibition against transferring after-tax money or tax-exempt money into the TSP does not apply to Roth money, the Internal Revenue Code prohibits the transfer of Roth money from a Roth IRA to the TSP Roth balance. Therefore, the TSP will only accept Roth money if it is transferred from a designated Roth account (*i.e.,* a Roth 401(k) account, Roth 403(b) account, or Roth 457(b) account).

In summary, the Agency will not accept a rollover of Roth money distributed from any plan or IRA after the participant has received the money. The Agency cannot accept Roth money that is transferred from a Roth IRA. The Agency will, however, accept Roth money that is transferred from a designated Roth account (*i.e.,* a Roth 401(k) account, Roth 403(b) account, or Roth 457(b) account).

Automatic Enrollment Program

Section 1600.34 currently provides that all newly hired Federal employees eligible to participate in the TSP (and

[3] The term ''trustee-to-trustee transfer'' (or ''transfer'') as it is used in the Agency's regulations, is synonymous with the term ''direct rollover'' as that term is used in 26 CFR 1.401(a)(31)–1.

Federal employees rehired after a separation in service of 31 or more calendar days and eligible to participate in the TSP) will automatically have 3% of their basic pay contributed to the TSP. These default employee contributions will be made unless the employee elects not to contribute or to contribute at some other level before the end of the employee's first pay period. The introduction of Roth contributions makes it necessary to establish whether default employee contributions are traditional contributions or Roth contributions. Accordingly, the Agency is amending § 1600.34 to provide that all default employee contributions shall be contributed to the employee's traditional balance.

Section 1600.34 also currently provides that an employee can opt out of automatic enrollment and/or terminate default employee contributions by submitting a contribution election. Under newly revised § 1600.11, a contribution election includes an election to change, add, or terminate any type of contribution. For consistency, the Agency is amending § 1600.34 to provide that an employee can opt out of automatic enrollment and/or terminate default employee contributions by submitting an election to make Roth contributions. A participant can opt out of automatic enrollment or terminate default employee contributions by submitting an election to make Roth contributions even if the election does not result in a change to the employee's total contribution percentage or amount (*e.g.,* a participant elects to contribute 3% of his or her basic pay as Roth contributions and thus terminates all traditional contributions).

Uniformed Services Accounts

This final rule removes Part 1604 of the Agency's regulations. Part 1604 currently contains rules that are uniquely applicable to uniformed services accounts. However, Part 1604 also contains some redundant rules and some rules not uniquely applicable to uniformed services accounts. In addition, the Agency's regulations have evolved such that other parts also contain rules that are uniquely applicable to uniformed services accounts. For this reason, the Agency is eliminating Part 1604 by deleting redundant provisions and relocating the remaining provisions as follows:

Deleted Part 1604 provision (5 CFR)	Redundant provision (5 CFR)
1604.5(a)(2)	1655.6(c)
1604.6(a)	1605.11
1604.7(b)	Part 1650, Subpart G
1604.9(a)	1653.2(a)(1)(iii)
1604.10(a)(2)	1655.4
1604.10(a)(3)	1655.6(c)
1604.10(b)	1655.13(a)(3)
1604.10(c)	1655.16(b)

Relocated Part 1604 provision (5 CFR)	New location (5 CFR)
1604.2	1690.1
1604.3	1600.12(e)
1604.4(a)(first two sentences).	1600.12(e)
1604.4(b)	1600.19(b)
1604.5(a)(first two sentences).	1600.18
1604.5(a)(1)	1600.22(c)
1604.5(b)	1600.33
1604.6(b)	1605.11(d)
1604.7(a)	1650.2(g)
1604.7(c)	1650.2(h)
1604.8	1651.14(a)
1604.9(b)	1653.5(d)
1604.9(c)	1653.5(m)
1604.9(d)	1653.5(n)
1604.10(a)(1)	1655.10(d)

Error Correction

This final rule adds definitions to § 1605.1 for the terms ''recharacterization'' and ''redesignation.'' Recharacterization is the process of changing a contribution erroneously submitted by an employing agency as a tax-deferred contribution to a tax-exempt contribution or vice versa. Redesignation is the process of changing a contribution erroneously submitted by an employing agency as a traditional contribution to a Roth contribution or vice versa. The rule also sets forth the rules and procedures for redesignation and recharacterization in a new section numbered 1605.17.

The term ''recharacterization'' is not synonymous with that term as it is used in regulations or guidance published by the Internal Revenue Service.[4] The Agency uses ''recharacterization'' and ''redesignation'' to refer to methods of error correction only. That is, a TSP contribution cannot be recharacterized or redesignated at the participant's request. Once a contribution has been made to the participant's account, it cannot be recharacterized or redesignated unless the employing agency erred in its submission. Therefore, a participant cannot elect to retroactively change the tax characteristics of contributions that have already been made. *See* 26 CFR 1.401(k)–1(f)(i).

The Agency is revising § 1605.12 to provide that positive earnings on an erroneous contribution to a participant's Roth balance will be moved to the participant's traditional balance when the error is corrected. If the Agency were to permit earnings attributable to an erroneous contribution to remain in the Roth balance when the contribution should have been to the participant's traditional balance, the Agency would arguably permit a transfer of value from the participant's traditional balance to the participant's Roth balance. The Internal Revenue Service prohibits any transaction or accounting method involving a participant's Roth balance and any other balance that has the effect of directly or indirectly transferring value from the other balance into the Roth balance. *See* 26 CFR 1.402A–1, Q&A–13.

The Agency is amending paragraph (c)(1) of § 1605.11 to provide that the schedule of makeup contributions elected by the participant must establish the type of contribution (*i.e.,* traditional, Roth, or both) to be made each pay period over the duration of the schedule. The Agency is also adding paragraph (c)(12) to 1605.11 in order to provide that a participant cannot contribute a makeup contribution with an ''as of'' date occurring prior to May 5, 2012 to his or her Roth balance. If the ''as of'' date of a late or makeup Roth contribution is earlier than the existing date of a participant's first Roth contribution, the Agency will adjust the start date of the participant's 5-year non-exclusion period (as defined by 26 U.S.C. 402A(d)(2)(B) accordingly.

Transfers From the TSP

The Agency is revising §§ 1650.2, 1650.23, 1651.14, 1653.3, and 1653.5 to add Roth IRAs to the types of retirement savings vehicles to which a participant, beneficiary, or alternate payee might choose to transfer or roll over a TSP distribution. This final rule also adds a new section, 1650.25, to address rules and procedures pertaining to transfers from the TSP.

Section 1650.25 permits a participant to elect to transfer an eligible rollover distribution consisting of funds from his or her traditional balance to a single eligible employer plan or IRA and funds from his or her Roth balance to another eligible employer plan or IRA. The Agency will also allow a participant to elect to transfer the traditional and Roth portions of a payment to the same plan or IRA but, for each type of balance, the election must be made separately and each type of balance will be transferred

[4] Under regulations published by the Internal Revenue Service, an IRA owner may choose to ''recharacterize'' certain contributions (*i.e.,* treat a contribution made to one type of IRA as made to a different type of IRA) for a taxable year. 26 CFR 1.408A–5.

separately. The Agency will not transfer portions of a participant's traditional balance to two different eligible employer plans and/or IRAs or portions of a participant's Roth balance to two different eligible employer plans and/or IRAs.

Paragraph (c) of § 1650.25 requires the TSP to inform the plan administrator or trustee of the plan or Roth IRA receiving a distribution from a Roth TSP balance of (1) the start date of the participant's Roth 5 year non-exclusion period or the date of the participant's first Roth contribution, and (2) the portion of the distribution that represents Roth contributions. If a participant elects not to transfer a distribution from his or her Roth balance, the Agency will inform the participant of the amount of the distribution that represents Roth contributions.

Paragraph (e) of § 1650.25 clarifies that a participant may transfer a distribution from the TSP to another eligible employer plan or to an IRA only to the extent the transfer is permitted by the Internal Revenue Code.

Pro Rata Distributions

The Agency is amending its regulations to provide that all withdrawals, loan distributions, death benefit distributions, court-ordered payments, and required minimum distributions will be disbursed pro rata from a participant's traditional and Roth balance.

The Agency is also amending its regulations to require distributions from a traditional balance to be pro rated between the tax-deferred balance and tax-exempt contributions (if any) and to require distributions from a Roth balance to be pro rated between contributions in the Roth balance and earnings in the Roth balance. This requirement is necessary because Internal Revenue Code section 72 precludes the TSP from allocating the portion of an account balance that has already been taxed to a distribution in a manner that is other than pro rata.

Annuities

The Internal Revenue Service prohibits any transaction involving a participant's Roth balance and any other balances that would have the effect of directly or indirectly transferring value from the other balance(s) into the Roth balance. 26 CFR 1.402A–1, Q&A–13. The Internal Revenue Service has noted that it may be difficult for a single annuity contract to have guarantees that apply to both Roth and non-Roth balances without the potential for a prohibited transfer of value between the balances. *See* 72 FR 21107 (third column). Accordingly, the Agency is amending § 1650.14 to prohibit the purchase of one annuity contract with both the traditional portion and the Roth portion of a withdrawal. If a participant who has a Roth balance and a traditional balance desires to purchase an annuity, he or she must purchase two separate contracts; one with the traditional balance and one with the Roth balance.

Section 1650.14 currently requires a minimum amount of $3,500 to purchase an annuity. The Agency is amending § 1650.14 to provide that the $3,500 minimum threshold applies to each annuity purchased. If a participant who has a Roth balance elects to use 100% of a withdrawal to purchase life annuities and both the traditional balance and the Roth balance are below $3,500, the TSP will reject the participant's withdrawal request. If only one balance is below $3,500, then the TSP will pay that balance to the participant in a single payment and use the balance that is $3,500 or above to purchase an annuity.

If a participant who has a Roth balance makes a mixed withdrawal election and both the traditional balance and the Roth balance are below $3,500, the TSP will reject the withdrawal request. If only one balance is below $3,500, then the TSP will pro rate that balance among the participant's other elected withdrawal options and will use the balance that is $3,500 or above to purchase an annuity.

Section 1650.14 currently allows a participant to select from several types of annuities: (1) Single life, (2) joint life of the participant and spouse, and (3) joint life of the participant and a person with an insurable interest in the participant. The Agency is amending § 1650.14 to provide that, if a participant is required to purchase two separate annuities, the participant's withdrawal election among the types of annuities and any available options and features, will apply to both annuities purchased. A participant cannot elect more than one type of annuity per account.

Death Benefits

The Agency is amending § 1651.3 to provide that a beneficiary designation form is not valid if it attempts to designate beneficiaries for the participant's traditional balance and the participant's Roth balance separately. The Agency is also amending § 1651.17 to provide that a valid disclaimer cannot specify which balance shall be disclaimed.

Court Orders

A TSP participant's account balance cannot be assigned or alienated and is not subject to execution, levy, attachment, garnishment, or other legal process except as provided for in 5 U.S.C. 8437(e)(3). Section 8437(e)(3) provides that a participant's account balance shall be subject to an obligation of the Executive Director to make a payment to another person under a domestic relations court order described in section 8467.

A domestic relations court order is enforceable against the TSP only if it is a ''qualifying retirement benefits court order'' or ''qualifying legal process'' as defined by 5 CFR part 1653. A retirement benefits court order or legal process is qualifying only if it satisfies the requirements and conditions set forth in 5 CFR 1653.2 or 5 CFR 1653.12, respectively. The Agency is amending §§ 1653.2 and 1653.12 to provide that a retirement benefits court order or legal process is not qualifying if it purports to designate the TSP Fund, source of contributions, or balance (*e.g.* traditional, Roth, or tax-exempt) from which the payment or portions of the payment shall be made.

Loans

The Agency is amending § 1655.9 to provide that the TSP will credit loan payments to a participant's traditional and Roth balances in the same proportion that the loan was distributed from the participant's account. This requirement is necessary to ensure that the loan repayment requirements under Internal Revenue Code section 72(p)(2)(C) (*i.e.,* at least quarterly amortization of principal and interest) are satisfied separately with respect to the Roth balance.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register.** This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects

5 CFR Part 1600

Government employees, Pensions, Retirement.

5 CFR Part 1601

Government employees, Pensions, Retirement.

5 CFR Part 1604

Military personnel, Pensions, Retirement.

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Thomas K. Emswiler,

Acting Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

■ 1. Revise the authority citation for part 1600 to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8432d, 8474(b)(5) and (c)(1).

■ 2–3. Amend § 1600.11 by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

§ 1600.11 Types of elections.

(a) * * *

(2) To change the amount of employee contributions;

(3) To change the type of employee contributions (traditional or Roth); or

(4) To terminate employee contributions.

* * * * *

■ 4. Amend § 1600.12 by adding paragraph (e) to read as follows:

§ 1600.12 Contribution elections.

* * * * *

(e) A uniformed service member may elect to contribute sums to the TSP from basic pay and special or incentive pay (including bonuses). However, in order to contribute to the TSP from special or incentive pay (including bonuses), the uniformed service member must also elect to contribute to the TSP from basic pay. A uniformed service member may elect to contribute from special pay or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special or incentive pay (including bonuses) when the contribution election is made); those elections will take effect when the uniformed service member receives the special or incentive pay (including bonuses).

§ 1600.13 [Removed]

■ 5. In Subpart B, remove § 1600.13.

§ 1600.14 [Redesignated as § 1600.13]

■ 6. In Subpart B, redesignate § 1600.14 as § 1600.13.

■ 7. In Subpart C, add § 1600.18 to read as follows:

§ 1600.18 Separate service member and civilian contributions.

The TSP maintains uniformed services accounts separately from civilian accounts. Therefore, a participant who has made contributions as a uniformed service member and as a civilian employee will have two TSP accounts: A uniformed services account and a civilian account.

■ 8. In Subpart C, add § 1600.19 to read as follows:

§ 1600.19 Employing agency contributions.

(a) *Agency Automatic (1%) Contributions.* Each pay period, any agency that employs an individual covered by FERS must make a contribution to that employee's tax-deferred balance for the benefit of the individual equal to 1% of the basic pay paid to such employee for service performed during that pay period. The employing agency must make Agency Automatic (1%) Contributions without regard to whether the employee elects to make employee contributions.

(b) *Agency Matching Contributions.* (1) Any agency that employs an individual covered by FERS (or any service that employs an individual who has an agreement described in 37 U.S.C. 211(d)) must make a contribution to the employee's tax-deferred balance for the benefit of the employee equal to the sum of:

(i) The amount of the employee's contribution that does not exceed 3% of the employee's basic pay for such pay period; and

(ii) One-half of such portion of the amount of the employee's contributions that exceeds 3% but does not exceed 5% of the employee's basic pay for such period.

(2) A uniformed service member who receives matching contributions under 37 U.S.C. 211(d) is not entitled to matching contributions for contributions deducted from special or incentive pay (including bonuses).

(c) *Timing of employing agency contributions.* An employee appointed or reappointed to a position covered by FERS is immediately eligible to receive employing agency contributions.

■ 9. In Subpart C, add § 1600.20 to read as follows:

§ 1600.20 Types of employee contributions.

(a) *Traditional contributions.* A participant may make traditional contributions.

(b) *Roth contributions.* A participant may make Roth contributions in addition to or in lieu of traditional contributions.

(c) *Contributions from tax-exempt pay.* A uniformed service member who receives pay which is exempt from taxation under 26 U.S.C. 112 will have contributions deducted from such pay and made to his or her traditional or Roth balance in accordance with an election made under paragraph (a) or (b) of this section.

■ 10. Revise § 1600.21 to read as follows:

§ 1600.21 Contributions in whole percentages or whole dollar amounts.

(a) Civilian employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts. A participant may contribute a percentage for one type of contribution and a dollar amount for another type of contribution. If a participant elects to contribute a dollar amount to his or her traditional balance and a dollar amount to his or her Roth balance, but the total dollar amount elected is more than the amount available to be deducted from the participant's basic pay, the employing agency will deduct traditional contributions first and Roth contributions second.

(b) Uniformed services members may elect to contribute a basic pay and special or incentive pay (including bonus pay) subject to the limits described in § 1600.22. The election may be expressed as a whole percentage, a dollar amount, or both as determined by the member's service.

■ 11. Revise § 1600.22 to read as follows:

§ 1600.22 Maximum employee contributions.

A participant's employee contributions are subject to the following limitations:

(a) The maximum employee contribution will be limited only by the provisions of the Internal Revenue Code (26 U.S.C.).

(b) A participant may make traditional contributions and Roth contributions during the same year, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions cannot exceed the applicable Internal Revenue Code elective deferral limit for the year.

(c) A participant who has both a civilian and a uniformed services account can make employee contributions to both accounts, but the combined total amount of the participant's tax-deferred employee contributions and Roth contributions made to both accounts cannot exceed the Internal Revenue Code elective deferral limit for the year.

■ 12. In Subpart C, add § 1600.23 to read as follows:

§ 1600.23 Catch-up contributions.

(a) A participant may make traditional catch-up contributions or Roth catch-up contributions from basic pay at any time during the calendar year if he or she:

(1) Is at least age 50 by the end of the calendar year;

(2) Is making employee contributions at a rate that will result in the participant making the maximum employee contributions permitted under § 1600.22; and

(3) Does not exceed the annual limit on catch-up contributions contained in section 414(v) the Internal Revenue Code.

(b) An election to make catch-up contributions must be made using a Catch-Up Contribution Election form (or an electronic substitute) and will be valid only through the end of the calendar year in which the election is made. An election to make catch-up contributions will be separate from the participant's regular contribution election. The election must be expressed in whole dollar amounts.

(c) A participant may make traditional catch-up contributions and Roth catch-up contributions during the same year, but the combined total amount of catch-up contributions of both types cannot exceed the applicable Internal Revenue Code catch-up contribution limit for the year.

(d) A participant who has both a civilian account and a uniformed services account may make catch-up contributions to both accounts, but the combined total amount of catch-up contributions to both accounts cannot exceed the Internal Revenue Code catch-up contribution limit for the year.

(e) A participant cannot make catch-up contributions to his or her traditional balance from pay which is exempt from taxation under 26 U.S.C. 112.

(f) A participant may make catch-up contributions to his or her Roth balance from pay which is exempt from taxation under 26 U.S.C. 112.

(g) A participant cannot make catch-up contributions from special or incentive pay (including bonus pay).

(h) Catch-up contributions are not eligible for matching contributions.

§ 1600.31 [Redesignated as § 1600.30]

■ 13a. In subpart D, redesignate § 1600.31 as § 1600.30.

■ 13b. In newly redesignated § 1600.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 1600.30 Accounts eligible for transfer or rollover to the TSP.

(a) A participant who has an open TSP account and is entitled to receive (or receives) an eligible rollover distribution, within the meaning of I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible employer plan or a rollover contribution, within the meaning of I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)), from a traditional IRA may transfer or roll over that distribution into his or her existing TSP account in accordance with § 1600.31.

* * * * *

(c) Notwithstanding paragraph (b) of this section, the TSP will accept Roth funds that are transferred via trustee-to-trustee transfer from an eligible employer plan that maintains a qualified Roth contribution program described in section 402A of the Internal Revenue Code.

(d) The TSP will accept a transfer or rollover only to the extent the transfer or rollover is permitted by the Internal Revenue Code.

§ 1600.32 [Redesignated as § 1600.31]

■ 14a. In subpart D, redesignate § 1600.32 as § 1600.31.

■ 14b. In newly redesignated § 1600.31, revise paragraphs (a), (b) introductory text, and (b)(1), the second sentence in paragraph (b)(2), the first sentence in paragraph (b)(3), and paragraphs (b)(4) and (c)(1)(vi) to read as follows:

§ 1600.31 Methods for transferring or rolling over eligible rollover distributions to the TSP.

(a) *Trustee-to-trustee transfer.* (1) A participant may request that the administrator or trustee of an eligible employer plan or traditional IRA transfer any or all of his or her account directly to the TSP by executing and submitting the appropriate TSP form to the administrator or trustee. The administrator or trustee must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution (as defined by 26 CFR 1.401(a)(31)–1, Q&A–14). By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan administrator or trustee indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, or a tax notice from the plan to the participant indicating that the

participant could receive a rollover from the plan.

(2) If the distribution is from a Roth account maintained by an eligible employer plan, the plan administrator must also provide to the TSP a statement indicating the first year of the participant's Roth 5 year non-exclusion period under the distributing plan and either:

(i) The portion of the trustee-to-trustee transfer amount that represents Roth contributions (*i.e.* basis); or

(ii) A statement that the entire amount of the trustee-to-trustee transfer is a qualified Roth distribution (as defined by Internal Revenue Code section 402A(d)(2))

(b) *Rollover by participant.* A participant who has already received a distribution from an eligible employer plan or traditional IRA may roll over all or part of the distribution into the TSP. However, the TSP will not accept a rollover by the participant of Roth funds distributed from an eligible employer plan. A distribution of Roth funds from an eligible employer plan may be rolled into the TSP by trustee-to-trustee transfer only. The TSP will accept a rollover by the participant of tax-deferred amounts if the following requirements and conditions are satisfied:

(1) The participant must complete the appropriate TSP form.

(2) * * * By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible employer plan or traditional IRA, a check indicating that the contribution is a direct rollover, or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(3) The participant must submit the completed TSP form, together with a certified check, cashier's check, cashier's draft, money order, treasurer's check from a credit union, or personal check, made out to the ''Thrift Savings Plan,'' for the entire amount of the rollover. * * *

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible employer plan or traditional IRA. The transaction is not complete until the TSP record keeper receives the appropriate TSP form, executed by the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) * * *

(1) * * *

(vi) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid. This paragraph shall not apply to Roth funds distributed from an eligible employer plan.

* * * * *

§ 1600.33 [Redesignated as § 1600.32]

■ 15. In subpart D, redesignate § 1600.33 as § 1600.32.

§ 1600.32 [Amended]

■ 16a. In newly redesignated § 1600.32, in paragraphs (a) through (c), remove the phrase ''§§ 1600.31 and 1600.32'' and add in its place the phrase ''§§ 1600.30 and 1600.31''.

■ 16b. In Subpart D, add new § 1600.33 to read as follows:

§ 1600.33 Combining uniformed services accounts and civilian accounts.

Uniformed services TSP account balances and civilian TSP account balances may be combined (thus producing one account), subject to the following rules:

(a) An account balance can be combined with another once the TSP is informed (by the participant's employing agency) that the participant has separated from Government service.

(b) Tax-exempt contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(c) A traditional balance and a Roth balance cannot be combined.

(d) Funds transferred to the gaining account will be allocated among the TSP Funds according to the contribution allocation in effect for the account into which the funds are transferred.

(e) Funds transferred to the gaining account will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600.

(f) A uniformed service member must obtain the consent of his or her spouse before combining a uniformed services TSP account balance with a civilian account that is not subject to FERS spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(g) Before the accounts can be combined, any outstanding loans from the losing account must be closed as described in 5 CFR part 1655.

■ 17. Revise § 1600.34 to read as follows:

§ 1600.34 Automatic enrollment program.

(a) All newly hired civilian employees who are eligible to participate in the Thrift Savings Plan and those civilian employees who are rehired after a separation in service of 31 or more calendar days and who are eligible to participate in the TSP will automatically have 3% of their basic pay contributed to the employee's traditional TSP balance (default employee contribution) unless they elect by the end of the employee's first pay period (subject to the agency's processing time frames):

(1) To not contribute;

(2) To contribute at some other level; or

(3) To make Roth contributions in addition to, or in lieu of, traditional contributions.

(b) After being automatically enrolled, a participant may elect, at any time, to terminate default employee contributions, change his or her contribution percentage or amount, or make Roth contributions in addition to, or in lieu of, traditional contributions.

■ 18. Amend § 1600.37 by revising paragraphs (a) and (b) to read as follows:

§ 1600.37 Employing agency notice.

* * * * *

(a) That default employee contributions equal to 3 percent of the employee's basic pay will be deducted from the employee's pay and contributed to the employee's traditional TSP balance on the employee's behalf if the employee does not make an affirmative contribution election;

(b) The employee's right to elect to not have default employee contributions made to the TSP on the employee's behalf, to elect to have a different percentage or amount of basic pay contributed to the TSP, or to make Roth contributions;

* * * * *

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

■ 19. Revise the authority citation for part 1601 to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8438, 8474(b)(5) and (c)(1).

■ 20. Amend § 1601.13 by revising paragraphs (a)(5) and (c) to read as follows:

§ 1601.13 Elections.

(a) * * *

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation or the participant withdraws his or her entire account. If a separated participant is rehired and had not withdrawn his or her entire TSP account, the participant's

last contribution allocation before separation from Government service will be effective until a new allocation is made. If, however, the participant had withdrawn his or her entire TSP account, then the participant's contributions will be allocated to the G Fund until a new allocation is made.

* * * * *

(c) *Contribution elections.* A participant may designate the amount or type of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

PART 1604—[REMOVED AND RESERVED]

■ 21. Under the authority of 5 U.S.C. 8474(b)(5), remove and reserve part 1604.

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 22. Revise the authority citation for part 1605 to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 23. Amend § 1605.1(b) as follows:

■ a. Revise the definition of *attributable pay date;*

■ b. In the definition of *late contributions,* redesignate paragraphs (1) through (4) as (i) through (iv), and in newly redesignated paragraph (iii), remove ''(1) and (2)'' and add ''(i) and (ii)'' in its place; and

■ c. Add definitions for *recharacterization, recharacterization record, redesignation,* and *redesignation record.*

The revision and additions read as follows:

§ 1605.1 Definitions.

* * * * *

(b) * * *

Attributable pay date means:

(i) The pay date of a contribution that is being redesignated from traditional to Roth, or vice versa;

(ii) In the case of the uniformed services, the pay date of a contribution that is being recharacterized from tax-deferred to tax-exempt, or vice versa; or

(iii) The pay date of an erroneous contribution for which a negative adjustment is being made. However, if the erroneous contribution for which a negative adjustment is being made was a makeup or late contribution, the attributable pay date is the ''as of'' date of the erroneous makeup or late contribution.

* * * * *

Recharacterization means the process of changing a contribution that the employing agency erroneously submitted as a tax-deferred contribution to a tax-exempt contribution (or vice versa). Recharacterization is a method of error correction only. It applies only to the traditional balance of a uniformed services account.

Recharacterization record means a data record submitted by an employing agency to recharacterize a tax-deferred contribution that the employing agency erroneously submitted as a tax-exempt contribution (or vice versa).

Redesignation means the process of moving a contribution (and its associated positive earnings) from a participant's traditional balance to the participant's Roth balance or vice versa in order to correct an employing agency error that caused the contribution to be submitted to the wrong balance. Redesignation is a method of error correction only. A participant cannot request the redesignation of contributions unless the employing agency made an error in the submission of the contributions.

Redesignation record means a data record submitted by an employing agency to redesignate a contribution that the employing agency erroneously submitted to the wrong balance (traditional or Roth).

■ 24. Amend § 1605.11 by revising paragraph (c)(1) and the second sentence in paragraph (c)(8), by adding paragraphs (c)(12) and (13), and by adding paragraph (d) to read as follows:

§ 1605.11 Makeup of missed or insufficient contributions.

* * * * *

(c) * * *

(1) The schedule of makeup contributions elected by the participant must establish the dollar amount of the contributions and the type of employee contributions (traditional or Roth) to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the total amount to be contributed must be established when the schedule is created. After the schedule is created, a participant may, with the agreement of his or her agency, elect to change his or her payment amount (*e.g.,* to accelerate payment) or elect to change the type of employee contributions (traditional or Roth). The length of the schedule may not exceed four times the number of pay periods over which the error occurred.

* * * * *

(8) * * * If a participant separates from Government service, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck.

* * * * *

(12) A participant is not eligible to contribute makeup contributions with an ''as of'' date occurring prior to May 5, 2012 to his or her Roth balance.

(13) If the ''as of'' date of a Roth contribution that is submitted as a makeup contribution is earlier than the participant's existing Roth initiation date, the TSP will adjust the participant's Roth initiation date.

(d) *Missed bonus contributions.* This paragraph (d) applies when an employing agency fails to implement a contribution election that was properly submitted by a uniformed service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a uniformed service member may establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the uniformed service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the uniformed service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a uniformed service member who earns $29,000 yearly in basic pay and who missed a $2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the uniformed service member 2 months to earn $2,500 in basic pay (at $2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the uniformed service member to earn basic pay equal to the dollar amount of the missed contribution.

■ 25. Amend § 1605.12 by revising paragraph (d)(1) as follows:

§ 1605.12 Removal of erroneous contributions.

* * * * *

(d) * * *

(1) If, on the posting date, the amount calculated under paragraph (c) of this section is equal to or greater than the amount of the proposed negative adjustment, the full amount of the

adjustment will be removed from the participant's account and returned to the employing agency. Earnings on the erroneous contribution will remain in the participant's account. However, positive earnings on an erroneous contribution to the participant's Roth balance will be moved to the participant's traditional balance;

* * * * *

■ 26. Amend § 1605.14 by revising the first sentence in paragraph (b)(4) and the first sentence in paragraph (c)(3) to read as follows:

§ 1605.14 Misclassified retirement system coverage.

* * * * *

(b) * * *

(4) If the retirement coverage correction is a Federal Employees' Retirement Coverage Act (FERCCA) correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage on contributions from all sources. * * *

* * * * *

(c) * * *

(3) The TSP will consider a participant to be separated from Government service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Government service.* * *

* * * * *

■ 27. Amend § 1605.15 by adding paragraph (d) to read as follows:

§ 1605.15 Reporting and processing late contributions and late loan payments.

* * * * *

(d) If the ''as of'' date of a late Roth contribution is earlier than the participant's existing Roth initiation date, the TSP will adjust the participant's Roth initiation date.

■ 28. In Subpart B, add § 1605.17 to read as follows:

§ 1605.17 Redesignation and recharacterization.

(a) *Applicability.* This section applies to the redesignation of contributions which, due to employing agency error, were contributed to the participant's traditional balance when they should have been contributed to the participant's Roth balance or were contributed to the participant's Roth balance when they should have been contributed to the participant's traditional balance. This section also applies to the recharacterization of contributions which, due to employing agency error, were contributed as tax-deferred contributions when they should have been contributed as tax-exempt contributions (or vice versa). It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to error correction under this section.

(b) *Method of correction.* The employing agency must promptly submit a redesignation record or a recharacterization record in accordance with this part and the procedures provided to employing agencies by the Board in bulletins or other guidance.

(c) *Processing redesignations and recharacterizations.* (1) Upon receipt of a properly submitted redesignation record, the TSP shall treat the erroneously submitted contribution (and associated positive earnings) as if the contribution had been made to the correct balance on the date that it was contributed to the wrong balance. The TSP will adjust the participant's traditional balance and the participant's Roth balance accordingly. The TSP will also adjust the participant's Roth initiation date as necessary.

(2) Upon receipt of a properly submitted recharacterization record or recharacterization request, the TSP will change the tax characterization of the erroneously characterized contribution.

(3) Agency Automatic (1%) Contributions and matching contributions cannot be redesignated as Roth contributions or recharacterized as tax-exempt contributions.

(4) There is no breakage associated with redesignation or recharacterization actions.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 29. Revise the authority citation for part 1650 to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 30. Amend § 1650.2 by revising the section heading and paragraphs (f) and (g) and by adding paragraph (h) to read as follows:

§ 1650.2 Eligibility and general rules for a TSP withdrawal.

* * * * *

(f) A participant can elect to have any portion of a single or monthly payment that is not transferred to an eligible employer plan, traditional IRA, or Roth IRA deposited directly, by electronic funds transfer (EFT), into a savings or checking account at a financial institution in the United States.

(g) If a participant has a civilian TSP account and a uniformed services TSP account, the rules in this part apply to each account separately. For example, the participant is eligible to make one age-based in-service withdrawal from each account. A separate withdrawal request must be made for each account.

(h) All withdrawals will be distributed pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The distribution from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all withdrawals will be distributed pro rata from all TSP Funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each TSP Fund or source of contributions on the day the withdrawal is processed.

■ 31. Amend § 1650.11 by revising the first sentence in paragraph (c) to read as follows:

§ 1650.11 Withdrawal elections.

* * * * *

(c) If a participant's vested account balance is less than $200 when he or she separates from Government service, the TSP will automatically pay the balance to the participant at his or her TSP address of record.* * *

■ 32. Amend § 1650.14 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) through (d) as paragraphs (f) through (h);

■ c. Redesignating existing paragraphs (e) through (g) as (j) through (l); and

■ d. Adding new paragraphs (b), (c), (d), (e) and (i).

The revision and additions read as follows:

§ 1650.14 Annuities.

(a) A participant electing a full post-employment withdrawal can use all or a portion of his or her account balance to purchase a life annuity.

(b) If a participant has a traditional balance and a Roth balance, the TSP must purchase two separate annuity contracts for the participant: One from the portion of the withdrawal distributed from his or her traditional balance and one from the portion of the withdrawal distributed from his or her Roth balance.

(c) A participant cannot select only one balance (traditional or Roth) from which to purchase an annuity.

(d) A participant cannot elect to purchase an annuity contract with less than $3,500.

(1) If a participant who has a traditional balance and a Roth balance elects to use 100% of his or her

withdrawal to purchase a life annuity and both the traditional balance and the Roth balance are below $3,500, the TSP will reject the participant's request. If only one balance is below $3,500, then the TSP will pay that balance to the participant in a single payment and use the balance that is at least $3,500 to purchase an annuity in accordance with the participant's election.

(2) If a participant who has a Roth balance and traditional balance makes a mixed withdrawal election and both the traditional portion of the amount designated to purchase an annuity and the Roth portion of the amount designated to purchase an annuity are below $3,500, the TSP will reject the withdrawal request. If only one portion is below $3,500, then the TSP will pro rate that portion among the participant's other elected withdrawal options and use the portion that is at least $3,500 to purchase an annuity in accordance with the participant's election.

(e) The TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance or the portion specified, unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code. In the event that a minimum distribution is required by section 401(a)(9) of the Internal Revenue Code before the date of the first annuity payment, the TSP will compute that amount, and pay it directly to the participant.

* * * * *

(i) If the TSP must purchase two annuity contracts, the type of annuity, the annuity features, and the joint annuitant (if applicable) selected by the participant will apply to both annuities purchased. A participant cannot elect more than one type of annuity by which to receive a withdrawal, or portion thereof, from any one account.

* * * * *

■ 33. Revise § 1650.23 to read as follows:

§ 1650.23 Accounts of less than $200.

Upon receiving information from the employing agency that a participant has been separated for more than 31 days and that any outstanding loans have been closed, the TSP record keeper will distribute the entire amount of his or her account balance if the account balance is $5.00 or more but less than $200. The TSP will not pay this amount by EFT. The participant may not elect to leave this amount in the TSP, nor will the TSP transfer this amount to an eligible employer plan, traditional IRA, or Roth IRA. However, the participant may elect to roll over this payment into an eligible employer plan, traditional IRA, or Roth IRA to the extent the roll over is permitted by the Internal Revenue Code.

■ 34. Revise § 1650.24 to read as follows:

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal, a participant must submit to the TSP record keeper a properly completed paper TSP post-employment withdrawal request form or use the TSP Web site to initiate a request.

■ 35. In Subpart C, add § 1650.25 to read as follows:

§ 1650.25 Transfers from the TSP.

(a) The TSP will, at the participant's election, transfer all or any portion of an eligible rollover distribution (as defined by section 402(c)(4) of the Internal Revenue Code) of $200 or more directly to an eligible employer plan or an IRA.

(b) If a withdrawal includes a payment from a participant's traditional balance and a payment from the participant's Roth balance, the TSP will, at the participant's election, transfer all or a portion of the payment from the traditional balance to a single plan or IRA and all or a portion of the payment from the Roth balance to another plan or IRA. The TSP will also allow the traditional and Roth portions of a payment to be transferred to the same plan or IRA but, for each type of balance, the election must be made separately by the participant and each type of balance will be transferred separately. However, the TSP will not transfer portions of the participant's traditional balance to two different institutions or portions of the participant's Roth balance to two different institutions.

(c) If a withdrawal includes an amount from a participant's Roth balance and the participant elects to transfer that amount to another eligible employer plan or Roth IRA, the TSP will inform the plan administrator or trustee of the start date of the participant's Roth 5 year non-exclusion period or the participant's Roth initiation date, and the portion of the distribution that represents Roth contributions. If a withdrawal includes an amount from a participant's Roth balance and the participant does not elect to transfer the amount, the TSP will inform the participant of the portion of the distribution that represents Roth contributions.

(d) Tax-exempt contributions can be transferred only if the IRA or plan accepts such funds.

(e) The TSP will transfer distributions only to the extent that the transfer is permitted by the Internal Revenue Code.

■ 36. Amend § 1650.31 by revising the first sentence in paragraph (a) and revising paragraph (b) to read as follows:

§ 1650.31 Age-based withdrawals.

(a) A participant who has reached age 59½ and who has not separated from Government service is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. * * *

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP transfer all or a portion of the withdrawal to a traditional IRA, an eligible employer plan, or a Roth IRA in accordance with § 1650.25.

* * * * *

■ 37. Amend § 1650.41 by revising the second sentence to read as follows:

§ 1650.41 How to obtain an age-based withdrawal.

* * * A participant's ability to complete an age-based withdrawal on the Web will depend on his or her retirement system coverage, marital status, and whether or not all or part of the withdrawal will be transferred to an eligible employer plan, traditional IRA, or Roth IRA.

PART 1651—DEATH BENEFITS

■ 38. Revise the authority citation for part 1651 to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 39. Amend § 1651.3 by adding paragraph (c)(8) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c) * * *

(8) Not attempt to designate beneficiaries for the participant's traditional balance and the participant's Roth balance separately.

* * * * *

■ 40. Amend § 1651.14, by:

■ a. Redesignating paragraphs (d) through (i) as paragraphs (c)(1) through (c)(6), respectively; and

■ b. Revising paragraphs (a) through newly redesignated paragraph (c) introductory text and newly redesignated paragraph (c)(4) to read as follows:

§ 1651.14 How payment is made.

(a) Each beneficiary's death benefit will be disbursed pro rata from the participant's traditional and Roth balances. The payment from the

traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all death benefits will be disbursed pro rata from all TSP Funds in which the deceased participant's account is invested. All pro rated amounts will be based on the balances in each TSP Fund or source of contributions on the day the disbursement is made. Disbursement will be made separately for each entitled beneficiary.

(b) *Spouse beneficiaries.* The TSP will automatically transfer a surviving spouse's death benefit to a beneficiary participant account (described in § 1651.19) established in the spouse's name. The TSP will not maintain a beneficiary participant account if the balance of the beneficiary participant account is less than $200 on the date the account is established. The Agency also will not transfer this amount or pay it by electronic funds transfer. Instead the spouse will receive an immediate distribution in the form of a check.

(c) *Nonspouse beneficiaries.* The TSP record keeper will send notice of pending payment to each beneficiary. Payment will be sent to the address that is provided on the participant's TSP designation of beneficiary form unless the TSP receives written notice of a more recent address. All beneficiaries must provide the TSP record keeper with a taxpayer identification number; *i.e.,* Social Security number (SSN), employee identification number (EIN), or individual taxpayer identification number (ITIN), as appropriate. The following additional rules apply to payments to nonspouse beneficiaries:

* * * * *

(4) *Payment to inherited IRA on behalf of a nonspouse beneficiary.* If payment is to an inherited IRA on behalf of a nonspouse beneficiary, the check will be made payable to the account. Information pertaining to the inherited IRA must be submitted by the IRA trustee. A payment to an inherited IRA will be made only in accordance with the rules set forth in 5 CFR 1650.25.

* * * * *

■ 41. Amend § 1651.17 by revising paragraphs (c) and (d) to read as follows:

§ 1651.17 Disclaimer of benefits.

* * * * *

(c) *Invalid disclaimer.* A disclaimer is invalid if it:

(1) Is revocable;

(2) Directs to whom the disclaimed benefit should be paid; or

(3) Specifies which balance (traditional, Roth, or tax-exempt) is to be disclaimed.

(d) *Disclaimer effect.* The disclaimed share will be paid as though the beneficiary predeceased the participant, according to the rules set forth in § 1651.10. Any part of the death benefit which is not disclaimed will be paid to the disclaimant pursuant to § 1651.14.

■ 42. Amend § 1651.19 by adding paragraph (c)(3) and revising paragraph (m)(3) to read as follows:

§ 1651.19 Beneficiary participant accounts.

* * * * *

(c) * * *

(3) The TSP will disburse minimum distributions pro rata from the beneficiary participant's traditional balance and the beneficiary participant's Roth balance.

* * * * *

(m) * * *

(3) If a uniformed services beneficiary participant account contains tax-exempt contributions, any payments or withdrawals from the account will be distributed pro rata from the tax-deferred balance and the tax-exempt balance;

* * * * *

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 43. Revise the authority citation for part 1653 to read as follows:

Authority: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

■ 44. Amend § 1653.2 by revising paragraphs (b)(2) and (5), removing the period and adding ''; and'' to the end of paragraph (b)(6), and adding paragraph (b)(7) to read as follows:

§ 1653.2 Qualifying retirement benefits court orders.

* * * * *

(b) * * *

(2) An order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Government service;

* * * * *

(5) An order that does not specify the account to which the order applies, if the participant has both a civilian TSP account and a uniformed services TSP account; and

* * * * *

(7) An order that designates the TSP Fund, source of contributions, or balance (*e.g.* traditional, Roth, or tax-exempt) from which the payment or portions of the payment shall be made.

■ 45. Amend § 1653.3 by revising paragraph (f)(4)(iv) to read as follows:

§ 1653.3 Processing retirement benefits court orders.

* * * * *

(f) * * *

(4) * * *

(iv) Information and the form needed to transfer the payment to an eligible employer plan, traditional IRA, or Roth IRA (if the payee is the current or former spouse of the participant); and

* * * * *

■ 46. Amend § 1653.5 by revising paragraphs (a)(1)(i), (d), and (e)(1), and by adding paragraphs (m) and (n) to read as follows:

§ 1653.5 Payment.

(a) * * *

(1) * * *

(i) The payee makes a tax withholding election, requests payment by EFT, or requests a transfer of all or a portion of the payment to a traditional IRA, Roth IRA, or eligible employer plan (the TSP decision letter will provide the forms a payee must use to choose one of these payment options); and

* * * * *

(d) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP Funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the disbursement is made. The TSP will not honor provisions of a court order that require payment to be made from a specific TSP Fund, source of contributions, or balance.

(e) * * *

(1) If payment is made to the current or former spouse of the participant, the distribution will be reported to the Internal Revenue Service (IRS) as income to the payee. If the court order specifies a third-party mailing address for the payment, the TSP will mail to the address specified any portion of the payment that is not transferred to a traditional IRA, Roth IRA, or eligible employer plan.

* * * * *

(m) A payee who is a current or former spouse of the participant may

elect to transfer a court-ordered payment to a traditional IRA, eligible employer plan, or Roth IRA. Any election permitted by this paragraph (m) must be made pursuant to the rules described in 5 CFR 1650.25.

(n) If the TSP maintains an account (other than a beneficiary participant account) for a court order payee who is the current or former spouse of the participant, the payee can request that the TSP transfer the court-ordered payment to the payee's TSP account in accordance with the rules described in 5 CFR 1650.25. However, any pro rata share attributable to tax-exempt contributions cannot be transferred; instead it will be paid directly to the payee.

■ 47. Amend § 1653.12 by revising paragraphs (c)(2) by adding paragraph (c)(6) to read as follows:

§ 1653.12 Qualifying legal processes.

* * * * *

(c) * * *

(2) A legal process relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Government service;

* * * * *

(6) A legal process that designates the specific TSP Fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

PART 1655—LOAN PROGRAM

■ 48. Revise the authority citation for part 1655 to read as follows:

Authority: 5 U.S.C. 8432d, 8433(g), 8439(a)(3) and 8474.

■ 49. Amend § 1655.9 by redesignating paragraph (c) as paragraph (d) and revising it and by adding new paragraph (c) to read as follows:

§ 1655.9 Effect of loans on individual account.

* * * * *

(c) The loan principal will be disbursed pro rata from the participant's traditional and Roth balances. The disbursement from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The disbursement from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all loan disbursements will be distributed pro rata from all TSP Funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each TSP Fund or source of contributions on the day the disbursement is processed.

(d) Loan payments, including both principal and interest, will be credited to the participant's individual account. Loan payments will be credited to the appropriate TSP Fund in accordance with the participant's most recent contribution allocation. Loan payments will be credited to the participant's traditional and Roth balances in the same proportion that the loan was distributed from the participant's account.

■ 50. Amend § 1655.10 by adding paragraph (d) to read as follows:

§ 1655.10 Loan application process.

* * * * *

(d) If the TSP maintains a uniformed services account and a civilian account for an individual, a separate loan application must be made for each account.

■ 51. Amend § 1655.15 by revising paragraph (b) to read as follows:

§ 1655.15 Taxable distributions.

* * * * *

(b) If a taxable distribution occurs in accordance with paragraph (a) of this section, the Board will notify the participant of the amount and date of the distribution. The Board will report the distribution to the Internal Revenue Service as income for the year in which it occurs.

* * * * *

PART 1690—THRIFT SAVINGS PLAN

■ 52. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

■ 53. Amend § 1690.1 as follows:

■ a. Remove the definitions of *regular contributions* and *combat zone compensation.*

■ b. Revise the definitions of *account or individual account, catch-up contributions, contribution election, employing agency, separation from Government service, source of contributions, tax-deferred balance,* and *tax-exempt balance.*

■ c. Add definitions for *bonus contributions, civilian account, civilian employee, employee contributions, Federal civilian retirement system, Ready Reserve, Roth 5 year non-exclusion period, Roth balance, 'Roth contributions, Roth initiation date, Roth IRA, uniformed service member, special or incentive pay, tax-deferred contributions, tax-exempt contributions, traditional balance, traditional contributions, traditional IRA, trustee-to-trustee transfer,* and *uniformed services account.*

§ 1690.1 Definitions.

As used in this chapter:

Account or individual account means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a). The TSP offers four types of accounts: civilian participant accounts, uniformed services accounts, civilian beneficiary participant accounts, and uniformed services beneficiary participant accounts. Each type of account may contain a traditional balance, a Roth balance, or both.

* * * * *

Bonus contributions means contributions made by a participant from a bonus as defined in 37 U.S.C. chapter 5.

* * * * *

Catch-up contributions means TSP contributions from basic pay that are made by participants age 50 and over, which exceed the elective deferral limit of 26 U.S.C. 402(g) and meet the requirements of 5 CFR 1600.23.

Civilian account means a TSP account to which contributions have been made by or on behalf of a civilian employee.

* * * * *

Civilian employee means a TSP participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plan.

* * * * *

Contribution election means a request by an employee to start contributing to the TSP, to change the amount or type of contributions (traditional or Roth) made to the TSP each pay period, or to terminate contributions to the TSP.

* * * * *

Employee contributions means traditional contributions and Roth contributions. Employee contributions are made at the participant's election pursuant to § 1600.12 and are deducted from compensation paid to the employee.

* * * * *

Employing agency means the organization (or the payroll office that services the organization) that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual. It includes the uniformed services and their servicing payroll office(s).

* * * * *

Federal civilian retirement system means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or

any equivalent Federal civilian retirement system.

* * * * *

Ready Reserve means those members of the uniformed services described at 10 U.S.C. 10142.

Roth 5 year non-exclusion period means the period of five consecutive calendar years beginning on the first day of the calendar year in which the participant's Roth initiation date occurs. It is the period described in section 402A(d)(2)(B) of the Internal Revenue Code.

Roth balance means the sum of:

(1) Roth contributions and associated earnings; and

(2) Amounts transferred to the TSP from a Roth account maintained by an eligible employer plans and earnings on those amounts.

Roth contributions means employee contributions made to the participant's Roth balance which are authorized by 5 U.S.C. 8432d. Roth contributions may be deducted from taxable pay on an after-tax basis or from pay exempt from taxation under 26 U.S.C. 112.

Roth initiation date means

(1) The earlier of:

(i) The actual date of a participant's first Roth contribution to the TSP;

(ii) The ''as of'' date or attributable pay date (as defined in § 1605.1 of this subchapter) that established the date of the participant's first Roth contribution to the TSP; or

(iii) The date used, by a plan from which the participant directly transferred Roth money into the TSP, to measure the participant's Roth five year non-exclusion period.

(2) If a participant has a civilian account and a uniformed services account, the Roth initiation date for both accounts will be the same.

Roth IRA means an individual retirement plan described in Internal Revenue Code section 408A (26 U.S.C. 408A).

* * * * *

Separation from Government service means generally the cessation of employment with the Federal Government. For civilian employees it means termination of employment with the U.S. Postal Service or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP for 31 or more full calendar days. For uniformed services members, it means the discharge from active duty or the Ready Reserve or the transfer to inactive status or to a retired list pursuant to any provision of title 10 of the United States Code. The discharge or transfer may not be followed, before the end of the 31-day period beginning on the day following the effective date of the discharge, by resumption of active duty, an appointment to a civilian position covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or an equivalent retirement system, or continued service in or affiliation with the Ready Reserve. Reserve component members serving on full-time active duty who terminate their active duty status and subsequently participate in the drilling reserve are said to continue in the Ready Reserve. Active component members who are released from active duty and subsequently participate in the drilling reserve are said to affiliate with the Ready Reserve.

* * * * *

Source of contributions means traditional contributions, Roth contributions, Agency Automatic (1%) Contributions, or matching contributions. All amounts in a participant's account are attributed to one of these four sources. Catch-up contributions, transfers, rollovers, and loan payments are included in the traditional contribution source or the Roth contribution source.

Special or incentive pay means pay payable as special or incentive pay under 37 U.S.C. chapter 5.

* * * * *

Tax-deferred balance means the sum of:

(1) All contributions, rollovers, and transfers in a participant's traditional balance that would otherwise be includible in gross income if paid directly to the participant and earnings on those amounts; and

(2) Earnings on any tax-exempt contributions in the traditional balance. The tax-deferred balance does not include tax-exempt contributions.

Tax-deferred contributions means employee contributions made to a participant's traditional balance that would otherwise be includible in gross income if paid directly to the participant.

Tax-exempt balance means the sum of tax-exempt contributions within a participant's traditional balance. It does not include earnings on such contributions. Only a traditional balance in a uniformed services participant account or a uniformed services beneficiary participant account may contain a tax-exempt balance.

Tax-exempt contributions means employee contributions made to the participant's traditional balance from pay which is exempt from taxation by 26 U.S.C. 112. The Federal income tax exclusion at 26 U.S.C. 112 is applicable to compensation for active service during a month in which a uniformed service member serves in a combat zone. The term ''tax-exempt contributions'' does not include contributions made to the participant's Roth balance from pay which is exempt from taxation by 26 U.S.C. 112.

* * * * *

Traditional balance means the sum of:

(1) Tax-deferred contributions and associated earnings;

(2) Tax-deferred amounts rolled over or transferred into the TSP and associated earnings;

(3) Tax-exempt contributions and associated earnings;

(4) Matching contributions and associated earnings;

(5) Agency Automatic (1%) Contributions and associated earnings.

Traditional contributions means tax-deferred employee contributions and tax-exempt employee contributions made to the participant's traditional balance.

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

Trustee-to-trustee transfer or transfer means the payment of an eligible rollover distribution (as defined in section 402(c)(4) of the Internal Revenue Code) from an eligible employer plan or IRA directly to another eligible employer plan or IRA at the participant's request.

* * * * *

Uniformed services account means a TSP account to which contributions have been made by or on behalf of a member of the uniformed services.

Uniformed service member means a member of the uniformed services on active duty or a member of the Ready Reserve in any pay status.

* * * * *

[FR Doc. 2012–10630 Filed 5–3–12; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2423, 2424, 2425, and 2429

Unfair Labor Practice Proceedings; Negotiability Proceedings; Review of Arbitration Awards; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (the FLRA) is engaged in an initiative to make electronic filing, or ''eFiling,'' available to parties in all cases before the FLRA. Making eFiling available to its parties is another way in which the FLRA is using technology to improve the customer-service experience. EFiling also is expected to increase efficiencies by reducing procedural filing errors and resulting processing delays.

DATES: *Effective Date:* June 4, 2012.

ADDRESSES: Written comments can be emailed to *engagetheflra@flra.gov* or sent to the Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street NW., Washington, DC 20424–0001. All written comments will be available for public inspection during normal business hours at the Case Intake and Publication Office.

FOR FURTHER INFORMATION CONTACT: Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218–7791; or email: *engagetheflra@flra.gov*.

SUPPLEMENTARY INFORMATION: In the first stage of its eFiling initiative, the FLRA enabled parties to use eFiling to file requests for Federal Service Impasses Panel assistance in the resolution of negotiation impasses. *See* 77 FR 5987 (Feb. 7, 2012).

This final rule accompanies the second of three stages of the FLRA's eFiling initiative. In this stage, parties will be able to use the FLRA's eFiling system to electronically file 11 types of documents in cases that are filed with the FLRA's three-Member adjudicatory body, the Authority. This rule modifies the FLRA's existing regulations to allow for eFiling of such documents, clarifies some of the FLRA's procedural regulations, and explains how to calculate the due date for filing when parties are served with documents by more than one method. In addition, the rule provides that parties may use electronic mail (''email'') to serve one another, but only if the served party agrees to email service. Further, it modifies 5 CFR 2423.40(a)(3) to conform to 5 CFR 2429.29, and deletes the statement in 5 CFR 2429.24 that provides for parties filing carbon copies of typewritten material.

As the FLRA's eFiling procedures develop, the revisions set forth in this action may be evaluated and revised further.

Sectional Analyses

Sectional analyses of the amendments and revisions to part 2423, Unfair Labor Practice Proceedings, part 2424, Negotiability Proceedings, part 2425, Review of Arbitration Awards, and part 2429, Miscellaneous and General Requirements, are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.0

This section is amended to state that part 2423 is applicable to any unfair labor practice cases that are pending or filed with the FLRA on or after June 4, 2012.

Section 2423.6

This section is amended to state that a charging party in an unfair labor practice case may serve the charge on the charged party by email, but only if the charged party has agreed to email service.

Section 2423.40

Paragraph (a)(3) of this section, which requires a table of contents and table of authorities for exceptions containing 25 or more pages, is amended to eliminate the reference to a table of contents. While a table of contents is still required under 5 CFR 2429.29, the table of contents requirement in this section is inconsistent with 5 CFR 2429.29, which requires a table of contents for documents exceeding 10 double-spaced pages.

Part 2424—Negotiability Proceedings

Section 2424.1

This section is amended to state that part 2424 is applicable to all petitions for review filed on or after June 4, 2012.

Section 2424.22

Paragraph (b) of this section is amended to state that a petition for review filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a petition need not be dated if it is eFiled. Paragraph (b) also is amended to state that copies of petition forms are available on the FLRA's Web site. Finally, paragraph (b)(2) is amended to state that documents submitted along with a petition may be uploaded as attachments in the eFiling system if the exclusive representative eFiles its petition.

Section 2424.24

Paragraph (c) of this section is amended to state that a statement of position filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a statement need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of statement forms are available on the FLRA's Web site. Finally, paragraph (c)(2) is amended to state that documents submitted along with a statement may be uploaded as attachments in the eFiling system if the agency eFiles its statement.

Section 2424.25

Paragraph (c) of this section is amended to state that a response filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a response need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of response forms are available on the FLRA's Web site. Finally, paragraph (c)(1) is amended to state that documents submitted along with a response may be uploaded as attachments in the FLRA's eFiling system if the exclusive representative eFiles its response.

Section 2424.26

Paragraph (c) of this section is amended to state that a reply filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a reply need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of reply forms are available on the FLRA's Web site. Finally, paragraph (c) is amended to state that documents submitted along with a reply may be uploaded as attachments in the FLRA's eFiling system if the agency eFiles its reply.

Part 2425—Review of Arbitration Awards

Section 2425.1

This section is amended to state that part 2425 is applicable to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after June 4, 2012.

Section 2425.4

Paragraph (a) of this section is amended to state that arbitration exceptions filed electronically through use of the FLRA's eFiling system need not be dated. In addition, paragraph (a)(3) of this section is amended to provide that documents may be uploaded as attachments in the FLRA's eFiling system if the excepting party uses that system to file exceptions.

Paragraph (d) of this section is amended to provide that an exception form is provided on the FLRA's Web

site, and that filing an exception electronically through use of the FLRA's eFiling system complies with the formatting requirements of this paragraph.

Section 2425.5

This section is amended to provide that an opposition form is provided on the FLRA's Web site. It also is amended to provide that filing an opposition electronically through use of the FLRA's eFiling system complies with the formatting requirements of this section, and that documents may be uploaded as attachments in the eFiling system if the opposing party uses that system to file an opposition.

Part 2429—Miscellaneous and General Requirements

Section 2429.21

This section is renamed, ''How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed.''

Paragraph (a) of this section is renamed, ''How to compute the due date for filing documents with the FLRA,'' and is revised to clarify the existing rules regarding how to calculate the due date for filing documents with the FLRA. Paragraph (a)(1) is revised to specify that, if the last day of the filing period falls on a Saturday, Sunday, or federal legal holiday, then the due date falls to the next day that is not a Saturday, Sunday, or federal legal holiday, even if the party is eFiling.

Paragraph (b) of this section is renamed, ''How the FLRA determines the date on which documents have been filed,'' and is revised to clarify the existing rules regarding how the FLRA determines the date on which a party has filed documents. Paragraph (b)(1)(v) adds that, if a party files documents electronically through use of the FLRA's eFiling system, then the date of filing is the calendar day (including Saturdays, Sundays, and federal legal holidays) on which the document is transmitted in the eFiling system. It also notes that, consistent with paragraph (a)(1)(v), an eFiled document is not required to be filed on a Saturday, Sunday, or federal legal holiday.

Section 2429.22

This section is renamed, ''Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery,'' and is divided into paragraphs.

Paragraph (a) of this section, ''General rules,'' clarifies the existing, general rules regarding adding 5 days to the filing period when a party is filing in response to a document that has been served on that party by first-class mail or commercial delivery.

Paragraph (b) of this section, ''Rules that apply when you have been served by more than one method,'' explains the rules that apply when a filing party is filing in response to a document that has been served on that party by more than one method. It provides that, as a general rule, the first method of service is controlling for purposes of determining the due date for a responsive filing. It also provides that the filing party is entitled to the additional 5 days only if first-class mail or commercial delivery is the first method of service. It further provides that, if a party is served by first-class mail or commercial delivery on one day, and served by any method other than first-class mail or commercial delivery on the same day, then the party may not add 5 days—even if the served document was postmarked or deposited with a commercial-delivery service earlier in the day than the other method(s) of transmission.

Paragraph (c) of this section, ''Exception for applications for review filed under 5 CFR 2422.31,'' restates an existing rule that a filing party does not receive an extra 5 days to file an application for review under 5 CFR 2422.31.

Paragraph (d) of this section, ''Exception where extension of time has been granted,'' restates an existing rule that a filing party does not get an extra 5 days if that party already has received an extension of time.

Paragraph (e) of this section, ''Rules that apply to exceptions to arbitration awards,'' refers the reader to 5 CFR 2425.2(c) for rules that apply when a party is filing exceptions to an arbitration award.

Section 2429.24

Paragraph (a) of this section is amended to clarify that the rules in paragraph (a) apply to documents filed with the Authority, and not documents filed with the General Counsel, a Regional Director, or an Administrative Law Judge. It also is amended to clarify that the times discussed in the paragraph are Eastern Time (''E.T.''). Further, it is amended to provide that documents that are filed electronically through use of the FLRA's eFiling system may be filed on any calendar day—including Saturdays, Sundays, and federal legal holidays, although they are not required to be filed on those days—and will be considered filed on a particular day if they are filed by midnight E.T. that day. Finally, paragraph (a) is amended to clarify that documents may not be filed with the Authority by email.

Paragraph (e) of this section is amended to provide that the general rule in the first sentence of existing paragraph (e) is subject to new paragraphs (f) and (g), and to move the existing exceptions discussed in current paragraph (e) to paragraph (g).

New paragraph (f) of this section provides that, as an alternative to filing by the methods discussed in paragraph (e), a party may file the following 11 types of documents electronically through use of the FLRA's eFiling service: (1) Applications for review under 5 CFR 2422.31(a)–(c); (2) oppositions to applications for review under 5 CFR 2422.31(d); (3) exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(a); (4) oppositions to exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(b); (5) cross-exceptions under 5 CFR 2423.40(b); (6) exclusive representatives' petitions for review under 5 CFR 2424.22; (7) agency statements of position under 5 CFR 2424.24; (8) exclusive representatives' responses under 5 CFR 2424.25; (9) agency replies under 5 CFR 2424.26; (10) exceptions to arbitration awards under 5 CFR part 2425; and (11) oppositions to exceptions to arbitration awards under 5 CFR part 2425.

New paragraphs (g)(1)–(4) of this section clarify the existing rules (currently in paragraph (e)) for filing certain documents by facsimile.

New paragraph (h) of this section restates an existing requirement (currently in paragraph (f)) that matters filed under § 2429.24 be legibly printed, typed, or otherwise duplicated. It also deletes the sentence, ''Carbon copies of typewritten matter will be accepted if they are clearly legible,'' as parties generally do not submit such carbon copies. Further, new paragraph (h) provides that, for purposes of documents that are filed electronically through use of the eFiling system, ''legibly duplicated'' means that documents that are uploaded as attachments in the eFiling system must be legible.

Paragraph (i) of this section restates, more clearly, existing wording (currently in paragraph (g)).

Paragraph (j) of this section restates existing paragraph (h) and adds that, for documents that are eFiled, the documents must contain the mailing address, email address, and telephone number of the individual who is filing the document, but not that individual's signature.

Paragraph (k) of this section restates and clarifies existing paragraph (i).

Section 2429.25

This section is revised and divided into paragraphs.

New paragraph (a) of this section, ''General rule,'' restates and clarifies the existing, general rule regarding the number of copies and paper size of documents that are filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer. It also provides that the general rule is subject to the exceptions set forth in new paragraph (b).

New paragraph (b)(1), (3), and (4) of this section restate and clarify the existing exceptions to the general rule that is now set forth in paragraph (a). New paragraph (b)(2) adds a new exception for documents that are filed electronically through use of the FLRA's eFiling system.

Section 2429.27

Paragraph (b) of this section is revised and divided into paragraphs (1) through (6). Paragraphs (1) through (5) restate existing, authorized methods of service. Paragraph (6) states that parties may serve one another by email, but only if the receiving party agrees to email service.

Paragraph (c) of this section clarifies the existing requirements regarding filing statements of service with the FLRA. It also states that, for documents that are eFiled, the filing party or individual must certify, in the eFiling system and at the time of filing, that copies of the filing and any supporting documents have been served on the appropriate individuals specified in § 2429.27(a). Finally, paragraph (c) provides that statements of service must be signed and dated, unless they are eFiled.

Paragraph (d) of this section clarifies the existing rules regarding calculating the date of service, and adds that, for documents served by email, the date of service is the date on which the documents were transmitted by email.

Section 2429.29

This section is amended to provide that the existing table-of-contents requirement for documents exceeding 10 double-spaced pages in length applies to briefs that are uploaded as attachments in the eFiling system, but that a party using the fillable forms on the FLRA's eFiling system is not required to submit a separate table of contents.

Executive Order 12866

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this rule, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to federal agencies, federal employees, and labor organizations representing those employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2423, 2424, 2425, and 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR Parts 2423, 2424, 2425, as follows:

PART 2423—[AMENDED]

■ 1. The authority citation for part 2423 continues to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

■ 2. Section 2423.0 is revised to read as follows:

§ 2423.0 Applicability of this part.

This part applies to any unfair labor practice cases that are pending or filed with the FLRA on or after June 4, 2012.

■ 3. Section 2423.6 is amended by revising paragraph (d) to read as follows:

§ 2423.6 Filing and service of copies.

* * * * *

(d) *Service of the charge.* You must serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, you may serve the charge by facsimile transmission, as paragraph (c) of this section discusses. Alternatively, you may serve the charge by electronic mail (''email''), but only if the Charged Party has agreed to be served by email. The Region routinely serves a copy of the charge on the Charged Party, but you remain responsible for serving the charge, consistent with the requirements in this paragraph.

■ 4. Section 2423.40 is amended by revising paragraph (a)(3) to read as follows:

§ 2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

(a) * * *

(3) Exceptions containing 25 or more pages shall include a table of legal authorities cited.

* * * * *

PART 2424—[AMENDED]

■ 5. The authority citation for part 2424 continues to read as follows:

Authority: 5 U.S.C. 7134.

■ 6. Section 2424.1 is revised to read as follows:

§ 2424.1 Applicability of this part.

This part applies to all petitions for review filed on or after June 4, 2012.

■ 7. Section 2424.22 is amended to revise paragraphs (b) introductory text and (b)(2) to read as follows:

§ 2424.22 Exclusive representative's petition for review; purpose; content; severance; service.

* * * * *

(b) *Content.* You must file a petition for review on a form that the Authority

has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your petition electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov.* That Web site also provides copies of petition forms. You must date the petition, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file the petition, you must ensure that it includes the following:

* * * * *

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on in your argument or that you reference in the proposal or provision, and a copy of any such material that the Authority cannot easily access (which you may upload as attachments if you file the petition electronically through use of the FLRA's eFiling system);

* * * * *

■ 8. Section 2424.24 is amended by revising paragraphs (c) introductory text and (c)(2) introductory text to read as follows:

§ 2424.24 Agency's statement of position; purpose; time limits; content; severance; service.

* * * * *

(c) *Content.* You must file your statement of position on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your statement electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov.* That Web site also provides copies of statement forms. You must date your statement, unless you file it electronically through use of the eFiling system. And, regardless of how you file your statement, your statement must:

* * * * *

(2) Set forth in full your position on any matters relevant to the petition that you want the Authority to consider in reaching its decision, including: A statement of the arguments and authorities supporting any bargaining obligation or negotiability claims; any disagreement with claims that the exclusive representative made in the petition for review; specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

* * * * *

■ 9. Section 2424.25 is amended by revising paragraphs (c) introductory text and (c)(1) introductory text to read as follows:

§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

* * * * *

(c) *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov.* That Web site also provides copies of response forms. With the exception of a request for severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it includes the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. You must: State the arguments and authorities supporting your opposition to any agency argument; include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

* * * * *

■ 10. Section 2424.26 is amended by revising paragraph (c) introductory text to read as follows:

§ 2424.26 Agency's reply; purpose; time limits; content; service.

* * * * *

(c) *Content.* You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov.* That Web site also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. Your reply must: State the arguments and authorities supporting your position; cite with specificity any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on; and provide a copy of any material that the Authority may not easily access (which you may upload as attachments if you file your reply electronically through use of the FLRA's eFiling system). You must date your reply, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your reply, you must ensure that it includes the following:

* * * * *

PART 2425—[AMENDED]

■ 11. The authority citation for part 2425 continues to read as follows:

Authority: 5 U.S.C. 7134.

■ 12. Section 2425.1 is revised to read as follows:

§ 2425.1 Applicability of this part.

This part applies to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after June 4, 2012.

■ 13. Section 2425.4 is amended to revise paragraphs (a) introductory text, (a)(3), and (d) to read as follows:

§ 2425.4 Content and format of exceptions.

(a) *What is required.* You must date your exception, unless you file it electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov.* Regardless of how you file your exception, you must ensure that it is self-contained and that it sets forth, in full, the following:

* * * * *

(3) Legible copies of any documents (which you may upload as attachments if you file electronically through use of the FLRA's eFiling system) that you reference in the arguments discussed in paragraph (a)(2) of this section, and that the Authority cannot easily access (such as internal agency regulations or provisions of collective bargaining agreements);

* * * * *

(d) *Format.* You may file your exception on an optional form that is available on the FLRA's Web site at *www.flra.gov,* or in any other format that is consistent with paragraphs (a) and (c)

of this section. You meet this requirement if you file your exception electronically through use of the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your exception.

■ 14. Section 2425.5 is revised to read as follows:

§ 2425.5 Content and format of opposition.

If you choose to file an opposition, then you may file your opposition on an optional form that is available on the FLRA's Web site at *www.flra.gov*, or in any other format that is consistent with this section. You meet this requirement if you file your opposition electronically through use of the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your opposition. If you choose to file an opposition, and you dispute any assertions that have been made in the exceptions, then you should address those assertions—including any assertions that any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. If the excepting party has requested an expedited, abbreviated decision under § 2425.7 of this part, then you should state whether you support or oppose such a decision and provide supporting arguments. You must provide copies of any documents upon which you rely (which you may upload as attachments if you file your opposition electronically through use of the FLRA's eFiling system), unless the Authority can easily access those documents (as discussed in § 2425.4(b) of this part) or the excepting party provided them with its exceptions.

PART 2429—[AMENDED]

■ 15. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

■ 16. Section 2429.21 is revised to read as follows:

§ 2429.21 How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed.

(a) *How to compute the due date for filing documents with the FLRA.* In computing the due date for filing any document with the FLRA under this subchapter, follow these rules:

(1) *General rules.* Except in the situations discussed in paragraphs (a)(2) and (3) of this section, follow these steps in order to determine the date on which you must file any document with the FLRA.

(i) *Step 1:* Determine the act, event, or default (''the triggering event'') that you are filing in response to. The act, event, or default constitutes the triggering event even if it falls on a Saturday, Sunday, or federal legal holiday.

(ii) *Step 2:* Determine the number of days that you have to file (''the filing period'').

(iii) *Step 3:* Determine the first day of the filing period. This is the day after, not the day of, the triggering event, and constitutes the first day of the filing period even if it is a Saturday, Sunday, or federal legal holiday.

(iv) *Step 4:* Starting with the first day of the filing period, count calendar days—including Saturdays, Sundays, and federal legal holidays—until you reach the last day of the filing period (''the last day'').

(v) *Step 5:* Ask: Does the last day fall on a Saturday, Sunday, or federal legal holiday? If no, then your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22). If yes, then find the next day on the calendar that is not a Saturday, Sunday, or federal legal holiday. Your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22), even if you are filing electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov* (although, as discussed in paragraph (b)(1)(v) of this section, you are permitted to file electronically on Saturdays, Sundays, or federal legal holidays). *See* § 2429.22 for rules regarding how to calculate your due date if you are entitled to an additional 5 days.

(2) *Agreement-bar exception.* If you are filing a petition in an agreement-bar situation under 5 CFR 2422.12(c), (d), (e), and (f), then, as discussed further in those regulations, you must file a petition no later than 60 days before the expiration date of the existing collective-bargaining agreement (''the 60-day date''). The first day (''day one'') of the period is the day before, not the day on which, the collective-bargaining agreement expires. Start with day one, and count back on the calendar from that day, including Saturdays, Sundays, and federal legal holidays. If the 60th day falls on a Saturday, Sunday, or federal legal holiday, then you must file your petition by the close of business on the last official workday that comes before, not after, that Saturday, Sunday, or federal legal holiday.

(3) *Exception for filing periods that are 7 days or less.* If your filing period is 7 days or less, then determine the act, event, or default that you are filing in response to (''the triggering event''). Find the first day after the triggering event that is not a Saturday, Sunday, or federal legal holiday. Start counting the 7-day period on (and including) that day, but exclude any Saturdays, Sundays, or federal legal holidays. The 7th day is the due date for filing.

(b) *How the FLRA determines the date on which documents have been filed.* The FLRA applies the following rules in determining the date on which a party has filed documents.

(1) *General rules.* Except in the situations discussed in paragraph (b)(2) of this section, the FLRA looks to the method by which documents have been filed in order to determine the date on which those documents have been filed. Specifically:

(i) *Documents filed with the FLRA by first-class mail.* If the mailing contains a legible postmark date, then that date is the date of filing. If the mailing does not contain a legible postmark date, then the FLRA presumes that it was filed 5 days prior to the date on which the appropriate FLRA component, officer, or agent receives it.

(ii) *Documents filed with the FLRA by facsimile (''fax'').* If the date of transmission on a fax is clear, then that date is the filing date. If the date of transmission on a fax is not clear, then the date of filing is the date on which the appropriate FLRA component, officer, or agent receives the fax.

(iii) *Documents filed with the FLRA by personal delivery.* The date of filing is the date on which the appropriate FLRA component, officer, or agent receives the filing.

(iv) *Documents filed with the FLRA by deposit with a commercial-delivery service that provides a record showing the date of deposit.* The date of filing is the date of deposit with the commercial-delivery service.

(v) *Documents filed electronically through use of the eFiling system on the FLRA's Web site at www.flra.gov.* The date of filing is the calendar day (including Saturdays, Sundays, and federal legal holidays) on which the document is transmitted in the eFiling system. Although documents that are filed electronically may be filed on Saturdays, Sundays, and federal legal holidays, they are not required to be filed on such days, as discussed in paragraph (a)(1)(v) of this section.

(2) *Exceptions.* The rules in paragraph (b)(1) of this section do not apply to filing an unfair labor practice charge under 5 CFR part 2423, a representation

petition under 5 CFR part 2422, and a request for an extension of time under § 2429.23(a). See those provisions for more information.

(c) *Compliance with § 2429.24.* All documents filed or required to be filed with the Authority must be filed in accordance with the rules set out in § 2429.24.

■ 17. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery.

(a) *General rules.* Except as discussed in paragraphs (b), (c), (d), and (e) of this section, apply the following rules if and only if you are filing a document with the FLRA in response to a document that has been served on you by first-class mail or commercial delivery. First, look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine what normally would be your due date. Second, starting with the next calendar day, which will be day one, count forward on the calendar, including Saturdays, Sundays, and federal legal holidays, until you reach day five. If day five is not a Saturday, Sunday, or federal legal holiday, then your filing is due with the FLRA on that day. If day five is a Saturday, Sunday, or federal legal holiday, then find the next calendar day that is not a Saturday, Sunday, or federal legal holiday; your filing is due with the FLRA on that day.

(b) *Rules that apply when you have been served by more than one method.* If someone has served you with a document using more than one method of service, then, as a general rule, the first method of service is controlling for purposes of determining your due date for filing with the FLRA. For example, if someone serves you with a document by first-class mail or commercial delivery on one day, and then serves you by some other method (such as electronic mail) the next day, then you may add 5 days to your due date, as described in paragraph (a) of this section. But if someone serves you with a document one day by any method *other than* first-class mail or commercial delivery, and *later* serves you with the document by first-class mail or commercial delivery, then you may not add 5 days to your due date; rather, you must look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine your due date. Also, if someone serves you by first-class mail or commercial delivery on one day, and by any other method on the same day, then you may not add 5 days—even if the first-class mail was postmarked or the time of deposit with the commercial-delivery service was earlier in the day than the time at which the other method of service was effected.

(c) *Exception for applications for review filed under 5 CFR 2422.31.* You do not get an additional 5 days to file an application for review of a Regional Director's Decision and Order under 5 CFR 2422.31, regardless of the method of service of that Decision and Order.

(d) *Exception where extension of time has been granted.* You do not get an additional 5 days in any instance where an extension of time already has been granted.

(e) *Rules that apply to exceptions to arbitration awards.* For specific rules that apply to filing exceptions to arbitration awards, *see* 5 CFR 2425.2(c).

■ 18. Section 2429.24 is amended by revising paragraphs (a), (e), (f), (g), (h), and (i), and adding new paragraphs (j) and (k), to read as follows:

§ 2429.24 Place and method of filing; acknowledgement.

(a) Except for documents that are filed electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov,* anyone who files a document with the Authority (as distinguished from the General Counsel, a Regional Director, or an Administrative Law Judge) must file that document with the Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW., Washington, DC 20424–0001 (telephone: (202) 218–7740) between 9 a.m. and 5 p.m. Eastern Time (''E.T.''), Monday through Friday (except federal holidays). If you file documents by hand delivery, then you must present those documents in the Docket Room no later than 5 p.m. E.T., if you want the Authority to accept those documents for filing on that day. If you file documents electronically through use of the FLRA's eFiling system, then you may file those documents on any calendar day—including Saturdays, Sundays, and federal legal holidays—and the Authority will consider those documents filed on a particular day if you file them no later than midnight E.T. on that day. Note, however, that although you may eFile documents on Saturdays, Sundays, and federal legal documents, you are not required to do so. Also note that you may *not* file documents with the Authority by electronic mail (''email'').

* * * * *

(e) Except as discussed in paragraphs (f) and (g) of this section, if you are filing documents with the FLRA, then you must file them in person, by commercial delivery, by first-class mail, or by certified mail.

(f) As an alternative to the filing methods discussed in paragraph (e) of this section, you may file the following documents, and only the following documents, electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov:*

(1) Applications for review under 5 CFR 2422.31(a) through (c);

(2) Oppositions to applications for review under 5 CFR 2422.31(d);

(3) Exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(a);

(4) Oppositions to exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(b);

(5) Cross-exceptions under 5 CFR 2423.40(b);

(6) Exclusive representatives' petitions for review under 5 CFR 2424.22;

(7) Agency statements of position under 5 CFR 2424.24;

(8) Exclusive representatives' responses under 5 CFR 2424.25;

(9) Agency replies under 5 CFR 2424.26;

(10) Exceptions to arbitration awards under 5 CFR part 2425; and

(11) Oppositions to exceptions to arbitration awards under 5 CFR part 2425.

(g) As another alternative to the methods of filing described in paragraph (e) of this section, you may file the following documents by facsimile (''fax''), so long as fax equipment is available and your entire, individual filing does not exceed 10 pages in total length, with normal margins and font sizes. You may file only the following documents by fax under this paragraph (g):

(1) Motions;

(2) Information pertaining to prehearing disclosure, conferences, orders, or hearing dates, times, and locations;

(3) Information pertaining to subpoenas; and

(4) Other matters that are similar to those in paragraphs (g)(1) through (3) of this section.

(h) You must legibly print, type, or otherwise duplicate any documents that you file under this section. For purposes of documents that are filed electronically through use of the FLRA's eFiling system under paragraph (f) of this section, ''legibly * * * duplicated'' means that documents that you upload as attachments into the eFiling system must be legible.

(i) Documents, including correspondence, in any proceedings

under this subchapter must show the title of the proceeding and the case number, if any.

(j) Except for documents that are filed electronically through use of the FLRA's eFiling system, the original of each document required to be filed under this subchapter must be signed by either the filing party or that party's attorney, other representative of record, or officer, and also must contain the address and telephone number of the person who signs the document. Documents that are filed electronically using the FLRA's eFiling system must contain the mailing address, email address, and telephone number of the individual who files the document, but not that individual's signature.

(k) A return postal receipt may serve as acknowledgement that the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer has received a filed document. Otherwise, the FLRA will acknowledge receipt of filed documents only if the filing party:

(1) Asks the receiving FLRA officer to do so;

(2) Includes an extra copy of the document or the letter to which the document is attached, which the receiving FLRA office will date-stamp and return to the filing party; and

(3) For returns that are to be sent by mail, includes a self-addressed, stamped envelope.

■ 19. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies and paper size.

(a) *General rule.* Except as discussed in paragraph (b) of this section, and unless you use an FLRA-prescribed form, any document that you file with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, including any attachments, must be on 8½ by 11 inch size paper, using normal margins and font sizes. You must file an original as well as four (4) legible copies of each document, for a total of five (5) documents. You may substitute for the original document a clean copy of that document, so long as the copy is capable of being used as an original for purposes such as further reproduction.

(b) *Exceptions.* You are not required to comply with paragraph (a) of this section if and only if:

(1) You file documents by facsimile transmission under § 2429.24(g), in which case you are required to file only one (1) legible copy that is capable of being reproduced;

(2) You file documents electronically through use of the FLRA's eFiling system;

(3) The Authority or the General Counsel, or their designated representatives, allow you not to comply; or

(4) Another provision of this subchapter allows you not to comply.

■ 20. Section 2429.27 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 2429.27 Service; statement of service.

* * * * *

(b) If you are serving a document under paragraph (a) of this section, then you must use one of the following methods of service:

(1) Certified mail;

(2) First-class mail;

(3) Commercial delivery;

(4) In-person delivery;

(5) Facsimile (''fax'') service, but only for the types of documents listed in § 2429.24(g) and only where fax equipment is available; or

(6) Electronic mail (''email''), but only when the receiving party has agreed to be served by email.

(c) If you serve a document under this section, then you must file, with the appropriate FLRA office, a statement indicating that the party has served that document (a ''statement of service''). If you are filing documents electronically using the FLRA's eFiling system, then you must certify, in the FLRA's eFiling system and at the time of filing, that you have served copies of the filing and any supporting documents on the appropriate individual(s) specified in paragraph (a) of this section. Regardless of how you file a statement of service with the FLRA, you must ensure that your statement of service includes the names of the parties and persons that you served, their addresses, the date on which you served them, the nature of the document(s) that you served, and the manner in which you served the parties or persons that you served. You must also sign and date the statement of service, unless you are using the FLRA's eFiling system.

(d) *Date of service.* For any documents that you serve under this section, the date of service depends on the manner in which you serve the documents. Specifically, the date of service shall be the date on which you have: deposited the served documents in the U.S. mail; delivered them in person; deposited them with a commercial-delivery service that will provide a record showing the date on which the document was tendered to the delivery service; transmitted them by fax (where allowed under paragraph (b)(5) of this section); or transmitted them by email (where allowed under paragraph (b)(6) of this section).

■ 21. Section 2429.29 is revised to read as follows:

§ 2429.29 Content of filings.

With one exception, if you file any document with the Authority or the Office of Administrative Law Judges in a proceeding covered by this subchapter—including any briefs that you upload into the FLRA's eFiling system as attachments—and that document exceeds 10 double-spaced pages in length, then you must ensure that the document includes a table of contents. The one exception is that, if you use the fillable forms in the FLRA's eFiling system, then you are not required to submit a table of contents to accompany the fillable forms.

Dated: May 1, 2012.

Carol Waller Pope,

Chairman.

[FR Doc. 2012–10801 Filed 5–3–12; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0382]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hawthorne Bridge across the Willamette River, mile 13.1, at Portland, OR. This deviation is necessary to accommodate the May 2012 running of Portland's Rock-n-Roll Half Marathon. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 4 a.m. on May 20, 2012 through 10 a.m. May 20, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0382 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0382 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or

copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested that the Hawthorne lift bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Rock-n-Roll Half Marathon event. The Hawthorne Bridge crosses the Willamette River at mile 13.1 and provides 49 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR § 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday. This deviation period is from 4 a.m. on May 20, 2012 through 10 a.m. May 20, 2012. The deviation allows the Hawthorne Bridge across the Willamette River, mile 13.1, to remain in the closed position and need not open for maritime traffic from 4 a.m. through 10 a.m. on May 20, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 24, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–10750 Filed 5–3–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0889; FRL–9666–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of 2011 Consent Decree To Control Emissions From the GenOn Chalk Point Generating Station; Removal of 1978 and 1979 Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Maryland Department of the Environment (MDE) pertaining to the GenOn Chalk Point Generating Station (Chalk Point). These revisions approve specific provisions of a 2011 Consent Decree between MDE and GenOn to reduce particulate matter (PM), sulfur oxides (SO_X), and nitrogen oxides (NO_X) from Chalk Point. These revisions also remove the 1978 and 1979 Consent Orders for the Chalk Point generating station from the Maryland SIP as those Consent Orders have been superseded by the 2011 Consent Decree. EPA is approving these SIP revisions because the reductions of PM, SO_X, and NO_X are beneficial for reducing ambient levels of the PM, sulfur dioxide (SO_2), nitrogen dioxide (NO_2) and ozone. They also reduce visible emissions from Chalk Point. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on July 3, 2012 without further notice, unless EPA receives adverse written comment by June 4, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0889 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: spink.marcia@epa.gov*

C. *Mail:* EPA–R03–OAR–2011–0889, Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0889. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Project officer, (215) 814–2104 or by email at *spink.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 12, 2011, MDE submitted revisions to its SIP for the GenOn Chalk Point generating station located at 25100 Chalk Point Road in Aquasco, Maryland. These revisions approve a 2011 Consent Decree between MDE and GenOn to control PM, SO_X and NO_X from Chalk Point. These revisions also remove the 1978 and 1979 Consent Orders for Chalk Point from the Maryland SIP as those Consent Orders have been superseded by the 2011 Consent Decree. The purpose of the 2011 Consent Decree is to address stack test violations at Chalk Point Unit #4. As part of the settlement with MDE, GenOn has agreed to combust natural gas in Units #3 and #4 for no less than 75% of the annual heat input of the units, and for at least 95% of the ozone season (May 1st—September 30th) heat input instead of #6 fuel oil. Burning natural gas instead of #6 fuel oil results in a significant decrease in emissions of PM, SO_X and NO_X. These SIP revisions to reduce PM, SO_X, and NO_X emissions are beneficial for reducing ambient levels of the criteria pollutants PM, SO_2, and NO_2. As NO_X is a precursor pollutant of ground level ozone, these reductions are also beneficial for reducing ambient levels of the criteria pollutant ozone. In addition, these revisions reduce visible emissions from Chalk Point.

I. Background

The Chalk Point generating station consists of four steam electric generating units located in Aquasco, Maryland which is part of Prince George County. Units #1 and #2 are coal fired baseload units each rated at 355 megawatts. Units #3 and #4 are cycling units permitted to burn natural gas and oil, each rated at 640 megawatts. Consent Orders signed in 1978 and 1979 with the Potomac Electric Power Company (Pepco, the former owner) allowed Chalk Point Units #1–#3 to combust higher sulfur fuels than Maryland regulations allow and Unit #3 was also allowed to emit higher PM and visible emissions than Maryland regulations allow. In 2006, MDE and Pepco signed a Consent Decree to address opacity (visible emissions) violations from Chalk Point Units #3 and #4. That 2006 Consent Decree required Units #3 and #4 to burn natural gas during the ozone season for 95% of the heat input. The 2006 Consent Decree for Chalk Point also terminated the 1978 and 1979 Consent Orders with Pepco, effective May 1, 2007. However, the Maryland SIP was not revised at that time to remove the 1978 and 1979 Consent Orders and replace them with the 2006 Consent Decree.

II. Summary of the SIP Revision

In 2011, MDE and GenOn (new owner of Chalk Point) signed a Consent Decree, effective on March 10, 2011, for Chalk Point which amends, restates, and replaces the 2006 Consent Decree. On October 11, 2012, MDE submitted specific provisions of the 2011 Consent Decree to EPA for approval as a SIP revision. A copy of the provisions of the 2011 Consent Decree for Chalk Point for which MDE is requesting approval as SIP revisions is included in the docket for this rulemaking. Hereafter in describing the SIP revision, EPA is referring to the provisions of the 2011 Consent Decree that are being made part of the SIP. The October 11, 2012 SIP revision submittal from MDE also includes a request to remove the 1978 and 1979 Consent Orders for Chalk Point from the Maryland SIP.

Under the 2011 Consent Decree, Chalk Point Units #3 and #4 must burn natural gas for no less than 75% of the annual heat input of the units. In addition, the 2011 Consent Decree reiterates the 2006 Consent Decree's requirement that Chalk Point Units #3 and #4 use natural gas for at least 95% of the ozone season heat input. The 2011 Consent Decree also requires Chalk Point to perform a stack test for PM while burning residual fuel oil in 2011, and to perform stack testing for PM from Units #3 and #4 any calendar year that either unit exceeds 570,000 MBTU from the burning of residual fuel oil. The 2011 Consent Decree submitted for approval as a revision to the Maryland SIP also includes provisions for determining compliance, operating control equipment, determining the sulfur content of fuel, as well as recordkeeping and reporting requirements consistent with Federal regulations and the CAA.

GenOn's compliance with the 2006 Consent Decree, the requirements of which are reiterated in the 2011 Consent Decree, have resulted in significant annual emission reduction benefits because of the shift to natural gas during the ozone season. In 2005, Chalk Point Units #3 and #4 emitted 3, 978 tons per year (TPY) of NO_X, 744 TPY of PM, and 12,379 TPY of sulfur oxides (SO_X). In 2008, as a result of compliance with the 2006 Consent Decree, the requirements of which are reiterated in the 2011 Consent Decree, Chalk Point Units #3 and #4 emitted 446 TPY of NO_X, 49 TPY of PM, and 244 TPY of sulfur oxides (SO_X), thereby reducing annual emissions by 3,532 TPY, 695 TPY, and 12,135 TPY, respectively. The additional provision of the 2011 Consent Decree that requires Chalk Point Units #3 and #4 to maximize the use of natural gas during the non-ozone season will result in even further reductions of NO_X, PM, and SO_X and further reductions in visible emissions.

III. Final Action

EPA's review of the SIP revisions submitted by MDE on October 12, 2011 indicates that they strengthen the SIP requirements applicable to Chalk Point; result in significant emission reductions of NO_X, PM, SO_X and visible emissions; and meet all applicable Federal regulations and the CAA. The SIP revisions to remove the 1978 and 1979 Consent Orders for Chalk Point are approvable as they have been superseded by the more stringent 2011 Consent Decree. Therefore, EPA is approving the SIP revisions submitted by MDE on October 12, 2011. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 3, 2012 without further notice unless EPA receives adverse comment by June 4, 2012. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve a 2011 Consent Decree between MDE and the GenOn to reduce particulate matter (PM), sulfur oxides (SO_X), and nitrogen oxides (NO_X) from Chalk Point may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 16, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (d) is amended by:

■ a. Removing the entries for Potomac Electric Company (PEPCO)—Chalk Point Units #1 and #2 and Potomac Electric Company (PEPCO)—Chalk Point.

■ b. Adding an entry for the GenOn Chalk Point Generating Station as the last entry in the table.

The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) *EPA approved state source-specific requirements.*

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
GenOn Chalk Point Generating Station.	The 2011 Consent Decree for Chalk Point.	3/10/11	5/4/12 [Insert page number where the document begins].	Docket No. 52.1070(d). The SIP approval includes specific provisions of the 2011 Consent Decree for which the State of Maryland requested approval on October 12, 2011.

* * * * *

[FR Doc. 2012–10470 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0355(b); FRL–9666–7]

Approval and Promulgation of Implementation Plans; North Carolina; Charlotte; Ozone 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the ozone 2002 base year emissions inventory portion of the state implementation plan (SIP) revision submitted by the State of North Carolina November 12, 2009. The emissions inventory is part of the Charlotte-Gastonia-Rock Hill, North Carolina ozone attainment demonstration that was submitted for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area'') is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act). EPA will take action on the South Carolina submission for the ozone 2002 base year emissions inventory for its portion of the bi-state Charlotte Area in a separate action.

DATES: This direct final rule is effective July 3, 2012 without further notice, unless EPA receives adverse comment by June 4, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0355(b), by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0355(b),'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0355(b). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001–2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the bi-state Charlotte Area was classified as a moderate nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date six years after the June 15, 2004, effective date for areas classified as moderate areas for the 1997 8-hour ozone nonattainment designations. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. Therefore, the bi-state Charlotte Area's original attainment date was June 15, 2010. See 69 FR 23951, April 30, 2004.

On November 12, 2009,[1] North Carolina submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS in the bi-state Charlotte Area (hereafter referred to as the ''North Carolina's nonattainment submissions for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area''). A supplement to the RFP was submitted on November 30, 2009.

The bi-state Charlotte Area did not attain the 1997 8-hour ozone NAAQS by June 15, 2010 (the applicable attainment date for moderate nonattainment areas); however, the Area qualified for an extension of the attainment date. Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. In accordance with CAA section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. On May 31, 2011, EPA determined that North Carolina met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. See 76 FR 31245. As a result, EPA extended the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS.

Subsequently, on November 15, 2011 (76 FR 70656), EPA determined that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS. The determination of attaining data was based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period, showing that the Area had monitored attainment of the 1997 8-hour ozone NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 40 CFR 52.1779(a).

On December 21, 2011, North Carolina withdrew the bi-state Charlotte Area's attainment demonstration, contingency measures, and associated RACM as allowed by 40 CFR 51.918 for its portion of this Area; however, the emissions inventory requirement found in CAA section 182(a)(1), which requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions, is not suspended by a determination of attainment. Accordingly, North Carolina has not withdrawn its emission inventory for the 1997 8-hour ozone NAAQS, and EPA is now taking direct final action to approve this portion of the SIP revision submitted by the State of North Carolina on November 12, 2009, as required by section 182(a)(1).

II. Analysis of State's Submittal

As discussed above, section 182(a)(1) of the CAA requires areas to submit a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. North Carolina selected 2002 as base year for the emissions inventory pursuant to 40 CFR 51.915. Emissions contained in North Carolina's portion of the bi-state Charlotte attainment plan cover the general source categories of stationary point and area sources, non-road and on-road mobile sources, and biogenic sources. A detailed discussion of the emissions inventory development can be found in Appendix E of the North Carolina submittal. The 2002 nitrogen oxides (NO_X) baseline emissions inventory, including partial county emissions for Iredell, can be found in Appendix P of the submittal. The 2002 volatile organic compounds (VOC) baseline emissions inventory, including partial county emissions for Iredell, can be found in Appendix O of the submittal. The table below provides a summary of the emissions inventories. A detailed account of the point sources can be found in Appendix E of the November 12, 2009, submittal, which can be found in the docket for today's action using Docket ID No. EPA–R04–OAR–2010–0504.

[1] North Carolina withdrew a June 15, 2007, attainment demonstration SIP for its portion of the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone area on December 19, 2008, and committed to submit a revised SIP by November 30, 2009. On November 12, 2009, North Carolina resubmitted the attainment demonstration SIP for the North Carolina portion of the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone area.

TABLE 1—2002 POINT AND AREA SOURCES ANNUAL EMISSIONS FOR THE NORTH CAROLINA PORTION OF THE CHARLOTTE AREA

[Tons per summer day]

County	Point		Area		Non-road		Mobile	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Cabarrus	2.6	2.2	0.8	6.0	5.4	2.7	17.2	21.5
Gaston	34.8	2.5	1.3	8.9	4.9	2.9	20.0	13.5
Iredell (partial) *	8.5	0.9	0.3	1.9	1.4	0.9	5.6	5.1
Lincoln	0.3	2.1	0.5	3.1	1.9	1.3	6.1	7.1
Mecklenburg	2.1	5.7	7.0	29.4	32.1	24.1	78.7	68.0
Rowan	11.0	6.3	0.8	5.6	4.1	2.3	19.7	14.8
Union	0.2	1.0	1.0	6.4	7.7	4.7	11.3	13.0

* Only part of Iredell County is in the nonattainment area.

The 182(a)(1) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, area, non-road mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that was submitted in the State's attainment demonstration SIP for this Area. The 2002 emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the States to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. Data from many databases, studies and models (e.g., vehicle miles traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005) and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of CAA section 182(a)(1) and the implementing regulations.

EPA has reviewed North Carolina's emissions inventory for its portion of the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS and finds that it is adequate for the purposes of meeting section 182(a)(1) emissions inventory requirement. The emissions inventory is approvable because the emissions were developed consistent with the CAA, implementing regulations and EPA guidance for emission inventories.

III. Final Action

EPA is approving the 2002 base year emissions inventory portion of the North Carolina's 1997 8-hour ozone attainment demonstration SIP revision for the bi-state Charlotte Area submitted by the State of North Carolina on November 12, 2009. This action is being taken pursuant to section 110 of the CAA. On March 12, 2008, EPA issued a revised ozone NAAQS. See 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the North Carolina portion of the Charlotte Area under the 2008 ozone NAAQS will be addressed in the future. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 3, 2012 without further notice unless the Agency receives adverse comments by June 4, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 3, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 18, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(e), is amended by adding a new entry for ''North Carolina portion of bi-state Charlotte; 1997 8–Hour Ozone 2002 Base Year Emissions Inventory'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * * *	*	*	*
North Carolina portion of bi-state Charlotte; 1997 8-Hour Ozone 2002 Base Year Emissions Inventory.	11/12/2009	5/4/2012	[Insert citation of publication].

[FR Doc. 2012–10730 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0081; FRL–9660–5]

RIN 2060–AR42

Revisions to Final Response To Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the preamble and regulatory text to the ''Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' published November 7, 2011, to revise minor misstatements. These revisions clarify the EPA's finding that the Portland Generating Station (Portland) significantly contributes to nonattainment or interferes with maintenance of the 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) in the State of New Jersey and remove the references to specific New Jersey counties identified in the EPA's November 7, 2011, final rule. These revisions have no impact on any other provisions of the rule.

DATES: This final rule is effective on June 4, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0081. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Hawes (919) 541–5591, *hawes.todd@epa.gov,* or Ms. Gobeail

McKinley (919) 541–5246, *mckinley.gobeail@epa.gov,* Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this final rule?
II. Specific Revisions
III. Public Comment and Agency Response
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

I. Why is the EPA issuing this final rule?

This action finalizes minor amendments to the ''Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' published on November 7, 2011. *See* 76 FR 69052. We initially proposed this rule revision in parallel with a direct final rule because we viewed this as a noncontroversial action and anticipated no adverse public comments. However, the EPA did receive one adverse comment, and therefore we have withdrawn the direct final rule. In this document, we have addressed the public comment received on the proposal and are finalizing the ''Revisions to Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' published on December 22, 2011. *See* 76 FR 79574.

II. Specific Revisions

The preamble and rule text to the ''Final Response to Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station'' (76 FR 69052) contain minor misstatements that the EPA is revising in this action. In the preamble section IV.A, *Summary of the Modeling for the Proposed Rule,* the EPA inadvertently referred to four specific counties in New Jersey when discussing violations of the 1-hour SO_2 NAAQS. The statement reads, ''The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO_2 NAAQS in Morris, Sussex, Warren and Hunterdon Counties in New Jersey.'' (*See* id. at 69057.) This conclusion is not correctly stated as the EPA's modeling did not separately examine air quality in each of the four counties identified. A more accurate description of the EPA's conclusion was presented in the April 7, 2011, proposal (76 FR 19662 at 19680) which did not refer to those counties in our explanations of the modeling results. Furthermore, between proposal and promulgation, the EPA did not separately examine each of the four counties identified, so in the final rule there was no reason to change this proposed description to specifically list counties. Therefore, we are now revising the statement in the November 7, 2011, final rule preamble to be consistent with the description in the April 7, 2011, proposal by removing the references to Morris, Sussex, Warren, and Hunterdon Counties. The statement will now read, ''The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO_2 NAAQS in New Jersey.''

Similarly, in the rule text, Part 52—[Amended], Subpart NN—Pennsylvania, section 52.2039 in 40 CFR part 52, of the final rule, the EPA inadvertently referred to those same four counties in describing the finding of significant contribution to nonattainment and interference with maintenance of the 1-hour SO_2 NAAQS. The provision reads, ''The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO_2) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO_2 national ambient air quality standard (NAAQS) in Morris, Sussex, Warren, and Hunterdon Counties in New Jersey.'' With this action, the rule text now reads, ''The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO_2) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO_2 national ambient air quality standard (NAAQS) in New Jersey.''

Although the New Jersey Department of Environmental Protection (NJDEP) modeling analysis submitted with the September 2010 petition identified NAAQS violations at receptors in certain counties, the purpose of the EPA modeling was not to identify or corroborate the entire geographic footprint of the violations in New Jersey. The EPA modeling analysis was conducted for the purpose of corroborating the existence of NAAQS violations in New Jersey caused by Portland and for determining the remedy needed to eliminate all NAAQS violations caused by Portland. The EPA modeling thus focused upon identifying only the area where the maximum concentration was expected to occur. We used the same receptor grid for the final rule as for the proposed rule, which was focused on the area of maximum impacts occurring in Warren County, New Jersey. The remedy was determined by assessing the emission reduction needed to eliminate the maximum modeled violation in New Jersey, which occurs in close proximity to Portland in Warren County. There was no need to make an assessment of impacts at all locations within New Jersey since eliminating the NAAQS violations at the highest impacted receptor provided the basis for the remedy which, by its nature, would eliminate all modeled violations caused by Portland in the entire state. Therefore, the EPA finding pursuant to section 126 of the Clean Air Act (the Act) applies to New Jersey generally. The revision is consistent with NJDEP's request for a finding that emissions from Portland significantly contribute to nonattainment or interfere with maintenance of the 1-hour SO_2 NAAQS in New Jersey. The revision is also consistent with the language in sections 110 and 126 of the Act which is phrased such that the petitioner can request a finding that a source in one state is significantly contributing to nonattainment or interfering with maintenance of the NAAQS in another state. The addition of the counties was neither necessary nor intentional and did not arise from a request from the petitioner or any other commenter.

The revisions will not affect the emission limits, increments of progress, compliance schedules, or reporting provisions specified in the November 7, 2011, final rule and do not change the

conclusions that the EPA made in the final rule. No adjustments to the existing modeling or other technical analyses and no new analyses were necessary to make the revisions.

III. Public Comment and Agency Response

On February 21, 2012, the Pennsylvania Department of Environmental Protection (PADEP) provided comments to the EPA on the direct final rule and the concurrent proposal for this rule. The direct final rule was subsequently withdrawn. (*See* 77 FR 15608.)

PADEP commented that our revision to the November 7, 2011, final rule is a ''revision'' to a final rule which, in light of other similar actions, constitutes a pattern for EPA. PADEP specifically refers to recent revisions to the final Cross-State Air Pollution Rule (CSAPR) as an example of this alleged pattern. The commenter argues that this alleged pattern is the result of a ''rush to judgment'' causing mistakes to be made. The commenter claims that the EPA admits that the inadvertent reference to the four counties in New Jersey was a ''major misstatement'' and that the EPA committed a significant error with respect to the air modeling.

The EPA does not agree that the revisions to the final rule resulted from any significant errors with the modeling nor did we characterize the issue as a major misstatement. As explained in the December 22, 2011, notice of the proposed revision (76 FR 79541), we inadvertently made reference to the four counties in New Jersey in the November 7, 2011, final rule. (*See* 76 FR at 69077; 40 CFR 52.2039.) This was inconsistent with the correct characterization of the finding described in the April 7, 2011, proposal (76 FR at 19680) in which the finding was proposed for the State of New Jersey generally and not in specific counties within the state. The changes do not affect the emission limits, increments of progress, compliance schedules, or the reporting provisions of the final rule.

Moreover, the commenter's claim that these misstatements demonstrate a significant error in the air modeling is unsupported. First, as explained above, the modeling was targeted at corroborating the existence of NAAQS violations in New Jersey caused by Portland and determining the remedy needed to eliminate all NAAQS violations caused by Portland. The EPA modeling thus focused on identifying the area where the maximum concentration was expected to occur, which was identified as Warren County, New Jersey, and assessing the emission reduction needed to eliminate the maximum modeled violation in New Jersey. The commenter has failed to identify any error in this modeling approach. Therefore, no new technical analyses or any changes to the modeling are necessary to make these revisions. Second, comments on the modeling are beyond the scope of comment solicited by the proposal since no modifications to the modeling approach were proposed in this rule. If the commenter wished to raise any concerns with respect to the scope of EPA's modeling approach, they should have been raised when the modeling approach was initially proposed. Finally, comments regarding CSAPR are clearly beyond the scope of this rulemaking as CSAPR is a separate and unrelated rulemaking.

The comment provides no basis for us to change the characterization of our finding, namely that emissions from Portland significantly contribute to nonattainment or interfere with maintenance of the 1-hour SO_2 NAAQS in New Jersey. Therefore, we are not making any changes to the December 22, 2011, proposal in this final rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action revises minor wording errors in the November 7, 2011, final rule. This action corrects a response to a petition that is narrow in scope and affects a single facility. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* because under section 126 of the CAA, it will not create any new information collection burdens but revises minor wording errors in the November 7, 2011, rule. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The revisions in this action do not impose any new requirements on small entities. This action revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO_2 NAAQS in the State of New Jersey, and removes the specific references to the New Jersey counties identified in the November 7, 2011, rule.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local or tribal governments or the private sector. This action is not expected to result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action makes minor wording revisions to the November 7, 2011, final rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO_2 NAAQS in the State of New Jersey, and removes the specific references to the New Jersey counties identified in the November 7, 2011, rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The November 2011 final rule primarily affects private industry, and does not impose significant economic costs on state or local governments. This action revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO_2 NAAQS in the State of New Jersey, and removes the specific references to the New Jersey counties identified in the November 7, 2011, rule. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have a substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian tribes. This action revises minor wording errors in the November 7, 2011, rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO_2 NAAQS in the State of New Jersey, and removes the specific references to the New Jersey counties identified in the November 7, 2011, rule.

K. Congressional Review Act

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. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. Nonetheless, this action will be effective June 4, 2012.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the Third Circuit Court within 60 days from the date the final action is published in the **Federal Register**, Filing a petition for review by the Administrator of this final action 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 must be filed, and shall not postpone the effectiveness of such action.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 25, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble part 52 of chapter I of title 40 of the Code of Federal regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania [Amended]

■ 2. Section 52.2039 is amended by revising the introductory text to read as follows:

§ 52.2039 Interstate transport.

The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide

(SO_2) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO_2 national ambient air quality standard (NAAQS) in New Jersey. The owners and operators of Portland shall comply with the requirements in paragraphs (a) through (d) of this section.

* * * * *

[FR Doc. 2012–10718 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0643; FRL–9652–4]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Eastern Kern and Santa Barbara County; Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD), Eastern Kern Air Pollution Control District (EKAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that define terms used in other air pollution regulation in these areas and approving a rule rescission that addresses Petroleum Coke Calcining Operations—Oxides of Sulfur.

DATES: This rule is effective on July 3, 2012 without further notice, unless EPA receives adverse comments by June 4, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0643, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rule we are rescinding and the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1119	Petroleum Coke Calcining Operations—Oxides of Sulfur (rescinded)	01/18/11	06/21/11
EKAPCD	102	Definitions	01/13/11	06/21/11
SBCAPCD	102	Definitions	01/20/11	06/21/11

On July 15, 2011, EPA determined that the submittal for AVAQMD Rule 1119, EKAPCD Rule 102, and SBCAPCD Rule 102 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved earlier versions of these rules into the SIP on the dates listed: AVAQMD Rule 1119 on September 28, 1981 (46 FR 47451), EKAPCD Rule 102 on March 7, 2011 (76 FR 12280), and SBCAPCD Rule 102 on May 6, 2009 (74 FR 20872). The SBCAPCD amended revisions to the SIP-approved version on September 20, 2010 and CARB submitted them to us on April 5, 2011. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

Antelope Valley AQMD Rule 1119 applies to the operation of petroleum

coke calcining equipment. The AVAQMD has determined that there are no petroleum coke calcining operations located within the District and none are anticipated in the future. The AVAQMD has rescinded this rule and has certified that there are no sources covered by this rule in the jurisdiction of the AVAQMD. Since this rule is currently part of the SIP for AVAQMD, a resolution certifying that no sources exist in the AVAQMD is required by section 182(b)(2).

Eastern Kern APCD Rule 102, Definitions, is being amended to define a number of terms that are used in other District rules. The amendments include updating the name of the District, adding ten new definitions, revising language in three definitions, and adding one compound to the Exempt Compounds list. Minor formatting issues are also being corrected.

Santa Barbara County Rule 102, is amended by adding a new definition for ''greenhouse gas or greenhouse gases.'' In addition, the definition of ''attainment pollutant'' has been clarified to exclude greenhouse gases.

EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 4, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 3, 2012. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 July 3, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule

and address the comment in the proposed rulemaking. This action may not be challenged in later proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 8, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(88)(iii)(C) and (c)(391) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(88) * * *

(iii) * * *

(C) In Resolution 11–04 dated January 18, 2011, Antelope Valley Air Quality Management District certified that no sources which would be subject to Rule 1119, ''Petroleum Coke Calcining Operations,'' exist in the AVAQMD. Therefore, Rule 1119 has been rescinded and is removed from the SIP.

* * * * *

(391) New and amended regulations were submitted on June 21, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) Eastern Kern Air Pollution Control District.

(*1*) Rule 102, ''Definitions,'' amended on January 13, 2011.

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102, ''Definitions,'' revised on January 20, 2011.

* * * * *

[FR Doc. 2012–10734 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0179; FRL–9345–6]

Metconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of Metconazole, including its metabolites and degradates in or on sugarcane, cane. BASF Corporation requested the tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 4, 2012. Objections and requests for hearings must be received on or before July 3, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0179. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; email address: *gibson.tamue@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0179 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 3, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing

request, identified by docket ID number EPA–HQ–OPP–2011–0179, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 20, 2011 (76 FR 22067) (FRL–8869–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7807) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of cis- and trans-isomers, in or on sugarcane, cane at 0.06 parts per million (ppm); and sugarcane, molasses at 0.08 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, tolerances for sugarcane, molasses are not being established. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for metconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with metconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute oral and dermal toxicities to metconazole are moderate, while acute inhalation toxicity is low. Metconazole is a moderate eye irritant and a mild skin irritant. It is not a skin sensitizer.

Metconazole was shown to affect the liver, kidney, spleen, and certain blood parameters in all the species tested. Dose levels at which these effects occur are similar across species with the rat and dog being slightly more sensitive than the mouse. Like other triazoles, a primary target organ in mammalian toxicity studies is the liver. Liver toxicity was seen in the mouse, rat and dog following oral exposure to metconazole via subchronic or chronic exposure durations. While liver effects have been reported consistently across multiple durations and species, these effects were considered slight and minimal in some studies and appeared to be ''adaptive'' responses. However, based on the weight of evidence from the consistency of these reported effects and evidence that these effects increase in severity with duration, and leading to liver tumors in the chronic mouse study, they were considered ''adverse'' and formed the basis of the study lowest observed adverse effect levels (LOAELs). Metconazole is considered nongenotoxic and the liver tumors appear to have been formed via a mitogenic mode of action and therefore, metconazole is classified as ''not likely to be carcinogenic to humans'' at levels that do not cause mitogenesis. There is evidence of liver effects (microsomal induction, liver weight increases, hypertrophy) at 47.6 milligrams/kilograms/day (mg/kg/day), but no effects at 4.5 mg/kg/day in the mode of action studies in the mouse. There is no concern for mutagenicity. The chronic Reference Dose of 0.04 mg/kg/day based on the 2-year chronic rat study with a no observed adverse effect level (NOAEL) of 4.3 mg/kg/day would be protective of early liver disturbances seen in the mouse studies. Therefore, the Agency has determined that the quantification of risk using a non-linear approach (i.e., Reference dose (RfD)) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to metconazole.

Other major critical effects observed in oral studies were decreased body weight, decreased body weight gains, and blood effects (reductions in erythrocyte and/or platelet parameters) in the mouse, rat, dog and/or rabbit. Splenic effects including increased spleen weight and hyperplasia were observed in the mouse, rat and dog at dose levels where liver effects were also observed. In dogs, lenticular degeneration (cataracts) was observed at the highest dose tested (HDT) (114 mg/kg/day). Furthermore, at high dietary levels, there is evidence that metconazole is a gastrointestinal irritant in the dog.

There was no evidence of immunotoxicity at dose levels that produced systemic toxicity. No immunotoxic effects are evident for metconazole at dose levels as high as 52 mg/kg/day in rats, which is 12 times higher than the chronic dietary point of departure (4.3 mg/kg/day).

Metconazole did not demonstrate neurotoxicity in the standard battery of tests submitted. Information available from the submitted studies including acute, subchronic and chronic studies in several species, developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat do not indicate any neurotoxic signs. No effects were noted on brain weights and no clinical signs possibly related to neurotoxicity were noted up to and including the high doses in all studies.

Specific information on the studies received and the nature of the adverse effects caused by metconazole as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Metconazole: Human Health Risk Assessment for Proposed Uses on Sugarcane,'' at page 36 in docket ID number EPA–HQ–OPP–2011–0179.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*. A summary of the toxicological endpoints for metconazole used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 12 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.12 mg/kg/day. aPAD = 0.12 mg/kg/day	Developmental toxicity in rats. LOAEL = 30 mg/kg/day based on increases in skeletal variations. At 75 mg/kg/day increased incidence of post-implantation loss, hydrocephaly and visceral anomaliea (cranial hemorrhage, dilated renal pelvis, dilated ureters, and displaced testis) were reported.
Acute dietary (General population including infants and children).	An appropriate dose/endpoint attributable to a single dose was not observed in the available oral toxicity studies reviewed.		
Chronic dietary (All populations)	NOAEL= 4.3 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.04 mg/kg/day. cPAD = 0.04 mg/kg/day	Chronic oral toxicity study in rats. LOAEL = 13.1 mg/kg/day based on increased liver (M) weights and associated hepatocellular lipid vacuolation (M) and centrilobular hypertrophy(M). Similar effects were observed in females at 54 mg/kg/day, plus increased spleen weight.
Incidental oral short-term (1 to 30 days).	NOAEL= 9.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-Day oral toxicity study in rats. LOAEL = 90.5 mg/kg/day based on decreased body weight (M), increased liver and kidney weight and hepatocellular hypertrophy and vacuolation (M/F).
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 6.4 mg/kg/day UF_A= 10x UF_H= 10x FQPA SF = 1x	LOC for MOE = 100	90-Day oral toxicity study in rats. LOAEL = 19.2 mg/kg/day based on increased spleen wt (F) and hepatic vacuolation (M).
Dermal short-term and intermediate-term.	Quantification of dermal risk is not needed due to lack of systemic or dermal toxicity at the Limit Dose in a 21-day dermal toxicity study in the rat, the lack of target organ toxicity or neurotoxicity, and the lack of developmental or reproductive toxicity in the absence of parental effects which were looked for in the dermal toxicity.		
Inhalation short-term (1 to 30 days)	Inhalation (or oral) study NOAEL= 9.1 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-Day oral toxicity study in rats. LOAEL = 90.5 mg/kg/day based on decreased body weight (M), increased liver and kidney weight and hepatocellular hypertrophy and vacuolation (M/F).

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation (1 to 6 months)	Inhalation (or oral) study NOAEL = 6.4 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-Day oral toxicity study in rats. LOAEL = 19.2 mg/kg/day based on increased spleen wt (F) and hepatic vacuolation (M).
Cancer (Oral, dermal, inhalation)	Classification: ''Not likely to be Carcinogenic to Humans'' based on evidence that a non-genotoxic mode of action for mouse liver tumors was established and that carcinogenic effects were not likely below a defined dose that does not cause mitogenesis.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. M = male animals. F= female animals. Mg/kg/day = milligrams per kilogram per day. LOAEL= lowest observed adverse effect level. NOAEL = no observed adverse effect level.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing metconazole tolerances in 40 CFR 180.617. EPA assessed dietary exposures from metconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for metconazole. In estimating acute dietary exposure, EPA used food consumption information from the U. S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA made the following assumptions for the acute exposure assessment: Tolerance-level residues and 100 percent crop treated (PCT). EPA used Dietary Exposure Evaluation Model (DEEM™) version 7.81 default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA made the following assumptions for the chronic exposure assessment: Tolerance-level residues and 100 PCT. EPA used DEEM™ version 7.81 default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has determined that the quantification of risk using a non-linear approach will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to metconazole. Therefore, the chonic RfD is expected to be protective of chronic toxicity including carcinogenicity. For the purpose of assessing cancer risk under this approach EPA relied upon the exposure estimate discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for metconazole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for metconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of metconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of metconazole for acute exposures are estimated to be 45.48 parts per billion (ppb) for surface water and 0.38 ppb for ground water.

Chronic exposures for non-cancer assessments are estimated to be 38.16 ppb for surface water and 0.38 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 45.48 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 38.16 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metconazole is currently registered for the following uses that could result in residential exposures: Turf and ornamentals. EPA assessed residential exposure using the following assumptions: Adults, adolescents and children may be exposed to metconazole from its currently registered turf and ornamental uses. Adults and adolescents may experience short- and intermediate-term dermal exposure from golfing and other activities on treated turf, as well as from tending treated ornamentals. Children may experience short- and intermediate-term dermal and incidental oral exposure from activities on treated turf. However, because dermal toxicity endpoints for the appropriate durations of exposure were not identified, and because inhalation exposure is considered to be insignificant for postapplication exposures, only children's incidental oral postapplication exposures have been assessed. Postapplication risks to children following the application of metconazole to home lawns were calculated for short- and intermediate-term incidental oral exposures. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at

http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Metconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site *at http://www.epa.gov/pesticides/cumulative.*

Triazole-derived pesticides can form the metabolite 1,2,4-triazole (T) and two triazole conjugates triazolylalanine (TA) and triazolylacetic acid (TAA). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, EPA conducted an initial human-health risk assessment for exposure to T, TA, and TAA resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment was a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X Food Quality Protection Act (FQPA) safety factor (SF) for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497 and an update to the aggregate human health risk assessment for free triazoles and its conjugates may be found in Docket Identification (ID) Number EPA–HQ–OPP–2011–0179 entitled ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address Tolerance Petitions for Metconazole.''

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Developmental studies in rats and rabbits show some evidence of developmental effects, but only at dose levels that are maternally toxic. There was no quantitative susceptibility to the fetuses of rats or rabbits following *in utero* exposure to metconazole. In the developmental toxicity study in rats, skeletal variations (predominantly lumbar ribs) occurred in the presence of maternal toxicity (decreased body weight gains). In the prenatal developmental toxicity study in rabbits, developmental effects (increased post-implantation loss and reduced fetal body weights) were observed at the same dose that caused maternal toxicity (decreased body weight gains, reduced food consumption and alterations in hematology parameters). In the 2-generation reproduction study in rats, offspring toxicity (reduced fetal body weights F2 offspring and decreased viability in F1 and F2 offspring) was observed only at the HDT, a dose which also resulted in parental toxicity as evidenced by reduced parental body weight and body weight gains, increased incidence of fatty hepatocyte changes in male parental animals and increased incidence of spleen congestion in F1 parental females. In the rat study, there is a concern for qualitative susceptibility (skeletal variation in the presence of minimal maternal toxicity) due to the presence of more severe effects at higher dose levels such as post-implantation loss, hydrocephaly and visceral anomalies. However, there is a clear NOAEL for these effects and the point of departure for this endpoint is based on skeletal variations. Therefore, it is concluded that there is no residual uncertainty for prenatal and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- The toxicity database is complete except for an acute neurotoxicity study.
- There is no concern for neurotoxicity with metconazole. However, in accordance with the revised 40 CFR part 158 data requirements, a neurotoxicity battery is required for risk assessment. The existing metconazole database does not include an acute neurotoxicity study, and thus remains a data deficiency. An acceptable subchronic neurotoxicity study showed no neurotoxic effects at levels that produced systemic toxicity in the study, as well as in other subchronic and chronic studies. Therefore, concern for potential neurotoxicity is low and the 10X FQPA factor is not retained.
- There is no evidence of susceptibility following *in utero* exposure in the rabbit developmental study. In the rat developmental study there is qualitative evidence of susceptibility, however the concern is low since the developmental effects occur in the presence of maternal toxicity, the NOAELs are well defined, and the dose/endpoint is used for acute dietary risk assessment for the sensitive population. There is no evidence of increased susceptibility in the offspring based on the result of the 2-generation reproduction study. Dietary exposure assessments were conducted using tolerance level residues and assumed 100 PCT. Therefore, the acute and chronic dietary (food only) exposure is considered an upper bound conservative estimate. The contribution from drinking water is minimal. The Agency concludes that the acute and

chronic exposure estimates in this analysis are unlikely to underestimate actual exposure. The drinking water component of the dietary assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded. While there is potential for postapplication residential exposure, the Agency used the current conservative approaches for residential assessment. Exposures are unlikely to be under estimated because the assessment was a screening level assessment.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metconazole will occupy 3.8% of the aPAD for females 13–49 years old, the only population subgroup of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to metconazole from food and water will utilize 12.6% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of metconazole is not expected.

3. *Short-term risk.* Short-term risk takes into account short-term residential exposure plus chronic exposure to food and drinking water (considered to be a background exposure level). Metconazole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to metconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and non-occupational/residential post application exposures result in aggregate MOEs of 420 for children 1–2 years old and 1,700 for adults. Because EPA's level of concern for metconazole is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term risk takes into account intermediate-term residential exposure plus chronic exposure to food and drinking water (considered to be a background exposure level). Metconazole is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to metconazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and non-occupational residential exposures result in aggregate MOEs of 460 for children 1–2 years old and 1,700 for adults. Because EPA's level of concern for metconazole is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., the Agency has determined that the quantification of risk using a non-linear (i.e., RfD) approach will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to metconazole. Therefore, based on the results of the chronic risk assessment discussed in Unit III.E.2., metconazole is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to metconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography/tandem mass spectrometry (HPLC/MS/MS) method BASF D0604) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for metconazole on sugarcane.

C. Revisions to Petitioned-For Tolerances

Based on the results of the sugarcane crop field data and the tolerance calculation procedures, EPA has determined that separate tolerances for sugarcane, molasses are unnecessary. The highest metconazole residue from the sugarcane field trials is 0.036 ppm. This residue multiplied by the processing factor for molasses (0.036 × 1.2) yields 0.043 ppm. As this is less than the tolerance for sugarcane, cane at 0.06 ppm, the sugarcane, cane tolerance will cover molasses.

V. Conclusion

Therefore, tolerances are established for residues of metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, including its metabolites and degradates in or on sugarcane, cane at 0.06 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.617 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.617 Metconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sugarcane, cane	0.06
* * * * *	

* * * * *

[FR Doc. 2012–10689 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0428; FRL–9346–5]

Carfentrazone-ethyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of carfentrazone-ethyl in or on crop group 18, non-grass animal feed (forage, hay, and seed). FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 4, 2012. Objections and requests for hearings must be received on or before July 3, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0428. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bethany Benbow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8072; email address: *benbow.bethany@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0428 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 3, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0428, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW. Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 6, 2011 (76 FR 39360) (FRL–8875–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7839) by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. The petition requested that 40 CFR 180.515 be amended by establishing tolerances for residues of the herbicide, carfentrazone-ethyl and its metabolite, carfentrazone-ethyl chloropropionic acid, in or on alfalfa, forage at 5 parts per million (ppm); alfalfa, hay at 18 ppm; alfalfa, seed at 10 ppm; clover, forage at 5 ppm; clover, hay at 18 ppm; and clover, seed at 10 ppm. That notice referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed individual alfalfa and clover tolerances to crop group 18 tolerances. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for carfentrazone-ethyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with carfentrazone-ethyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Carfentrazone-ethyl was ranked low in acute oral toxicity in rats via the oral, dermal, and inhalation routes of exposure. It was minimally irritating to eyes, non-irritating to skin, and not a skin sensitizer.

The proposed mode of action of carfentrazone-ethyl in target plants is through inhibition of the enzyme protoporphyrinogen oxidase (PPO) which is involved in chlorophyll biosynthesis. In mammals, PPO is also an important enzyme in heme biosynthesis and its inhibition can lead toxic effects where heme is utilized (e.g., red blood cells). Some of the toxicities reported for carfentrazone-ethyl are consistent with this mode of action. The target tissues/organs identified are the blood and liver and the most sensitive species was the rat. Subchronic toxicity studies in rats, mice, and dogs demonstrated that the primary effects were on hematological parameters (decreased mean corpuscular hemoglobin (MCH) and mean corpuscular volume (MCV)). There was also increased urinary porphyrin excretion, increased liver weights, and liver histopathology findings consisting of hepatic pigment deposition, hepatocytomegaly, single cell necrosis, and cell mitosis. Similarly, chronic toxicity studies in rats and dogs demonstrated increased urinary porphyrin excretion and liver histopathology findings in rats and mice consisting of liver pigmentation and increases in red fluorescence. Fluorescence microscopy on liver sections also revealed red fluorescent granules consistent with porphyrin deposits in rats and mice.

There was no evidence of increased susceptibility in prenatal developmental toxicity studies (rats and rabbits) or the multigenerational reproductive toxicity study in rats. Carfentrazone-ethyl induced a significant increase in litter incidences of wavy and thickened ribs in rats at a dose (1,250 mg/kg/day) much higher than the dose (600 mg/kg/day) that caused maternal toxicity consistent with interference with porphyrin metabolism (i.e., staining of the abdominogenital area and of the cage pan liner). The rabbit prenatal developmental toxicity study did not yield any evidence of treatment-related prenatal developmental toxicity even at the highest dose tested (HDT) (300 mg/kg/day). The offspring effects from the 2-generation reproduction study consisted of decreased pup body weight in both sexes of the F_2 generation at the HDT (343 mg/kg/day) and at which maternal toxicity was observed in the form of decreased body-weight gains, increased liver weights, liver and bile duct histopathology, and reductions in the mean cell volume (F_0 and F_1 males, F_1 females), mean cell hemoglobin (F_0 and F_1 males, F_1 females), hematocrit (F_1 males), and hemoglobin (F_1 males).

There is no concern for neurotoxicity. The results of the acute neurotoxicity study indicate clinical signs (i.e., salivation) and mild decreases in motor activity only on the treatment day and the subchronic neurotoxicity showed no signs of neurotoxicity up to the limit dose (1,178 mg/kg/day for males and 1,434 mg/kg/day for females).

In a 21-day dermal toxicity study, carfentrazone-ethyl did not induce any type of dermal or systemic toxicity up to the limit dose of 1,000 mg/kg/day. There are no toxicity studies based on repeated inhalation exposures to carfentrazone-ethyl. A waiver of a 28-day inhalation toxicity study was previously accepted based on its relatively low volatility, low acute inhalation lethality, and the large inhalation MOEs associated with the requested applications.

The mutagenic test battery demonstrated that carfentrazone-ethyl is not mutagenic. In accordance with the Draft Proposed Guidelines for Carcinogen Risk Assessment (April, 1999), carfentrazone-ethyl is classified as a ''not likely human carcinogen,'' based on the lack of evidence for carcinogenicity in the mouse and rat.

Specific information on the studies received and the nature of the adverse effects caused by carfentrazone-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Carfentrazone-ethyl. Section 3 Registration for Application to the Non-grass Animal Feed Crop Group 18. Human-Health Risk Assessment'' pp. 30–32 in docket ID number EPA–HQ–OPP–2011–0428.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for carfentrazone-ethyl used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CARFENTRAZONE-ETHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 500 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 5 mg/kg/day aPAD = 5 mg/kg/day	Acute neurotoxicity—rat. LOAEL = 1000 mg/kg/day based on clinical observations (salivation) and decreased motor activity.
Chronic dietary (All populations)	NOAEL = 3 mg/kg/day ... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.03 mg/kg/day. cPAD = 0.03 mg/kg/day	Chronic toxicity—rat. LOAEL = 12 mg/kg/day based on liver histopathology (increases in microscopic red fluorescence and pigmentation) and increased urinary porphyrin levels in both sexes.
Incidental oral short-term (1 to 30 days) and intermediate term (1 to 6 months).	NOAEL = 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE ≤100	Subchronic toxicity—dog. LOAEL = 150 mg/kg/day based on decreased body weight gain and increased urinary excretion of porphyrins.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Dermal risk assessment is not required—No toxicity seen at the limit-dose (1,000 mg/kg/day) in a 21-day rat dermal toxicity study and low level of concern for developmental effects.		

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CARFENTRAZONE-ETHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation short-term (1 to 30 days) and intermediate term (1 to 6 months).	Oral NOAEL = 50 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE ≤100	Subchronic toxicity—dog. LOAEL = 150 mg/kg/day based on decreased body weight gain and increased urinary excretion of porphyrins.
Cancer (Oral, dermal, inhalation)	Classification: ''not likely to be carcinogen;'' therefore, a quantitative cancer risk assessment is not necessary.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to carfentrazone-ethyl, EPA considered exposure under the petitioned-for tolerances as well as all existing carfentrazone-ethyl tolerances in 40 CFR 180.515. EPA assessed dietary exposures from carfentrazone-ethyl in food as follows:

i. *Acute and chronic exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Since such effects were identified for carfentrazone-ethyl, both acute and chronic dietary risk assessments were conducted. In estimating acute and chronic dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues or, if necessary, tolerance-level residues adjusted to account for the residues of concern for risk assessment, 100 PCT.

ii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that carfentrazone-ethyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk was not conducted.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for carfentrazone-ethyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of carfentrazone-ethyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of carfentrazone-ethyl for acute exposures are estimated to be 126 parts per billion (ppb) for surface water and 13 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 48 ppb for surface water and 13 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 126 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 48 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Carfentrazone-ethyl is currently registered for the following uses that could result in residential exposures: Golf courses, residential lawns, and aquatic areas. EPA assessed residential exposure with the assumption that homeowner handlers wear shorts, short-sleeved shirts, socks, and shoes, and that they complete all tasks associated with the use of a pesticide product including mixing/loading, if needed, as well as the application. Residential handler exposure scenarios for residential lawn applications are considered to be short-term only, due to the infrequent use patterns associated with homeowner products. Therefore, short-term inhalation risk was assessed for residential handlers; however, since no hazard was identified via the dermal route of exposure, a dermal risk assessment was not conducted for residential handlers.

EPA uses the term ''post-application'' to describe exposure to individuals that occur as a result of being in an environment that has been previously treated with a pesticide. Carfentrazone-ethyl can be used in many areas that can be frequented by the general population including home lawns, golf courses and aquatic recreational areas such as ponds and lakes that have been treated for removal of aquatic vegetation. As a result, individuals can be exposed by entering these areas if they have been previously treated. Therefore, short-term post-application exposure and risk were also assessed for carfentrazone-ethyl. The most conservative exposure scenario for adults, the aquatic exposure scenario (combined incidental oral and inhalation), was used to estimate post-application risk. For children, the most conservative exposure scenario, the hand-to-mouth exposure in residential turf scenario (incidental oral), was used to estimate post-application risk. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found carfentrazone-ethyl to share a common mechanism of toxicity with any other substances, and carfentrazone-ethyl does not appear to produce a toxic metabolite produced by other

substances. For the purposes of this tolerance action, therefore, EPA has assumed that carfentrazone-ethyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* As discussed in Unit III.A., based on the results of the rat/rabbit prenatal developmental toxicity studies and the rat 2-generation reproductive toxicity study, there is no evidence of increased pre- and/or postnatal sensitivity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. Although an immunotoxicity study is currently lacking in the toxicity database for carfentrazone-ethyl, there is no evidence in the current database that the immune system organs are directly affected following carfentrazone-ethyl exposure.

ii. There is no indication that carfentrazone-ethyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that carfentrazone-ethyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to carfentrazone-ethyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by carfentrazone-ethyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to carfentrazone-ethyl will occupy 1% of the aPAD for all infants (<1 year old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to carfentrazone-ethyl from food and water will utilize 69% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of carfentrazone-ethyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Carfentrazone-ethyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to carfentrazone-ethyl. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that children (1–2 years old) provide the most conservative short-term exposure scenario. Chronic dietary estimates (food + water) for this age group, combined with incidental oral exposure from turf use (hand-to-mouth) results in aggregate MOEs of 2,300. Because EPA's level of concern for carfentrazone-ethyl is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Although intermediate-term residential exposures are not anticipated, the relevant short-/intermediate-term PODs are the same and, therefore, the short-term risk assessment is protective of intermediate-term exposure.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, carfentrazone-ethyl is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to carfentrazone-ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. This analytical enforcement method involves separate analyses for parent and the metabolite. The parent is analyzed by evaporation and reconstitution of the sample prior to analysis by LC/MS/MS GC/ECD. The metabolite is refluxed in the presence of acid and cleaned up with solid phase extraction prior to analysis by LC/MS/MS.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international

food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex, Canadian, or Mexican MRLs established for carfentrazone-ethyl in or on the requested crops.

C. Revisions to Petitioned-For Tolerances

Based on the proposed uses and the submitted data, the Agency concludes that crop group 18 tolerances are appropriate for carfentrazone-ethyl, as opposed to individual tolerances on alfalfa and clover as proposed. These crop group tolerances are based on the submitted field trial data, which were conducted on the representative commodities for crop group 18, and the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedure.

V. Conclusion

Therefore, tolerances are established for residues of carfentrazone-ethyl, including its metabolites and degradates, as set forth in the regulatory text. Compliance with the tolerance levels is to be determined by measuring only the sum of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolite carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[-4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), calculated as the stoichiometric equivalent of carfentrazone-ethyl.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.515 is amended in paragraph (a) by revising the introductory text and by alphabetically adding the following entries to the table to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide carfentrazone-ethyl, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the following tolerance levels is to be determined by measuring only the sum of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H* -1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolite carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[-4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), calculated as the stoichiometric equivalent of carfentrazone-ethyl, in or on the following commodities:

Commodity	Parts per million
* * * * *	
Animal feed, nongrass, crop group 18, forage	2.0
Animal feed, nongrass, crop group 18, hay	5.0
Animal feed, nongrass, crop group 18, seed	15.0
* * * * *	

* * * * *

[FR Doc. 2012–10688 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0388; FRL–9346–6]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerances for residues of dimethomorph, (*E,Z*)-4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or certain commodities as discussed in this document. BASF Corporartion requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 4, 2012. Objections and requests for hearings must be received on or before July 3, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0388. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; email address: *gibson.tamue@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0388 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 3, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0388, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7800) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that EPA amend 40 CFR part 180 by raising tolerances for residues of the fungicide dimethomorph, in or on brassica, head and stem, subgroup 5A from 2.0 ppm to 5.0 ppm; brassica, leafy greens, subgroup 5B from 20.0 ppm to 30.0 ppm; green onion, subgroup 3B from 2.0 ppm to 11.0 ppm. The petition also requested that 40 CFR part 180 be amended by establishing a tolerance for the residues of the fungicide dimethomorph, in or on vegetable, leafy at 16 ppm (PP 0F7816). The notice

referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of October 27, 2010 (75 FR 66092) (FRL–8848–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7751) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that EPA establish a tolerance for residues of the fungicide dimethomorph, in or on grape at 3.5 ppm. The notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has revised the proposed tolerance level and commodity definition for vegetable, bulb, group 3 and removed the established tolerance for the regional registration for grape. Tolerances for the national registration for grape and onion, bulb subgroup 3–07A were lowered. Tolerances for brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; vegetable, leafy except brassica, group 4; onion, green, subgroup 3–07B were raised. Tolerances for grape, raisin were established for domestic registrations and were also raised. EPA is also establishing rotational crop tolerances for wheat, forage; wheat, hay; and wheat, straw. EPA has made various changes to the commodity definitions and tolerance levels sought in the petition and also is establishing rotational crop tolerances. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for dimethomorph including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with dimethomorph follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Dimethomorph has low acute toxicity via the oral and dermal routes of exposure. Chronic risk is regulated based on effects seen in body weight decrements and liver effects in the female rat. There was no evidence of increased incidence of any neoplasms at the limit dose tested in carcinogenicity studies tested in rats and mice. Dimethomorph is classified as ''not likely'' to be a human carcinogen based on the lack of evidence of carcinogenicity in carcinogenicity studies in rats and mice. The available data for dimethomorph does not show evidence of neurotoxicity. There is a subchronic neurotoxicity study available which demonstrated no neurotoxic effects in the study. In addition, neither the subchronic nor chronic toxicity studies in rats or dogs, nor the developmental toxicity studies indicated that the nervous system was affected by treatment with dimethomorph.

Specific information on the studies received and the nature of the adverse effects caused by dimethomorph as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Dimethomorph: Human Health Risk Assessment to Support Amended Use on Grapes, Bulb Vegetables, Leafy *Brassica* Vegetables, and Leafy Vegetables,'' pp. 35–38 in docket ID number EPA–HQ–OPP–2011–0388.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for dimethomorph used for human risk assessment is shown in the Table this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIMETHOMORPH FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	No endpoint attributable to a single dose was identified.	Not applicable	No study selected.
Acute dietary (General population including infants and children).	No endpoint attributable to a single dose was identified.	Not applicable	No study selected.
Chronic dietary (All populations)	NOAEL = 11 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.1 mg/kg/day. cPAD = 0.1 mg/kg/day	Carcinogenicity study in rats. LOAEL = 46.3 mg/kg/day based on decreased body weight and increases in liver lesions in female rats.
Cancer (Oral, dermal, inhalation)	Classification: ''Not likely to be Carcinogenic to Humans''		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. mg/kg/day = milligram/kilogram/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to dimethomorph, EPA considered exposure under the petitioned-for tolerances as well as all existing dimethomorph tolerances in 40 CFR 180.493. EPA assessed dietary exposures from dimethomorph in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No toxic effects attributable to a single dose were observed in the toxicological studies for dimethomorph; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT). Dietary Evaluation Exposure Model (DEEM) default processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., dimethomorph has been classified as ''not likely'' to be a human carcinogen. EPA has concluded that dimethomorph does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. Anticipated residue and PCT information. EPA did not use anticipated residue and/or PCT information in the dietary assessment for dimethomorph. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dimethomorph in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of dimethomorph. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of dimethomorph for acute exposures are estimated to be 81.1 parts per billion (ppb) for surface water and 0.264 ppb for ground water.

For chronic exposures for non-cancer assessments are estimated to be 24.7 ppb for surface water and 0.264 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For chronic dietary risk assessment, the water concentration of value 24.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethomorph is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found dimethomorph to share a common mechanism of toxicity with any other substances, and dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that dimethomorph does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this

provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The available data did not provide evidence of any increased susceptibility in the offspring in either of the two developmental toxicity studies or in the 2-generation reproduction study. In either of these two studies toxicity was not seen in the offspring occurring at doses lower than in the parent in any of the studies. Additionally, the effects seen in the young were qualitatively similar to those in the parents.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for dimethomorph is complete.

ii. There is no indication that dimethomorph is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that dimethomorph results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The unrefined chronic dietary risk assessment used tolerance level residues, included modeled drinking water estimates, assumed 100 PCT, and incorporated DEEM default processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dimethomorph in drinking water. These assessments will not underestimate the exposure and risks posed by dimethomorph.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, dimethomorph is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dimethomorph from food and water will utilize 27% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for dimethomorph and thus residential exposure to residues of dimethomorph is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethomorph is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to dimethomorph through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethomorph is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to dimethomorph through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, dimethomorph is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

FAMS–002–04 which utilizes high pressure liquid chromatography with ultraviolet detection (HPLC/UV) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for dimethomorph in or on grape at 2 ppm; and grape, raisin at 5 ppm. These MRLs are different than the tolerances being established for dimethomorph in this action because the MRLs are based on residue data derived from Europe.

C. Response to Comments

One comment was received from a private citizen (in reference to tolerance petition 0F7751) who encouraged the Agency to continue to reduce the risk to human health and the environment from pesticide usage. The Agency recognizes that some individuals believe that pesticide use should not be permitted. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

D. Revisions to Petitioned-For Tolerances

The crop group regulations (40 CFR 180.41) were recently amended pertaining to Crop Group 3—Bulb Vegetables, and the revised Crop group is designated Crop group 3–07 Bulb Vegetable. The revised crop group now contains two subgroups: Bulb, subgroup

3–07A and onion, green, subgroup 3–07B. Because BASF proposed to modify its existing Crop Group 3 tolerance by adding a revised green onion tolerance, EPA has determined it is appropriate to establish both onion, bulb subgroup 3–07A and onion, green, subgroup 3–07B tolerances rather than a Crop Group 3 tolerance and a green onion tolerance. Based on analysis of residue levels from crop field trail data and tolerance calculation procedures, EPA is setting the onion, bulb subgroup 3–07A tolerance at 0.6 ppm and the onion, green, subgroup 3–07B tolerance at 15 ppm. EPA is removing the existing Crop Group 3 tolerance.

Additionally, based on analysis of residue levels from crop field trail data and tolerance calculation procedures, EPA is raising tolerance levels for grape, raisin; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; and vegetable, leafy, except brassica, group 4. For the same reason, EPA is lowering the tolerance for grape. Additionally, because the Agency is amending the BASF registration to allow use on grapes in the U.S., EPA is removing the footnote in the tolerance stating that such a registration does not exist.

Subsequent to the filing of the petition, the petitioner requested that the Agency establish tolerances in cereal grain commodities (forage, hay and straw) that are rotated to fields following use dimethomorph on commodities covered by the tolerances established in this action. The Agency determined that rotated crop tolerances would be appropriate for wheat, forage; wheat, hay; and wheat, straw.

V. Conclusion

Therefore, amended tolerances are established for residues of dimethomorph, in or on brassica, head and stem, subgroup 5A at 6.0 ppm; brassica, leafy greens, subgroup 5B at 30.0 ppm; onion, bulb subgroup 3–07A at 0.6 ppm; onion, green, subgroup 3–07B at 15.0 ppm; grape at 3.0 ppm; and grape, raisin at 7.0 ppm. A tolerance is established for residues of dimethomorph, in or on vegetable, leafy except brassica, group 4 at 30.0 ppm. This regulation also establishes tolerances for the indirect or inadvertent residues of dimethomorph, in or on wheat, forage at 0.15 ppm; wheat hay at 0.15 ppm and wheat, straw at 0.4 ppm. Furthermore, this regulation removes established tolerances on vegetable, bulb, group 3 and footnote pertaining the lack of a registration for use on grapes.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.493 is amended as follows:

■ i. Remove the entry for ''Vegetable, bulb, group 3''; and footnote 1 from the table in paragraph (a);

■ ii. By revising the entries for ''Brassica, head and stem, subgroup 5A,'' ''Brassica, leafy greens, subgroup 5B'' and ''Grape, raisin'' and alphabetically adding new entries to the table in paragraph (a);

■ iii. Remove ''Grape'' from the table in paragraph (c);

■ iv. Revise paragraph (d) .

The amendments read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) * * *

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	6.0
Brassica, leafy greens, subgroup 5B	30.0
* * * * *	
Grape	3.0
Grape, raisin	7.0
* * * * *	
Onion, bulb, subgroup 3–07A	0.6
Onion, green, subgroup 3–07B	15.0
* * * * *	
Vegetable, leafy (except Brassica) group 4	30.0

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of the fungicide dimethomorph, in or on the commodities in the following table. Compliance with the following tolerance levels specified in the following table is to be determined by measuring only dimethomorph (*E,Z*)-4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)acryloyl]morpholine calculated in or on the following commodities:

Commodity	Parts per million
Wheat, forage	0.15
Wheat, hay	0.15
Wheat, straw	0.4

[FR Doc. 2012–10709 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0677; FRL–9345–3]

Fluoxastrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluoxastrobin in or on peanut and peanut, refined oil. Arysta LifeScience North America, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 4, 2012. Objections and requests for hearings must be received on or before July 3, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0677. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0677 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 3, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0677, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2011 (76 FR 43236) (FRL–8880–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #1F7871) by Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by revising tolerances for residues of the fungicide fluoxastrobin in or on peanut and peanut oil, from 0.01 and 0.03 to 0.02 and 0.06 parts per million (ppm) respectively. That notice referenced a summary of the petition prepared by Arysta LifeScinece North America, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected the commodity definition for peanut oil. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluoxastrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluoxastrobin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The most recent human health risk assessment for fluoxastrobin was conducted for use on the squash/cucumber crop subgroup 9B. Since that time, no new toxicology data have been submitted to the Agency and the hazard characterization and toxicity endpoints for risk assessment remain unchanged. Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule that established a tolerance for residues of fluoxastrobin in or on squash/cucumber subgroup 9B. This rule was published in the **Federal Register** of August 17, 2011 (76 FR 50893) (FRL–8884–4).

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is shown in Table 1 of the final rule published in the **Federal Register** of August 17, 2011.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a conservative dietary exposure assessment for fluoxastrobin. The assumptions of this dietary assessment included tolerance level residues and 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue information in the dietary assessment for fluoxastrobin. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Based on laboratory studies, fluoxastrobin persists in soils for several months to several years and is slightly to moderately mobile in soil.

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. Further information

regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 52.9 parts per billion (ppb) for surface water and 0.23 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 53 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Spot treatment and/or broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions: Because of the potential for application four times per year, exposure duration is expected to be short-term and intermediate-term. A short-term dermal endpoint was not identified; therefore, only intermediate-term dermal risks as well as short- and intermediate-term inhalation risks were assessed. Homeowner residential applicators are expected to be adults.

There is also the potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. While it is assumed that most residential use will result in short-term (1 to 30 days) post-application exposures, it is believed that intermediate-term exposures (greater than 30 days up to 180 days) are also possible. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The database for evaluating *in utero* or postnatal susceptibility includes developmental toxicity studies in both rats and rabbits and a 2-generation reproduction study in the rat. The data provide no indication of increased susceptibility of rats or rabbits to prenatal and postnatal exposure to fluoxastrobin.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluoxastrobin is complete with the exception of an acceptable functional immunotoxicity study. The Agency does have an immunotoxicity study for fluoxastrobin but it has deficiencies that make it unacceptable at this time. The study may be acceptable if additional information is submitted. Nonetheless, the Agency does not believe that conducting a new immunotoxicity study will result in a lower NOAEL than the regulatory dose for risk assessment. First, the available data do not indicate that fluoxastrobin results in primary immune system effects; a NOAEL for decreased spleen weight in the absence of histopathological findings (male rats) was 53 milligrams/kilogram/day (mg/kg/day). In addition, there was no indication of a functional effect on the immune system in the unacceptable mouse immunotoxicity study at doses as high as 2,383 mg/kg/day. Finally, the registrant recently submitted a new immunotoxicity study. The Agency has not fully reviewed the study at this time, but a preliminary screen indicates that fluoxastrobin does not appear to significantly affect the immune system and would not provide a Point of Departure lower than that currently used for risk assessment. For all of these reasons, the Agency therefore believes that no additional safety factor is needed to account for the deficiencies in the first immunotoxicity study.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to fluoxastrobin in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and

chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 47% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluoxastrobin is currently registered for uses that could result in both short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures of adults and children to fluoxastrobin. Because all short- and intermediate-term quantitative hazard assessments (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (i.e., the highest exposure estimates) in the risk assessments for adults. The Agency believes that most residential exposure will be short-term, based on the use pattern.

There is potential short- and intermediate-term exposure to fluoxastrobin via the dietary (which is considered background exposure) and residential (which is considered primary) pathways. For adults, these pathways lead to exposure via the oral (background), and dermal and inhalation (primary) routes. For children, these pathways lead to exposure via the oral (background), and incidental oral and dermal (primary) routes.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 630 for adults; 170 for children (1–2 years old). Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluoxastrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for animal commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Mexican, Canadian, or Codex MRLs or tolerances for fluoxastrobin in/on peanuts.

C. Revisions to Petitioned-For Tolerances

The proposed commodity term has been revised to agree with the Agency's Food and Feed Commodity Vocabulary. The petitioned for commodities were peanut and peanut oil. The correct commodity definitions are peanut and peanut, refined oil.

V. Conclusion

Therefore, tolerances are established for residues of fluoxastrobin, in or on peanut and peanut, refined oil at s 0.02 and 0.06 ppm respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions

of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.609 is amended by revising the following entries in the table in paragraph (a)(1) to read as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Peanut	0.02
* * * * *	
Peanut, refined oil	0.06
* * * * *	

* * * * *

[FR Doc. 2012–10704 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2010–0026]

RIN 2105–AE14

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: 6-acetylmorphine (6–AM) Testing

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The Department is amending certain provisions of its drug testing procedures for 6-acetylmorphine (6–AM), a unique metabolite of heroin. Laboratories and Medical Review Officers (MROs) will no longer be required to consult with one another regarding the testing for the presence of morphine when the laboratory confirms the presence of 6–AM. This rule is intended to streamline the laboratory process for analyzing and reporting 6–AM positive results and will facilitate MRO verification of 6–AM positive results.

DATES: The rule is effective July 3, 2012. Comments to this interim final rule should be submitted by June 4, 2012. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329;

Instructions: You must include the agency name and docket number DOT-OST–2010–0026 or the Regulatory Identification Number (2105–AE14) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

For its drug testing regulation, the Department of Transportation (DOT) is required by the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) to incorporate the laboratory testing protocols and standards established by the U.S. Department of Health and Human Services (HHS). The Omnibus Act requires that we utilize HHS-certified laboratories and that we follow the HHS Mandatory Guidelines for identifying the specific drugs for which we test and the scientific methodologies the laboratories must use for testing. Because of these requirements and to create consistency with certain aspects of the new HHS Mandatory Guidelines effective October 1, 2010 [73 FR 71858], the DOT published its final rule on August 16, 2010 [75 FR 49850], also effective October 1, 2010, to harmonize with many aspects of the revised Mandatory Guidelines.

One item with which the DOT harmonized was the laboratory testing for 6-acetylmorphine (6–AM) without a morphine marker. 6–AM is a unique metabolite produced when a person uses the illicit drug heroin. Prior to the October 1, 2010 rulemaking, both HHS and DOT regulations required the laboratory to first test for morphine, and if it detected morphine at the HHS/DOT cutoff of 2000ng/mL, the lab would then test for 6–AM.

In our final rule, we discussed the concern some commentors had about whether morphine needed to be present with a confirmed positive 6–AM result. We discussed the data and studies submitted to the docket addressing the question of whether there was research or studies showing that morphine must also be present and at what quantitations. As stated at 75 FR 49856, based on the comments to the docket and multiple scientific publications, the facts were:

- 6–AM confirmed positive tests do not need a morphine marker;
- Data showed that when one looks for morphine as a marker, it most always exists above the morphine confirmation cutoffs or above Limit of Detection (LOD); and
- If the morphine marker does not exist on a 6–AM positive result, there is ample scientific reason to strongly suggest recent heroin use.

We decided that, until more experience was gained with the new testing procedures for 6–AM, we would place additional requirements on the laboratories and the MROs. Specifically, when morphine was not detected at the HHS/DOT cutoff of 2000ng/mL, we added a requirement for the laboratory and MRO to determine whether morphine was detected at the laboratory's LOD. If morphine was not detected at the laboratory's LOD, the laboratory and MRO were to report that result to DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC). After consulting with ODAPC, the MRO would make a verified result determination, keeping in mind that there is no legitimate explanation for 6–AM in the employee's specimen [see § 40.151(g)].

Policy Discussion

From the October 1, 2010 effective date of the final rule through September 30, 2011, ODAPC has received, on average, 14 results per month from the laboratories and MROs that a specimen was positive for 6–AM with no morphine at the laboratory's LOD. During this period, we learned that the laboratory LODs ranged from 100ng/mL to 600ng/mL, and were set in accordance with National Laboratory Certification Program guidance to them.

As part of our monitoring process and with the varying LODs in mind, DOT worked with HHS to have their contractor, RTI International (RTI), conduct a study of those DOT specimens reported to ODAPC as confirmed positive for 6–AM and negative for morphine. The scope of the study was ''* * * to verify the atypical results obtained by the laboratories, to determine if other drugs or metabolites present in the specimen could explain the absence of morphine, and to determine if something other than heroin use could explain the presence of 6–AM.'' [1] The study consisted of aliquots (from the A bottles) of DOT specimens received by the laboratories between October and December 2010 and reported by the laboratory to the MRO as confirmed positive for 6–AM and negative for morphine.

The study reconfirmed the presence of 6–AM in all the specimens. By reconfirming the 6–AM results, the study confirmed ''* * * that the presence of 6–AM in these specimens was not due to laboratory contamination or 6–AM production during analysis.'' Morphine levels of >5ng/mL were also detected in all but 6 of the specimens. For these 6 specimens, the report went on to say that, ''While atypical for heroin exposure and metabolism, the remaining 6 specimens' results are consistent with literature reports of atypical 6–AM results after heroin exposure.'' The authors determined that other drugs or metabolites present in the specimen were not responsible for the absence of morphine. Furthermore, the study concluded, ''There was no evidence indicating that the 6–AM originated from a source other than heroin.'' [2]

Based upon these facts and research-based conclusions, there is no longer a need for laboratories to detect the present of morphine below the HHS/DOT established morphine cutoff of 2000ng/mL and for MROs to confer with ODAPC on verifying these 6–AM results. Based on the RTI study, morphine may be present below the laboratory's LOD. As we indicated in the preamble of the final rule [75 FR 49856], for those specimens where morphine was not present we believe there is a scientific explanation. Therefore, we will amend 49 CFR 40.87 and 40.97 to say that if the laboratory confirms a specimen as positive for 6–AM, and morphine is not at or above the 2000ng/mL cutoff, the laboratory will report the specimen results to the MRO without any additional testing for morphine. We will also revise 49 CFR 40.139 and remove section 40.140. Furthermore, the MRO will conduct the verification as he or she would for any other laboratory confirmed positive test result, with the understanding there is no legitimate explanation for the presence of 6–AM in the employee's specimen regardless of the morphine result.

Regulatory Analyses and Notices

Authority

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

Administrative Procedure Act

The Department has determined this rule may be issued without a prior opportunity for notice and comment because providing prior notice and comment would be unnecessary, impracticable, or contrary to the public interest since this rule was thoroughly discussed in a prior final rule effective October 1, 2010 [75 FR 49850]. This rule will reduce the burden on laboratories and MROs since it will remove certain provisions of the drug testing regulation which currently require the laboratories and MROs to confer with each other and ODAPC regarding laboratory tests positive for 6–AM with no morphine at the laboratory's LOD. It will also remove requirements for further laboratory testing where 6–AM is detected without the presence of morphine.

Providing an opportunity for prior notice and comment before publishing this interim final rule (IFR) would be unnecessary since it is based upon a final rule [75 FR 49850, August 16, 2010] that followed public notice and comment. In that rule we indicated we would determine what our first year of testing would reveal regarding the screening and confirmation testing of 6–AM and the presence of morphine. The first year has passed and from the information provided by the laboratories and MROs, and the collaborative scientific study with HHS, we learned morphine may be present below the laboratory's LOD. In addition, for those few specimens where morphine was not present the study stated that such results were consistent with literature reports of atypical 6–AM results after heroin use.

Providing an opportunity for notice and comment before publishing this IFR is also unnecessary since it makes only minor procedural and burden-relieving amendments to the rule text. Specifically, the rule will no longer require laboratories and MROs to consult with one another regarding the testing for the presence of morphine when the laboratory confirms the

[1] Anomalous Results of Morphine and 6-Acetylmorphine in Urine Specimens, Abstract at the 2011 Joint Meeting of Society of Forensic Toxicologists (SOFT) & The International Association of Forensic Toxicologists (TIAFT), San Francisco, CA, September 25–30, 2011.

[2] *Ibid.*

presence of 6–AM. In addition, laboratories and MROs will no longer be required to notify ODAPC of 6–AM only positive results.

Executive Order 12866 and Regulatory Flexibility Act

This Interim Final Rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. The rule makes minor procedural amendments to its rule text. The rule will impose no new burdens on any parties, and will actually decrease the burden upon the laboratories and the MROs. The Department consequently certifies, under the Regulatory Flexibility Act, that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 24th Day of April 2012, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

For reasons discussed in the preamble, the Department of Transportation amends Title 49 of the Code of Federal Regulations, Part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

§ 40.87 [Amended]

■ 2. In § 40.87 remove paragraph (e).

§ 40.97 [Amended]

■ 3. In § 40.97 remove paragraph (g).

■ 4. Section 40.139 is revised to read as follows:

§ 40.139 On what basis does the MRO verify test results involving opiates?

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive opiate result:

(a) If the laboratory confirms the presence of 6-acetylmorphine (6–AM) in the specimen, you must verify the test result positive.

(b) In the absence of 6–AM, if the laboratory confirms the presence of either morphine or codeine at 15,000 ng/mL or above, you must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.

(c) For all other opiate positive results, you must verify a confirmed positive test result for opiates only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (i.e., morphine, heroin, or codeine).

(1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:

(i) Recent needle tracks;

(ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;

(iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;

(iv) Use of a medication from a foreign country. See § 40.137(e) for guidance on how to make this determination.

(2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.

(i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.

(ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (c)(1)(iii) or (iv) of this section.

(3) To be the basis of a verified positive result for opiates, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you do not have grounds for verifying the test positive. The admission must be for the substance that was found).

(4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (e.g., there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

§ 40.140 [Removed]

■ 5. Remove § 40.140.

[FR Doc. 2012–10665 Filed 5–3–12; 8:45 am]

BILLING CODE 4910–9X–P

Proposed Rules

Federal Register
Vol. 77, No. 87
Friday, May 4, 2012

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0889; FRL–9666–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of 2011 Consent Decree to Control Emissions From the GenOn Chalk Point Generating Station; Removal of 1978 and 1979 Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the Maryland Department of the Environment (MDE). These revisions approve specific provisions of a 2011 Consent Decree between MDE and GenOn to reduce particulate matter (PM), sulfur oxides (SO_X), and nitrogen oxides (NO_X) from the GenOn Chalk Point generating station (Chalk Point). These revisions also remove the 1978 and 1979 Consent Orders for the Chalk Point generating station from the Maryland SIP as those Consent Orders have been superseded by the 2011 Consent Decree. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0889 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: spink.marcia@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0889, Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0889. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Project Officer, (215) 814–2104, or by email at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 16, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–10460 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0355(a); FRL–9666–6]

Approval and Promulgation of Implementation Plans; North Carolina; Charlotte; Ozone 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the ozone 2002 base year emissions inventory portion of the state

implementation plan (SIP) revision submitted by the State of North Carolina on November 12, 2009, with additional information provided in a supplement dated April 5, 2010. The emissions inventory is part of the Charlotte-Gastonia-Rock Hill, North Carolina ozone attainment demonstration that was submitted for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area'') is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. This action is being taken pursuant to section 110 of the Clean Air Act. EPA will take action on the South Carolina submission for the ozone 2002 base year emissions inventory, for its portion of the bi-state Charlotte Area, in a separate action. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments.

DATES: Written comments must be received on or before June 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0355(a) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0355(a),'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the North Carolina portion of the bi-state Charlotte Area under the 2008 ozone NAAQS will be addressed in the future. For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: April 18, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–10731 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0643; FRL–9652–5]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Eastern Kern, and Santa Barbara County; Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD), Eastern Kern Air Pollution Control District (EKAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve revisions to local rules that define terms used in other air pollution regulations in these areas and a rule rescission that address Petroleum Coke Calcining Operations—Oxides of Sulfur, under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by *June 4, 2012.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0643, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: AVAQMD Rule 1119; EKAPCD Rule 102; and SBCAPCD Rule 102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules and a rule rescission in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 8, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–10736 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2011–0660; FRL–9668–9]

Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The EPA published in the **Federal Register** on April 13, 2012, the proposed rule, ''Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units.'' The EPA is making two announcements: first, two public hearings will be held for the proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, and, second, the comment period for this rulemaking will be extended until June 25, 2012.

DATES: The public hearings will be held on May 24, 2012.

ADDRESSES: There will be two public hearings held on May 24, 2012. The Washington, DC hearing will be held at the Ariel Rios East Building, in Room 1153 located at 1301 Constitution Avenue, Washington, DC 20460; telephone (202) 564–1661. The Chicago, Illinois hearing will be held at the Ralph H. Metcalfe Federal Building in the Lake Michigan Room (12th Floor) located at 77 West Jackson, Chicago, Illinois 60603, telephone (312) 886–9404.

For both the Washington, DC and Chicago, Illinois hearings, visitors must go through a metal detector, sign in with the security desk, be accompanied by an employee and show photo identification to enter the building.

The public hearing in Washington, DC will convene at 8:30 a.m. and will continue until 4:30 p.m. A lunch break is scheduled from 12:00 p.m. until 1:00 p.m. The EPA plans to conclude the hearing at 4:30 p.m. All Washington, DC times are Eastern Daylight Time (EDT). The public hearing in Chicago will convene at 8:30 a.m. and will continue until 4:30 p.m. A lunch break is scheduled from 12:00 p.m. until 1:00 p.m. The EPA plans to conclude the hearing at 4:30 p.m. All Chicago times are Central Daylight Time (CDT). The EPA's Web site for the rulemaking, which includes the proposal and information about the hearings, can be found at: *http://epa.gov/carbonpollutionstandard/*.

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Garrett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–01), Research Triangle Park, North Carolina 27711; telephone: (919) 541–7966; fax number: (919) 541–5450; email address: *garrett.pamela@epa.gov* (preferred method for registering). The last day to register to present oral testimony in advance will be Friday May 18, 2012. If using email, please provide the following information: the time you wish to speak (morning or afternoon), name, affiliation, address, email address and telephone and fax numbers. Time slot preferences will be given in the order requests are received. Additionally, requests to speak will be taken the day of the hearings at the hearing registration desk and accommodated as time allows, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator, please let us know at the time of registration.

Questions concerning the March 27, 2012, proposed rule should be addressed to Mr. Christian Fellner, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D 243–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; facsimile number: (919) 541–5450; email address: *fellner.christian@epa.gov*.

Public hearing: The proposal for which the EPA is holding the public hearings was published in the **Federal Register** on April 13, 2012 (77 FR 22392), and is available at: *http://www.epa.gov/carbonpollutionstandard/* and also in the docket identified below. The public hearings will provide interested parties the opportunity to present oral comments regarding the EPA's proposed standards, including data, views or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Garrett if they will need specific equipment or if there are other special needs related to providing comments at the public hearings. The EPA will provide equipment for commenters to make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to submit to the docket a copy of their oral testimony electronically (via email or CD) or in hard copy form.

The public hearing schedules, including lists of speakers, will be posted on the EPA's Web site at *http://www.epa.gov/carbonpollutionstandard/*. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule, ''Standards of

Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units'' under No. EPA–HQ–OAR–2011–0660, available at *www.regulations.gov*.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 2012.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–10825 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0802; FRL–9348–3]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0802 and the pesticide petition number (PP), by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0802 and the pesticide petition number (PP). EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; email address: *bryceland.andrew@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. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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 submitting comments, remember to:*

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

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 pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available online at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

EPA is providing a shortened comment period of 10 days on this notice of filing. EPA is expediting this petition because the time limited tolerances for 2,6-DIPN and its metabolites and degradates is set expire on May 18, 2012.

PP 9F7626. Loveland Products, Inc., 7251 W. 4th St., Greeley, CO 80634, requests that 40 CFR 180.590 be amended by extending the effective dates of existing time-limited tolerances for residues of the biochemical pesticide, 2,6-diisopropylnaphthalene (2,6-DIPN) and its metabolites and degradates resulting from post harvest applications, in or on the following food and edible livestock commodities for three years: Potato, whole at 2.0 parts per million (ppm); potato peel at 6.0 ppm; potato, granules/flakes at 5.5 ppm; cattle, goat, hog, horse, sheep, fat at 1.0 ppm; cattle, goat, hog, horse, sheep, liver at 0.5 ppm; cattle, goat, hog, horse, sheep, meat at 0.2 ppm; cattle, goat, hog, horse, sheep, meat byproducts at 0.4 ppm; and milk, fat at 0.5 ppm. The High-performance Liquid Chromatograph (HPLC) is used to measure and evaluate the chemical 2,6-diisopropylnaphthalene (2,6-DIPN).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 2012.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2012–10721 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 120417006–1018–01]

RIN 0648–XA496

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Dwarf Seahorse as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Ninety-day petition finding, request for information, and initiation of status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the dwarf seahorse (*Hippocampus zosterae*) as threatened or endangered and designate critical habitat under the Endangered Species Act (ESA). We find that the petition and information in our files present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species (see below).

DATES: Information and comments on the subject action must be received by July 3, 2012.

ADDRESSES: You may submit comments, identified by the code NOAA–NMFS–2012–0101, addressed to: Calusa Horn, Natural Resource Specialist, by any of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- *Facsimile (fax):* 727–824–5309.
- *Mail:* NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Hand delivery:* You may hand deliver written comments to our office during normal business hours at the street address given above.

Instructions: All comments received are a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit

confidential business information or otherwise sensitive or protected information. We will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Calusa Horn, NMFS, Southeast Region, (727) 824–5312; or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2010, we received a petition from the Center for Biological Diversity to list the dwarf seahorse (*Hippocampus zosterae*) as threatened or endangered under the ESA. The petitioner also requested that critical habitat be designated. The petition states that the species is declining and threatened with extinction due to loss or curtailment of seagrass habitat and range, overutilization resulting from commercial seahorse collection, inadequacy of existing regulatory mechanisms, vulnerable life-history parameters, noise, bycatch mortality, illegal fishing, invasive species, and tropical storms and hurricanes. Copies of this petition are available from us (see **ADDRESSES,** above) or at *http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm*.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 12 months of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by us and the USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action ''may be'' warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risks that are cause for concern; this may be indicated in information

expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response. Many petitions identify risk classifications made by other organizations or agencies, as evidence of extinction risk for a species. Risk classifications of the petitioned species by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Species Description

Hippocampus zosterae is commonly known as the dwarf or pygmy seahorse (hereafter dwarf seahorse). The dwarf seahorse is one of the smallest species of seahorses, with adult height ranging from 2 to 2.5 centimeters (Lourie *et al.,* 2004). In general, seahorses have heads positioned at right angles to their bodies, curved trunks, and a prehensile, finless tail. The dwarf seahorse varies in coloration; individuals can be beige, yellow, green, or black, and some individuals have white marking or dark spots. Seahorses can change coloring and grow skin filaments over time to blend in with their surroundings. Short-term color changes may also occur during courtship and other intra-species interactions. Seahorse skin is stretched over a series of bony plates that form rings around the trunk and tail. The dwarf seahorse has 9 to 10 trunk rings, 31 to 32 tail rings, and 12 pectoral fin rays (Lourie *et al.,* 2004). Seahorses in general are ambush predators, consuming primarily live, mobile prey, such as small amphipods and other invertebrates (Bruckner *et al.,* 2005).

Dwarf seahorse males and females are sexually dimorphic; males have a relatively longer tail and a shorter snout (Foster and Vincent, 2004). Male and female dwarf seahorses form monogamous pair bonds and remain together and mate repeatedly over the course of a single breeding cycle (Masonjones and Lewis, 1996; 2000). The breeding season for the dwarf seahorse occurs February through November and appears to be influenced by environmental parameters such as day length and water temperature (Foster and Vincent, 2004). During copulation the female deposits her egg clutch into the male's brood pouch where it is fertilized (Foster and Vincent, 2004). The gestation period within the male's brood pouch is approximately 10 to 13 days, and males can carry two broods a month. Most male seahorse species can produce 100 to 300 young per pregnancy cycle. However, smaller seahorse species, such as the dwarf seahorse, release 3 to 16 offspring per cycle (Masonjones and Lewis, 1996). Juvenile dwarf seahorses are independent at birth, receiving no further parental care. Juveniles reach maturity in 3 months (Foster and Vincent, 2004). The dwarf seahorse generally lives 1 to 2 years, though living longer than a year is considered rare (Alford and Grist, 2005).

The dwarf seahorse's distribution ranges across the sub-tropical northwest Atlantic and has well-defined habitat preferences. Bruckner *et al.* (2005) describe the species' distribution as patchy and its abundance as generally low. This species occurs in insular locations, including Bermuda, the Bahamas, and Cuba; along Atlantic continental shorelines from northeast Florida through the Florida Keys; and, in the Gulf of Mexico south to the Gulf of Campeche (Bruckner *et al.,* 2005). The dwarf seahorse's habitat is restricted almost completely to seagrass canopies (Bruckner *et al.,* 2005). Seahorses are characterized as feeble swimmers with low mobility that may disperse by clinging to drift macroalgae or debris (Foster and Vincent, 2004; Masonjones *et al.,* 2010). The dwarf seahorse exhibits preferences for areas with dense and high seagrass canopies, in shallow waters less than two meters, and higher salinities (~30 ppm) (Alford and Grist, 2005; Bruckner *et al.,* 2005; Vincent, 2004). Sogard *et al.* (1987) found total seagrass shoot density is positively correlated with density of *H. zosterae.* Seahorse populations were significantly correlated with water flow, with individuals being more likely to be located in low-flow areas, such as protected bays and lagoons, rather than high-flow areas, such as bridge cuts (Bruckner *et al.,* 2005). The species is described as occurring predominantly in Florida's estuaries, but is said to be ''more abundant'' in south Florida and the Florida Keys. According to Bruckner *et al.* (2005), the dwarf seahorse does not appear to be common in many areas in the Gulf of Mexico, west of Florida.

Analysis of the Petition

We evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition states the administrative measures recommended, and provides the scientific and common name of the species. The dwarf seahorse is taxonomically classified as a species and thus is an eligible entity for listing under the ESA. The petition includes a detailed narrative justification for the recommended measure, including some information on numbers of the species, historical geographic occurrences of the species, and threats faced by the species (see summary below). The petition provides some information relevant to the status of the species. The petition includes supporting references and documentation. Therefore, we conclude the petition meets the requirements of 50 CFR 424.14(b)(2). A detailed description of their narrative justification follows.

According to the petitioner, at least four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the dwarf seahorse, specifically: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. In the following sections, we use the information presented in the petition and in our files to determine whether the petitioned action may be warranted.

Information on Extinction Risk and Species Status

Information on extinction risk and species status in the petition includes references cited in support of the conclusion that the dwarf seahorse has declined or is declining, several risk classifications by governmental and non-governmental organizations, and discussion of life history and demographic characteristics that make the species intrinsically vulnerable to decline, particularly in conjunction with threats and impacts such as habitat loss.

The petitioner characterizes *H. zosterae* as numerically low in abundance where it occurs, and describes numerous studies as indicating the species' population trend is declining. In addition, the petitioner states that a declining population trend can be inferred from loss of seagrass habitats, because the species is a habitat generalist. The petitioner cites various surveys and studies that indicate that dwarf seahorse populations have declined in many estuarine and bay systems throughout the species range. Several citations characterize the dwarf seahorse as common, abundant, or a dominant species. However, the petitioner believes that these characterizations are not supported, because the number of dwarf seahorses collected was a numerically low component of the studies and surveys. The information provided in some of the studies is limited and it is difficult to determine whether the sampling methodology was appropriate for dwarf seahorse collection. For example, studies that sampled a variety of habitat types (i.e., seagrass, mud or sand banks, and deeper bays or channels, etc.) using a methodology that may not be conducive for seahorse collection (e.g., larger mesh sizes), would likely collect few dwarf seahorses. Therefore, the study results may not necessarily represent low abundance or a declining population trend, but could be due to use of a sampling method that is not conducive for surveying the species. However, the petitioner also cites several studies that indicate that the species is not very common or abundant throughout most of its range (i.e., Gulf of Mexico, west of Florida). Several citations have also documented dwarf seahorse declines in many surveyed seagrass systems in Florida. Declining populations of the dwarf seahorse have been observed to occur in conjunction with seagrass loss.

The petitioner cites various status classifications made by the American Fisheries Society (AFS), International Union for Conservation of Nature (IUCN), Florida Fish and Wildlife Conservation Commission (FFWCC), the Nature Conservancy (TNC), the Commonwealth of Puerto Rico, and the Commission for Environmental Cooperation to support its claim that the dwarf seahorse should be listed as threatened or endangered under the ESA. As discussed above, we do not give any particular weight to classifications established by other scientific and conservation organizations, which may or may not be based on criteria that directly correspond to the listing standards of the ESA. However, we have reviewed and evaluated the underlying information used to develop the various classifications given to the dwarf seahorse by entities listed in the petition.

The AFS designated the dwarf seahorse as ''vulnerable'' in 2000. According to AFS, this classification is given to species that are ''(special concern) not endangered or threatened severely but at possible risk of falling into one of these categories in the near future.'' AFS gave the dwarf seahorse this categorization based on (1) rarity, (2) habitat degradation, and (3) restricted habitat. AFS provided several citations to supporting these characterizations, but only one of them was available to us or provided by the petitioner. The available citation, Fourqurean and Robblee (1999), analyzed ecological changes (i.e., seagrass die-off, algal blooms, and increased turbidity) in the Florida Bay estuary. The study examined the ecological changes that transpired as a result of a large seagrass die-off that occurred in Florida Bay during the late 1980s. The study noted that fish and invertebrates inextricably associated with seagrass habitat dramatically declined following the referenced seagrass die-off, lending support to the AFS classification.

The petition cites the IUCN's classification of the dwarf seahorse as ''Data Deficient,'' which the IUCN assigns to a species ''when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status.'' The IUCN database entry for dwarf seahorse does not contain any information directly assessing the species' population trends or its extinction risk. However, the entry does include referenced conclusions in support of the petition's conclusion that the species' status may be inferable from losses of and threats to its seagrass habitats, at least in the United States (''This species may be particularly susceptible to decline. The information on habitat suggests they inhabit shallow seagrass beds (Lourie *et al.,* 1999) that are susceptible to human degradation, as well as making them susceptible to being caught as bycatch * * * The American Fisheries Society (AFS) lists the United States populations of *H. zosterae* as Threatened due to habitat degradation (Musick *et al.,* 2000). While this status may apply on a national level, we did not find information that would justify such a listing for the species as a whole.'').

The FFWCC lists the dwarf seahorse as a Species of Greatest Conservation Need (SGCN) in the state of Florida's Wildlife Action Plan (FFWCC, 2005). SGCN's are defined as ''animals that are at risk or are declining.'' The Action Plan categorizes the dwarf seahorse's population status as low and population trend as stable. We cannot evaluate any underlying information used to categorize the dwarf seahorse as a SGCN because the information provided in Florida's Wildlife Action Plan does not include species-specific information, although the plan does also describe the status of submerged aquatic vegetation in Florida, particularly seagrasses, as ''poor and declining,'' ranking numerous threats to these habitats as ''very high'' or ''high.''

TNC listed the dwarf seahorse as imperiled in their ''Identification of Priority Sites for Conservation in the Northern Gulf of Mexico: An Ecoregional Plan'' (Beck *et al.,* 2000). The objective of the Ecoregional Plan was to identify biologically diverse habitats within the northern Gulf of Mexico, defined as extending from Anclote Key, FL to the Laguna Madre de Tamaulipas, Mexico, and to establish high priority sites for conservation. The plan also identified individual species as ''conservation targets'' in addition to identification of priority habitat sites for conservation. ''Conservation target'' species were included if: ''(i) They were imperiled and conservation of their habitats would be insufficient for their conservation or (ii) they were declining faster than their habitats.'' The plan identified the following species as conservation target species, notably including several species listed under the ESA as threatened or endangered: the dwarf seahorse, fringed pipefish, opossum pipefish, Texas pipefish, diamondback terrapin, Gulf sturgeon, Florida manatee, and the Kemp's ridley sea turtle. The plan was based in part on a Geographic Information Systems database developed from ''all the readily available information on the distribution of these [conservation] targets.''

In their 2009 report on Marine Ecoregions of North America, the Commission for Environmental Cooperation categorized the dwarf seahorse as a ''species at risk'' within the northern Gulf of Mexico (Wilkinson *et al.,* 2009). However, because there is no description of how the ''at risk'' categorization was determined, we cannot further assess the Commission for Environmental Cooperation's ''species at risk'' categorization. The petitioner also states that the dwarf seahorse is recognized as a Species of Concern by the Commonwealth of Puerto Rico, but provides no citation or information on this designation; we were unable to evaluate the referenced categorization made by the petitioner.

The petitioner describes life history characteristics generally applicable to the genus *Hippocampus* that could be indicative of its extinction risk, for which the petition provides supporting information (Baum *et al.,* 2003; Foster and Vincent, 2004; Lourie *et al.,* 2004; Masonjones *et al.,* 2010). We believe that the dwarf seahorse's life history characteristics in and of themselves are likely well-adapted for the species' ecological niche. However, the petition presents information on other threats (i.e., habitat loss and overutilization) that may interact with these life history characteristics to increase extinction risk. The dwarf seahorse's narrow habitat preference and low mobility could increase the species' ecological vulnerability. Similarly, patchy spatial distributions in combination with low population density make a species susceptible to habitat loss or change. The petition and references also suggest that other life history characteristics, such as low fecundity, complex reproductive behavior, and monogamous mating systems may also increase the species' vulnerability. Seahorse species have complex reproductive behavior and appear to be monogamous at least within a single breeding cycle; if courting or pair bonds are disrupted due to removal or disturbance during courtship or mating it may diminish the productivity within a single breeding cycle. Low fecundity could reduce the ability for population recovery from overexploitation of particular areas. The low mobility and patchy distribution of dwarf seahorse suggest that the species may be slow to recolonize depleted areas. This is particularly true given that the dwarf seahorse is restricted to seagrasses (Alford and Grist 2005; Lourie *et al.,* 2004), which in some areas have declined substantially over the course of several decades (Waycott *et al.,* 2009). The importance of life history characteristics in determining responses to exploitation has been demonstrated for a number of species (Jennings *et al.,* 1998).

In summary, the information presented indicates that the dwarf seahorse has a patchy distribution and is not very abundant or common in many areas throughout its range. Declines in the dwarf seahorse population have been documented in a number of Florida's estuaries and bays. It is evident that the dwarf seahorse is inextricably associated with seagrass and the inferences made about the species' declining status due to habitat loss are supported.

The petition also includes risk classifications for the dwarf seahorse made by other organizations; however these do not include a specific analysis of extinction risk for the dwarf seahorse. While the species is present on these lists, they provide no analysis of population size and trends or other information directly addressing whether the species faces extinction risk that is cause for concern. However, in some of these classifications the dwarf seahorse's status is linked to the degraded or threatened status of seagrass habitats, which supports a similar contention made by the petition. The petitioner presents substantial scientific or commercial information indicating that the species' life history and demographic characteristics make it vulnerable to decline and potential extinction risk, particularly in conjunction with threats to the species including loss of its habitat.

Information on Impacts and Threats to the Species

The petitioner states that impacts and threats corresponding with four factors in section 4(a)(1) of the ESA are impacting the dwarf seahorse. Specifically, the petitioner states that the following factors are affecting the dwarf seahorses continued existence: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information from the petition and in our files suggests that the primary threat to the dwarf seahorse is from habitat decline. The petitioner states that the dwarf seahorse is threatened by the loss and degradation of seagrass habitat, which increases the species' vulnerability. The petitioner references considerable seagrass loss throughout the species range and especially in the northern Gulf of Mexico which has occurred over the course of several decades, and provides summaries of indirect and direct anthropogenic factors that continue to impact seagrasses (oil and gas development, loss and degradation of mangrove habitat, declining water quality, development and human population growth, damage from vessels, trawling and global climate change). Seagrass declines cited within the petition range from 6–90 percent (Waycott *et al.,* 2009), depending on the timeframe, geographic area, and system (i.e., estuary, coastal water, or bay).

In Texas, the petition cites a 90 percent decline in ''vascular vegetation'' which occurred within the Galveston Bay system on the upper Texas coast from 1956 to 1990 (Pulich and White, 1990). Waycott *et al.* (2009) also documented a 90 percent decline in seagrass acreage within the Galveston Bay system from 1956 to 1998. Hadley *et al.* (2007) reported that nearly all seagrass beds ''disappeared from the main parts of Galveston Bay in the 1970's'' and attributed the decline to a variety of anthropogenic impacts, as well as natural events. The petitioner notes that eutrophication and harmful algal blooms have caused seagrass declines in Corpus Christi, Laguna Madre, and Baffin Bay (An and Gardner, 2000; Breier *et al.,* 2004). Several factors, both natural (i.e., droughts, hurricanes, fresh water flows, etc.) and human-induced (i.e., nutrient loading or water quality, sedimentation caused by dredging, prop scarring caused by vessel traffic, and direct physical disturbance), are believed to be affecting the health, abundance, distribution, and density of seagrasses in Texas (Handley *et al.,* 2007; Pulich and White, 1997).

The petition provides evidence that Alabama and Mississippi have also experienced extensive seagrass loss. Alabama documented an 82 percent decline in seagrass coverage within Mobile Bay between 1981 and 2003. Perdido Bay lost approximately 75 percent of its seagrass coverage from 1940 to 2003. Similarly, Mississippi Sound experienced a 50 percent decline in seagrass coverage from 1992 to 2003 (Waycott *et al.,* 2009).

For Florida, the petitioner references a USFWS Conservation Plan and Environmental Assessment for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee National Wildlife Refuges, which states that Florida has lost more than 50 percent of its seagrass

habitat since the 1950s (USFWS, 2010). The petition also cites the Florida State Wildlife Action Plan's status rank for Florida's submerged aquatic vegetation of ''poor and declining,'' and the Plan's identification of numerous stresses to seagrass ranked as ''very high'' or ''high'' (e.g., altered water quality, habitat destruction, altered species composition, and sedimentation) (FFWCC, 2005). The petition references seagrass loss in northwestern Florida (e.g., Pensacola Bay, Choctawhatchee Bay, St. Andrew Bay, and the Big Bend region) (USGS, 2004; Waycott *et al.,* 2009). Florida's Big Bend region lost approximately 667,184 acres of seagrass between 1984 and 1992 (USGS, 2004). The petition references several studies that report seagrass loss in southwestern Florida's estuary and bay systems, including Tampa Bay, Sarasota Bay, Greater Charlotte Harbor, Naples Bay, Faka Union Bay, Fakahatchee Bay, and Florida Bay. The petition states that Tampa Bay lost approximately 60 percent of seagrass coverage between 1879 and 2006 (Waycott *et al.,* 2009), that seagrass in Sarasota Bay decreased from 12,073 acres in 1950 to approximately 9,063 acres in 2001 (Waycott *et al.,* 2009), and that seagrass in Naples Bay decreased by 90 percent since the 1950s (FDEP, 2010). The 2010 Florida Department of Environmental Protection (FDEP) Environmental Assessment for Southwest Coastal Estuaries refers to an ''ecosystem analysis'' conducted by Carter *et al.* (1973) which documented that Fakahatchee Bay contained 57 percent seagrass coverage and Union Bay contained 23.1 percent seagrass coverage in the early 1970s. Carter *et al.* (1973) also documented three species of seagrasses in these areas (*Halophila decipiens, H. wrightii,* and *Thalassia testudinum*), however the FDEP assessment cites an unpublished 2005 study by Locker that suggests that since the 1970s seagrass species composition in Fakahatchee Bay has been reduced to a single species (*H. decipiens)* and that Faka Union Bay has lost all seagrass cover.

The petitioner identifies oil and gas refining and the byproducts from such activities as a specific source of ongoing impacts to seagrass habitats. The petition references the DWH oil spill, stating that ''a significant portion of *H. zosterae's* range is threatened by pollution from the spill, which covered vast areas in the Gulf.'' The petitioner states that oil pollution and the use of dispersants has resulted in the direct mortality of the dwarf seahorse, the destruction and degradation of their seagrass habitat, and contamination and reduction of their invertebrate prey. The petition references a Project Seahorse news release (2010) where scientists at the organization caution that the dwarf seahorse could face extinction as a result of the DWH oil spill, citing impacts such as direct mortality due to high toxin levels, contamination of habitat, as well as contamination of the species food sources. The petition cites peer-reviewed scientific literature which supports the claim that oil pollution and the use of dispersants can adversely affect seagrasses and fishes at all life stages. Information was provided on the quantities of oil and methane released into the Gulf of Mexico, as well as the amount of coastal shoreline damaged by the DWH oil spill. The petitioner also discusses the long-term pollution that the oil industry causes to coastal environments in general.

The petitioner also presents arguments that the destruction of Florida's mangrove habitats may be adversely affecting the dwarf seahorse ''to the extent that seagrass beds are negatively affected by the loss of mangroves, or that mangroves provide direct habitat value for the seagrasses,'' because ''in some areas seagrass beds occur in close association with mangroves, with mangroves protecting seagrass beds by trapping sediments and stabilizing shorelines (Hoff *et al.,* 2010; Pauly and Ingles, 1999).'' However, the petition does not provide information to characterize the extent of the association between mangroves and seagrasses, and the petition is limited to generalized statements of potential sources of threats to seagrasses from impacts to mangroves. We acknowledge that mangroves in Florida have been destroyed or degraded in large amounts over the course of decades, and face many of the same ongoing threats of loss and degradation as do seagrasses, discussed elsewhere in this finding.

The petition lists several other factors it identifies as contributing to seagrass loss including declining water quality, development and human population growth, damage from vessels, trawling, and global climate change. As discussed above, extensive seagrass loss has occurred throughout the Northern Gulf of Mexico over the last several decades. The causes for these losses are many, but include climate and water-level variations, physical removal, smothering with sedimentation, light reduction resulting from turbidity or phytoplankton, and increased nutrient loading (Handley *et al.,* 2011). Seagrasses are highly dependent on water quality and clarity for their survival, and reduced water quality due to nutrient loading, algal blooms, and contamination resulting from non-point source pollution, such as storm water run-off, has been identified as a threat/stressor to seagrass. The petition cites development and human population growth as a factor which increases the dwarf seahorse's risk of extinction. The petition cites Lellis-Dibble *et al.* (2008) as support for its statement that human population growth affects coastal resources, stating that ''53 percent of the current U.S. population lives in coastal counties, creating tremendous stress on coastal resources.'' The petition references various activities that are often associated with coastal development (i.e., dredging and channelization, vessel prop scarring, increased water pollution, altered hydrologic and salinity regimes), which are all also recognized to cause stress and/or degradation to seagrass habitat. The potential consequences of threats to the dwarf seahorse habitat are discussed above.

In summary, the petition and its references present substantial information that indicates the present or threatened destruction, modification, or curtailment of habitat or range may be causing or contributing to extinction risk that is cause for concern for the dwarf seahorse.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner cites information that dwarf seahorse populations are declining and that their life history characteristics (sparse distribution, low population densities, low mobility, small home ranges, slow re-colonization potential, low rates of population increase, highly structured social and reproductive behavior) increase their vulnerability to overexploitation, and that the demand for seahorses in the aquarium, curio, and traditional Chinese medicine trades is increasing, further exasperating the species' exploited status.

Dwarf seahorses are harvested commercially to be sold and traded live as aquarium fishes, and are also dried and sold at curio shops as souvenirs, or processed into key chains, jewelry, ornaments, paperweights, etc. There is also a high demand for seahorses in the traditional Chinese medicine trade where they are believed to cure several health disorders (Vincent, 1995). Smaller sized, bony seahorses, such as the dwarf seahorse, are less desirable for the purpose of traditional Chinese medicine (Lourie *et al.,* 2004). However, Vincent (1995) stated that ''poor quality'' seahorses are increasingly

susceptible to overexploitation by the traditional Chinese medicine trade because the supplies of larger ''good quality'' seahorses are in decline. In 2004, concerns over the international trade of seahorses resulted in all seahorse species being protected under Appendix II of the Convention for the International Trade in Endangered and Threatened Species (CITES; for further discussion, see next section). A CITES technical memorandum on the international conservation and trade of seahorses (Bruckner *et al.,* 2005) noted that the dwarf seahorse is one of 17 seahorse species observed or reported to be traded. Several publications have noted the popularity of the dwarf seahorse in the aquarium trade (Vincent, 1996; Woods, 2001). Woods (2001) found that the dwarf seahorse is the second most exported ornamental fish in Florida. Koldewey *et al.* (2010) conducted an international review of the seahorse aquaculture trade from 1997 to 2008 and found that 100 percent of dwarf seahorse exports were wild-caught individuals, not captive-bred. Alford and Grist (2005) suggest that wild dwarf seahorse populations have decreased in Florida and that the species is difficult to locate and harvest in areas where it was once considered common.

The only seahorse commercial fishery in the United States is located in the state of Florida. Bruckner *et al.* (2005) state that most of the seahorse harvest in Florida is for the dried curio market. Dwarf seahorses are primarily harvested in state waters as targeted catch by divers using nets or as bycatch by fishers using trawls (e.g., in the live-bait shrimp fishery) with some seahorse harvest conducted by seine or dredge (Bruckner *et al.,* 2005). A study conducted on the Marine Life Fishery in Florida from 1990 to 1998 (Adams *et al.,* 2001) documented a five-fold increase in seahorse landings between 1991 and 1992 (from 14,000 harvested in 1991 to 83,700 harvested in 1992). The increased landings primarily consisted of the dwarf seahorse. Bruckner *et al.* (2005), state that 90 percent of the dwarf seahorse harvest is in southeast Florida and the Florida Keys region and that more than 50 percent of the harvest in southwest Florida was collected by divers from 1990 to 2003. The number of seahorses landed in Florida varied between 1990 and 2003, from 6,000 to 111,000 individuals per year. Approximately 91 percent of those landings were dwarf seahorses, so the number of dwarf seahorses landed (1990–2003) ranged from 2,142 to 98,779 individuals per year (Bruckner *et al.,* 2005). The petition provides data on the quantities of seahorses being exported, allotted bag limits permitted by the State of Florida, and the ways in which the species is commercially utilized (e.g., aquarium market, curio market, and Chinese traditional medicine trade).

Commercial harvest may be negatively affecting dwarf seahorse populations. The petition and its supporting citations also indicate that commercial demand for the dwarf seahorse is extensive, and that populations in some geographic areas where they are harvested may have declined. Therefore, based on the standards for making 90-day findings, we accept the petition's characterizations of the information presented and conclude that substantial information in the petition and in our files suggest overutilization may be a factor contributing to extinction risk for the dwarf seahorse.

Inadequacy of Existing Regulatory Mechanisms

The petitioner states that regulatory mechanisms at the international, federal, and state level are inadequate to protect the dwarf seahorse from commercial overharvest and trade, and inadequate to protect its seagrass habitat from loss and degradation. As such, the petitioner argues that inadequacy of existing regulatory mechanisms is one of the factors causing the species to be threatened or endangered.

The petition notes that in 2004, the entire genus *Hippocampus,* including the dwarf seahorse, was listed under Appendix II of CITES. Species listed under Appendix II are those in which trade must be controlled in order to avoid utilization incompatible with their survival, but are not necessarily at risk of extinction. International trade of CITES Appendix II species can take place if an export permit is issued. Export permits are only issued if the Management Authority of the exporting country is satisfied that the specimens were ''legally obtained'' and the Scientific Authority of the exporting country advises that the ''export will not be detrimental to the survival of the species in the wild.'' The petition lists several reasons it believes that CITES Appendix II does not effectively protect the dwarf seahorse from overexploitation: it does not apply to seahorses that are traded entirely within the U.S. domestic markets, not all exports are inspected, and certification that trade is not detrimental to the persistence of the dwarf seahorse is not possible because no comprehensive population data is available. The petition and citations indicate that no stock assessment has been conducted for the dwarf seahorse.

The petitioner also states that the CITES listing is not sufficient to protect the dwarf seahorse from illegal trade occurring in Mexico, and cites references finding that most seahorse trade in Mexico occurs on the black market. Mexican populations of dwarf seahorse are listed in the NOM–059–SEMARNAT–2001 as species subject to special protection; Mexico prohibits the intentional capture and trade of wild seahorses, permitting only the commercialization of cultured and incidentally caught seahorses (Lourie *et al.,* 2004). The petitioner acknowledges that Mexico prohibits the deliberate capture and trade of wild seahorses and only authorizes the trade of seahorses if they are ''incidentally caught in non-selective fishing gear.'' However, the petitioner asserts that Mexico's regulations and enforcement of those regulations are inadequate to protect the dwarf seahorse from decline or illegal harvest.

The petitioner also argues that other existing regulatory mechanisms at the Federal (Magnuson-Stevens Fishery Conservation and Management Act, National Marine Sanctuaries Act) and state level relevant to the U.S. seahorse trade (Florida laws and regulations, discussed below) are also inadequate to protect the species. Neither Federal law prohibits collection of the dwarf seahorse. Florida has regulatory mechanisms that require anyone wishing to collect or sell dwarf seahorses to have a Saltwater Product License, a Marine Life Endorsement, and a Restricted Species Endorsement under Florida law (Chapter 370.021.01(2)(a)) and Administrative Code 16R–500). There is a commercial bag limit of 400 dwarf seahorses per person or per vessel per day (whichever is less), and a recreational bag limit of 5 dwarf seahorses per person, per day (FL 68B–42.005), but no apparent cap on total annual take of the species. There are no seasonal restrictions or closures for this fishery. There does not appear to be a limit on the number of seahorses that can be collected as bycatch, but the landings value of all marine life bycatch must be less than $5,000 annually (Florida Marine Fisheries Commission, 2009).

The petitioner also argues that existing regulatory measures do not adequately protect the dwarf seahorse's seagrass habitat. The petition references declining water quality and the physical damage (prop scarring) caused by recreational and commercial vessels as contributing to the decline of seagrass

habitat throughout the dwarf seahorse's range. The petition states that the protections of the Florida Keys National Marine Sanctuary have not prevented ongoing threats to seagrasses since the sanctuary's designation. Similarly, the petition states that loss and degradation of seagrasses is not prevented within other areas protected by the state or federal governments. The petitioner acknowledges that federal regulations such as the Coastal Zone Management Act provide a degree of habitat protection, but say that despite the Act's intentions, seagrass habitat continues to decline throughout the dwarf seahorse's range.

The petitioner also states that protection from oil pollution is inadequate because, while the Oil Pollution Act is intended to protect the species' habitat from spilled oil, accidental spills inevitably occur. Finally, the petition states that regulation of greenhouse gases is inadequate. However, the discussion does not explain how the described potential increases in atmospheric concentrations of CO_2 that may result in the absence of adequate regulations may result in extinction risk for the dwarf seahorse.

In summary, the petition presents substantial information indicating that inadequacy of existing regulatory mechanisms may be contributing to extinction risk that is cause for concern for the dwarf seahorse, particularly in regards to regulations intended to control harvest for domestic markets and international trade, and we will evaluate these regulations' impacts on dwarf seahorse during the status review. We will also evaluate whether existing regulatory mechanisms relevant to preventing damage to seagrasses are inadequate in a manner that contributes to extinction risk for the dwarf seahorse. Similarly, we will evaluate whether existing regulatory mechanisms relevant to preventing oil pollution are inadequate in a manner that contributes to extinction risk for the dwarf seahorse.

Other Natural or Manmade Factors

The petition describes other natural or manmade factors that may be affecting the dwarf seahorse, including life history characteristics, bycatch mortality, noise, and unintentional and illegal fishing, hurricanes or tropical storms, and invasive species. As described previously, the petition provides information describing how ''life history parameters'' in the form of complex reproductive strategies, low population density, and patchy spatial distribution, are affecting the species' ability to recover from habitat loss and overexploitation. The available information indicates that the dwarf seahorse has some life history characteristic that may increase the species' vulnerability, in conjunction with habitat decline and overutilization.

The petitioner also suggests that the dwarf seahorse is vulnerable to increased risk of extinction, because ''low frequency boat motor noise negatively impacts the health, behavior, and reproductive success of dwarf seahorses (Masonjones and Babson 2003).'' The petition cites a single reference, Masonjones and Babson (2003), to support its assertion that vessel noise is a threat to the dwarf seahorse. We attempted to evaluate the referenced citation, which is an abstract from the 17th Annual Meeting of the Society for Conservation Biology—Book of Abstracts (2003). According to the Masonjones and Babson (2003) abstract, dwarf seahorses were exposed to recordings of low frequency boat motor noise (ranging from 70–110 dB and 60–600 H_Z) with ''continuous'' and ''intermittent'' noise treatments, as well as ''quiet'' treatments. The abstract states that adult dwarf seahorses exposed to ''noise conditions showed a significantly higher incidence of gas bladder disease, behavioral differences, and had significantly longer gestation lengths than controls. Fewer offspring were born to parents exposed to continuous noise and the offspring were smaller and had lower growth rates than control offspring.'' The abstract provides minimal information, and we cannot determine whether this study was conducted in a laboratory or in the species' natural environment, though we assume from the limited information the study was conducted in a laboratory. Based on information in the abstract we cannot determine what the study's limitations were for ''continuous'' and ''intermittent'' noise exposures levels, as well as ''quiet'' treatments. Likewise, we cannot determine the intensity levels the seahorses were exposed to or the duration of exposure time. We recognize that dwarf seahorses in the wild are exposed to levels of low frequency noise transmitted from vessels, but exposure levels are likely temporary and infrequent (i.e., only when a vessel is operating within the vicinity of a seahorse). Without additional information (e.g., exposure duration, how noise levels tested in the laboratory environment compare to noise levels in the natural environment, and how noise levels may be attenuated at distances from the noise source given water depths, turbidity, currents, and other natural factors) we cannot conclude how the results of this study on vessel noise correspond to impacts on wild populations. The information presented in the referenced abstract does not constitute substantial information indicating that low frequency vessel noise is an operative threat that has acted or is acting on the species to the point that it is contributing to an extinction risk of concern for the dwarf seahorse.

As described previously, bycatch of the dwarf seahorse in trawl fisheries, specifically the live-bait trawl fishery in Florida, is a source of commercial harvest. According to the petitioner, seahorses are affected by nonselective fishing gear because trawling often covers seahorse habitat and their life history characteristics render them particularly vulnerable to overexploitation. The petitioner states that seahorses likely experience injuries or mortality during towing and sorting, but notes that the post-release mortality of bycaught seahorses is unknown. The petitioner also references a study that suggests discarded seahorses are subject to increased predation upon release and experience deleterious effects as a result of being bycaught (Foster and Vincent, 2004). It is conceivable that incidentally caught seahorses that are not retained for commercial sale could be injured or die post-release and that unintentional collection could disrupt natural behaviors. However, as the petition notes, post-release mortality estimates are not available for seahorses. The available information is insufficient to indicate post-release mortality or bycatch mortality is a threat that is contributing to an extinction risk of concern for the dwarf seahorse. Nonetheless, as described in the overutilization section of this finding, we will evaluate to what extent the dwarf seahorse is affected by indirect (i.e., bycatch) and direct commercial harvest during the status review.

Last, the petitioner asserts that unintentional and illegal fishing, hurricanes and tropical storms, and invasive species are ''potentially threatening'' the dwarf seahorse. Broad statements about generalized threats to the species do not constitute substantial information that listing may be warranted. The petition does not present information indicating that the dwarf seahorse is responding in a negative fashion to unintentional and illegal fishing, hurricanes and tropical storms, or invasive species. Therefore, we find that the petition does not present substantial information to indicate that these generalized threats are operative and have acted or acting on the species to the point that it may

warrant protection under the ESA. Nonetheless, during the status review we will research and consider all information submitted relevant to these potential threats.

Summary of Section 4(a)(1) Factors

We conclude that the petition presents substantial scientific or commercial information indicating that a combination of at least four of the section 4(a)(1) factors may be causing or contributing to extinction risk for the dwarf seahorse: present or threatened destruction, modification, or curtailment of its habitat or range, overutilization for commercial, recreational, scientific, or educational purposes, inadequate existing regulatory mechanisms, and other natural or manmade factors.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition presents substantial scientific information indicating the petitioned action of listing the dwarf seahorse as threatened or endangered may be warranted. In accordance with section 4(b)(3)(B) of the ESA and our implementing regulations (50 CFR 424.14(b)(2)), we will commence a review of the status of the dwarf seahorse and make a final determination as to whether the petitioned action is warranted. During our status review, we will determine whether the species is in danger of extinction (endangered) or likely to become so in the foreseeable future (threatened) throughout all or a significant portion of its range, or that the species does not warrant listing under the ESA.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether the dwarf seahorse is endangered or threatened. Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of this species throughout its range; (2) historical and current population status and trends; (3) life history in marine environments; (4) curio, traditional medicine, and aquarium trade or other trade data; (5) any current or planned activities that may adversely impact the species; (6) historical and current seagrass trends and status; (7) ongoing or planned efforts to protect and restore the species and their seagrass habitats; (8) management, regulatory, and enforcement information; and (9) any biological information on this species. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request from the Protected Resources Division on NMFS Southeast Regional Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 30, 2012.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2012–10845 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 87
Friday, May 4, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service (RUS). The USDA Rural Development invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: Review Rating Summary, RUS Form 300, 7 CFR part 1730.

OMB Control Number: 0572–0025.

Type of Request: Extension of a currently approved collection.

Abstract: RUS manages loan programs in accordance with the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*). An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs must be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. A periodic operations and maintenance (O&M) review, using the RUS Form 300, in accordance with 7 CFR part 1730, is an effective means for RUS to determine whether the Borrowers' systems are being properly operated and maintained, thereby protecting the loan collateral. The O&M review is also used to rate facilities and can be used for appraisals of collateral as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

Estimate of Burden: Public reporting for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 217.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 868 hours.

Title: Deferment of Rural Development Utilities Programs Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Type of Request: Extension of a currently approved collection.

Abstract: The Deferment of Rural Development Utilities Programs Loan Payments for Rural Development Projects allows RUS electric and telecommunications borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR 1703, subpart H. The burden required by this collection consists of information that will allow the Agency to determine eligibility for deferment; specific purposes of the deferment; the term of the deferment; cost of the project and degree of participation from other sources; and compliance with Agency regulations and other regulations and legal requirements.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.23 hours per response.

Respondents: Business or other for Profit and Not-for profit institutions.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 11 hours.

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection requirement stems from passage of the Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129) on November 1, 1993, which amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (Modernization Plan), covering at a minimum the Rural Utilities Service (RUS) borrowers in the state, be established in a state or RUS cannot make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB)

loans for construction in that state. It is the policy of RUS that every State has a Modernization Plan which provides for the improvement of the State's telecommunications network. A proposed Modernization plan must be submitted to RUS for approval. RUS will approve a proposed Modernization Plan if it conforms to the provisions of 7 CFR part 1751, subpart B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 350 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350.

Title: Mergers and Consolidations of Electric Borrowers, 7 CFR 1717, subpart D.

OMB Control Number: 0572–0114.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended (RE Act) authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. Due to deregulation and restructuring activities in the electric industry, RUS borrowers find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of RUS policies and procedures for mergers and consolidations of electric program borrowers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.32 hours per response.

Respondents: Businesses or other for profits; not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Number of Responses per Respondent: 10.8.

Estimated Total Annual Burden on Respondents: 170.

Title: Use of Consultants Funded by Borrowers, 7 CFR part 1789.

OMB Control Number: 0572–0115.

Type of Request: Extension of a currently approved collection.

Abstract: Section 18(c) of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*) authorizes RUS to utilize consultants voluntarily funded by Borrowers for financial, legal, engineering and other technical services. Consultants may be utilized to facilitate timely action on loan applications submitted to RUS by Borrowers for financial assistance and for approvals required by RUS, pursuant to the terms of outstanding loans, or otherwise. RUS may not require Borrowers to fund consultants and the provision of section 18(c) may be utilized only at the Borrower's request. The collection of information from the Borrower allows RUS to evaluate the request and to implement RUS policies and procedures for the use of consultants funded by RUS Borrowers. The collection of information is required only when a Borrower submits a request for the services of a consultant and consists of a summary, project description and information concerning the project or proposal for which the Borrower is requesting consultant services.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Not-for-profit institutions; business or other for-profit entities.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2 hours.

Title: Extensions of Payments of Principal and Interest.

OMB Control Number: 0572–0123.

Type of Request: Extension of a currently approved information collection.

Abstract: This collection of information describes information procedures which borrowers must follow in order to request extensions of principal and interest. Authority for these is contained in section 12 of the Rural Electrification Act of 1936 (REAct), as amended and in section 236 of the ''Disaster Relief Act of 1970'' (Pub. L. 91–606), as amended by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). Eligible purposes include financial hardship, energy resource conservation (ERC) loans, renewable energy projects, distributed generation projects, and contribution-in-aid of construction. These procedures are codified at 7 CFR part 1721, subpart B.

Estimate of Burden: Public reporting for this collection of information is estimated to average 4.71 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 424 hours.

Title: 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–0131.

Type of Request: Extension of a currently approved collection.

Abstract: RUS provides loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act). Section 4 of the RE Act requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the Borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act and, in order to assure that loans made or guaranteed by the Agency are adequately secure, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure the Agency that: (1) Appropriate standards and specifications are maintained; (2) RUS loan security is not adversely affected, and; (3) Loan and loan guarantee funds are used effectively and for the intended purposes. 7 CFR part 1728 establishes Agency policy that materials and equipment purchased by RUS Electric Borrowers or accepted as contractor-furnished material must conform to Agency standards and specifications where established and, if included in RUS Publication IP 202–1, ''List of Materials Acceptable for Use on Systems of Agency Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS.

Estimate of Burden: This collection of information is estimated to average 20 hours per response.

Respondents: Businesses or other for profits.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 2.63.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Dated: April 26, 2012

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–10747 Filed 5–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China: Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on frontseating service valves (''FSVs'') from the People's Republic of China (''PRC''), covering the period April 1, 2010 through March 31, 2011.

We have preliminarily determined that neither respondent in this administrative review, Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn'') or Zhejiang Sanhua Co., Ltd. (''Sanhua'') made sales in the United States at prices below normal value (''NV'') during the period of review (''POR''). We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243, and (202) 482–0414, respectively.

Background

On April 28, 2009, the Department published in the **Federal Register** the antidumping duty order on FSVs from the PRC.[1] On April 1, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on FSVs from the PRC for the period April 1, 2010 through March 31, 2011.[2] On April 27, 2011, in accordance with 19 CFR 351.213(b)(2), Sanhua, a foreign exporter of the subject merchandise, requested the Department to review its sales of subject merchandise.[3] On May 2, 2011, Parker-Hannifin Corporation (''Petitioner'') requested that the Department conduct an administrative review of the exports of subject merchandise made by DunAn and Sanhua during the POR.[4] On the same date, DunAn, a foreign exporter of the subject merchandise, requested that the Department review its sales of subject merchandise.[5] On May 27, 2011, the Department initiated an administrative review of the order on FSVs from the PRC for the POR with respect to DunAn and Sanhua.[6]

Between June 2011 and April 2012, the Department issued its initial and supplemental antidumping duty questionnaires to DunAn and Sanhua. DunAn and Sanhua submitted their responses between September 2011 and March 2012. Petitioner did not comment on these questionnaire responses.

On September 2, 2011, the Department requested that Import Administration's Office of Policy provide a list of surrogate countries for this review.[7] On September 22, 2011, the Office of Policy issued its list of surrogate countries.[8] On October 11, 2011, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values (''SVs'').[9] On November 1, 2011, Petitioner and DunAn provided surrogate country selection comments. On November 28, Petitioner and DunAn submitted SV comments (''Petitioner's SV Comments'' and ''DunAn's SV Comments,'' respectively). On December 12, 2011, DunAn submitted rebuttal SV comments (''DunAn's Rebuttal SV Comments'').

On December 13, 2011, the Department extended the time period for completion of the preliminary results of this review by 90 days until March 30, 2012.[10] On March 7, 2012, the Department extended the time period for completing the preliminary results of review by an additional 30 days until April 29, 2012.[11] However, because April 29, 2012, falls on a weekend, the preliminary results are now due no later than April 30, 2012.[12]

Period of Review

The POR is April 1, 2010, through March 31, 2011.

Scope of the Order

The merchandise covered by this order is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves contain a sealing surface on the front side of the valve stem that allows the indoor unit or outdoor unit to be isolated from the refrigerant stream when the air conditioning or refrigeration unit is being serviced. Frontseating service valves rely on an elastomer seal when the stem cap is removed for servicing and the stem cap metal to metal seat to create this seal to the atmosphere during normal operation.[13]

For purposes of the scope, the term ''unassembled'' frontseating service valve means a brazed subassembly

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[1] *See Antidumping Duty Order: Frontseating Service Valves from the People's Republic of China,* 74 FR 19196 (April 28, 2009) (''*Order*'').

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 18153, 18154 (April 1, 2011).

[3] *See* Letter from Sanhua, ''Frontseating Service Valves from the People's Republic of China; A–570–933; Request for § 751 Administrative Review of Exports by Zhejiang Sanhua Co., Ltd.,'' dated April 27, 2011.

[4] *See* Letter from Petitioners, ''Frontseating Service Valves from the People's Republic of China—Request for Initiation of Antidumping Administrative Review,'' dated May 2, 2011.

[5] *See* Letter from DunAn, ''Request for Administrative Review of the Antidumping Duty Order of Frontseating Service Valves from the People's Republic of China (POR 4/01/2010–3/31/2011),'' dated May 2, 2011.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912 (May 27, 2011) (''*Initiation Notice*'').

[7] *See* Memorandum to Carole Showers, Director, Office of Policy, ''Antidumping Duty Administrative Review of Frontseating Service Valves from the People's Republic of China: Surrogate-Country Selection,'' dated September 2, 2011.

[8] *See* Memorandum from Carole Showers, Director, Office of Policy, ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Frontseating Service Valves ('FSVs') from the People's Republic of China ('China'),'' dated September 22, 2011 (''Surrogate Country List'').

[9] *See* Letter to Interested Parties, ''Second Administrative Review of the Antidumping Duty Order on Front Seating Valves from the People's Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,'' dated October 11, 2011.

[10] *See Frontseating Service Valves From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 77479 (December 13, 2011).

[11] *See Frontseating Service Valves from the People's Republic of China: Notice of Second Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 13539 (March 7, 2012).

[12] *See id.; see also Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[13] The frontseating service valve differs from a backseating service valve in that a backseating service valve has two sealing surfaces on the valve stem. This difference typically incorporates a valve stem on a backseating service valve to be machined of steel, where a frontseating service valve has a brass stem. The backseating service valve dual stem seal (on the back side of the stem), creates a metal to metal seal when the valve is in the open position, thus, sealing the stem from the atmosphere.

requiring any one or more of the following processes: the insertion of a valve core pin, the insertion of a valve stem and/or O ring, the application or installation of a stem cap, charge port cap or tube dust cap. The term ''complete'' frontseating service valve means a product sold ready for installation into an air conditioning or refrigeration unit. The term ''incomplete'' frontseating service valve means a product that when sold is in multiple pieces, sections, subassemblies or components and is incapable of being installed into an air conditioning or refrigeration unit as a single, unified valve without further assembly.

The major parts or components of frontseating service valves intended to be covered by the scope under the term ''certain parts thereof'' are any brazed subassembly consisting of any two or more of the following components: a valve body, field connection tube, factory connection tube or valve charge port. The valve body is a rectangular block, or brass forging, machined to be hollow in the interior, with a generally square shaped seat (bottom of body). The field connection tube and factory connection tube consist of copper or other metallic tubing, cut to length, shaped and brazed to the valve body in order to create two ports, the factory connection tube and the field connection tube, each on opposite sides of the valve assembly body. The valve charge port is a service port via which a hose connection can be used to charge or evacuate the refrigerant medium or to monitor the system pressure for diagnostic purposes.

The scope includes frontseating service valves of any size, configuration, material composition or connection type. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States (''HTSUS''). It is possible for frontseating service valves to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes, but the written description of the scope of this proceeding is dispositive.

Non-Market Economy Country Status

No interested party contested the Department's treatment of the PRC as a non-market economy (''NME'') country in this administrative review, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews.[14] Designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. As such, we continue to treat the PRC as a NME in this proceeding.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOP''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[15] The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below and in the Factor Valuation Memorandum,[16] which is on file in the Central Records Unit, Room 7046 of the main Department building.

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.[17] Once the Department has identified countries that are economically comparable to the PRC, it identifies those countries which are significant producers of comparable merchandise.

Petitioner submitted a letter stating that Thailand is an appropriate surrogate country because: (1) Thailand is at a level of economic development comparable to the PRC; (2) of the six countries at a level of economic development to the PRC, Thailand is the most significant producer of comparable merchandise; (3) the World Trade Atlas (''WTA'') has import values for direct materials, energy and packaging inputs used to manufacture the merchandise under consideration; and, (4) the Department recently used Thailand as the surrogate country in the preliminary determination of the antidumping duty investigation of galvanized steel wire from the PRC.[18]

DunAn submitted a letter stating that the Philippines is an appropriate surrogate country because: (1) The Philippines is at a level of economic development comparable to the PRC; (2) the Philippines is a significant producer of comparable merchandise; (3) the Philippines offers the most specific, comprehensive and reliable surrogate value data of all the potential surrogate countries.[19]

After evaluating interested parties' comments, the Department has determined that the Philippines is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act. The Department based its decision on the following facts: (1) The Philippines is at a level of economic development comparable to that of the PRC;[20] (2) the Philippines, in terms of total value of net exports, is a significant producer of comparable merchandise;[21] and, as explained below, (3) the Philippines provides the best opportunity to use quality, publicly available data to value the FOPs, including surrogate financial data.

Therefore, because the Philippines best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected the Philippines as the surrogate country and, accordingly,

[14] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 52645 (September 10, 2008); *see also Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3560 (January 21, 2009).

[15] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''Policy Bulletin'').

[16] *See* Memorandum to the File, ''2010–2011 Administrative Review of the Antidumping Duty Order on Frontseating Service Valves from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results of Review,'' dated April 30, 2012 (''Factor Valuation Memorandum'').

[17] *See* Surrogate Country List.

[18] *See* Letter from Petitioner, ''Petitioner's Comments on Surrogate Country Selection in the Second Administrative Review of Certain Frontseating Service Valves from the People's Republic of China,'' dated November 1, 2011 (''Petitioner's Surrogate Country Selection Letter'') at 1–2.

[19] *See* Letter from DunAn, ''Surrogate Country Comments in the Antidumping Duty Investigation on Frontseating Service Valves from the People's Republic of China,'' dated November 1, 2011 (''DunAn's Surrogate Country Selection Letter'') at 1–2.

[20] *See* Surrogate Country List.

[21] *See* DunAn's Surrogate Country Selection Letter at 2–3 and Exhibit 1.

have calculated NV using Philippine prices to value DunAn's and Sanhua's FOPs, when available and appropriate. We have obtained and relied upon publicly available information to value all FOPs.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.[22]

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department.[23] In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.[24]

In the *Initiation Notice,* the Department notified parties of the application and certification process by which exporters may obtain separate rate status in NME proceedings.[25] It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.[26]

Separate Rate Recipients

DunAn and Sanhua each reported that it is a wholly Chinese-owned company.[27] Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[28]

The evidence provided by DunAn and Sanhua supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with their businesses and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.[29]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[30] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by DunAn and Sanhua supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency; [31] (2) the respondents have authority to negotiate and sign contracts and other agreements; [32] (3) the respondents have autonomy from the government in making decisions regarding the selection of management; [33] and (4) the respondents retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses.[34]

Therefore, the evidence placed on the record of this review by DunAn and Sanhua demonstrates an absence of *de jure* and *de facto* government control with respect to DunAn's and Sanhua's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, we have determined that DunAn and Sanhua have demonstrated their eligibility for a separate rate.

Fair Value Comparisons

To determine whether sales of FSVs to the United States by DunAn and Sanhua were made at less than NV, the Department compared constructed export price (''CEP'') to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and*

[22] In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[23] *See* section 771(18)(C)(i) of the Act.

[24] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006) (''*Lined Paper from the PRC*''); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[25] *See Initiation Notice,* 76 FR 30913.

[26] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[27] *See* DunAn's Section A Questionnaire Response, dated July 11, 2010 (''DunAn's AQR'') at 2–19; Sanhua's Section A Questionnaire Response, dated July 11, 2011 (''Sanhua's AQR'') at 2.

[28] *See Sparklers,* 56 FR 20589.

[29] *See* Foreign Trade Law of the People's Republic of China, contained in Sanhua's AQR, at Exhibit A–2. *See also* DunAn's AQR at 3–4.

[30] *See Silicon Carbide,* 59 FR 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[31] *See* DunAn's AQR, at 8–9 and Sanhua's AQR at 7–8 and Exhibit A–5.

[32] *See* DunAn's AQR, at 8–9 and Sanhua's AQR at 8–9.

[33] *See* DunAn's AQR, at 10–11 and Sanhua's AQR at 9–10.

[34] *See* DunAn's AQR, at 11–12 and Sanhua's AQR at 10–12.

Assessment Rate in Certain Antidumping Proceedings: Final Modification.[35] In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for DunAn's and Sanhua's sales because the sales were made by U.S. affiliates in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, to the reported gross unit prices for billing adjustments to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight from port to the warehouse, U.S. freight from warehouse to customer, U.S. warehousing, U.S. customs duty, and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, inventory carrying costs, and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d) of the Act, we calculated DunAn's and Sanhua's credit expenses and inventory carrying costs based on each company's respective short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.[36]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that DunAn and Sanhua each provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier. This methodology ensures that the Department's calculations are as accurate as possible.[37]

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a ME and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.[38] DunAn and Sanhua each reported that they did not purchase inputs from ME suppliers for the production of the merchandise under consideration.[39]

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by DunAn and Sanhua for direct materials, energy, labor, by-products, and packing materials.

DunAn used unaffiliated tollers for the production of recycled brass bar, copper tubing, brass valve caps and valve stems.[40] DunAn reported the FOPs of the unaffiliated tollers of brass bar, except for two tollers that would not provide full information.[41] We requested DunAn to report the FOPs of the unaffiliated tollers of the other components.[42] DunAn reported that it attempted to obtain FOP's from all of its unaffiliated tollers of copper tubing, brass valve caps and valve stems, but that the tollers were unable or unwilling to cooperate with the Department's request for information. DunAn documented these attempts for the record.[43] Consequently, we do not find that DunAn failed to cooperate by not acting in the best of its abilities. Consistent with our treatment of missing tolled FOPs of an intermediate input in the first administrative review of certain steel nails,[44] we have preliminarily applied facts available (''FA'') in accordance with section

[35] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*'').

[36] For a detailed description of all adjustments, *see* Memoranda titled ''Frontseating Service Valves from the People's Republic of China: Analysis Memorandum for the Preliminary Results of the 2010–2011 Administrative Review: Zhejiang DunAn Hetian Metal Co. Ltd.,'' (''DunAn Preliminary Analysis Memorandum''), dated April 30, 2012; and, ''Frontseating Service Valves (''FSVs'') from the People's Republic of China (''PRC''): Analysis Memorandum for the Preliminary Results of the 2010–2011 Administrative Review: Zhejiang Sanhua Co., Ltd. (''Sanhua''),'' (''Sanhua Preliminary Analysis Memorandum''), dated April 30, 2012.

[37] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

[38] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc.* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[39] *See* DunAn's Section D Questionnaire response (''DunAn's DQR'') at 6, and Sanhua's Section D Questionnaire response, dated August 3, 2011 (''Sanhua's DQR'') at 7.

[40] *See* DunAn's letter, ''DunAn Questionnaire Response to Question 16 of the Third Supplemental Questionnaire in the Second Administrative Review of the Antidumping Duty Order on Frontseating Service Valves from the people's Republic of China,'' dated February 21, 2012 (''3rd SQR (Question 16)''), at 2.

[41] *See* DunAn's DQR at Exhibit D–19; and DunAn's letter, ''DunAn Third Supplemental Questionnaire Response in the Second Administrative Review of the Antidumping Duty Order on Frontseating Service Valves from the people's Republic of China,'' dated February 27, 2012 (''3rd SQR'').

[42] *See* letter from the Department, ''Front Seating Service Values from the People's Republic of China: Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn''): Fourth Supplemental Questionnaire,'' dated March 1, 2012.

[43] *See* letter from DunAn, ''Fourth Supplemental Questionnaire Response in the Second Administrative Review of the Antidumping Duty Order on Frontseating Service Valves from the People's Republic of China,'' dated March 22, 2012 (''4th SQR''), at 1–2, and Exhibit 1, with respect to the tollers of copper tubing, brass valve caps and valve stems. With respect to brass bar, *see* DunAn's 3rd SQR (Question 16) at 8.

[44] *See Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 17.

776(a)(1) of the Act.[45] The Department is using DunAn's reported consumption of the intermediate inputs received from the tollers as FA (facts available without an adverse inference) for DunAn.

DunAn reported that it produced model SFJH–308–DG8 (''DG8'') in its entirety prior to the POR,[46] and that it produced the valve bodies for models SFJI–314–DG16 (''DG16'') and SFJI–314–DG20 (''DG20'') prior to the POR, but completed certain components (brass valve caps and valve stems),[47] final assembly, and packing during the current POR.[48] Consequently, DunAn explained that it reported per-unit FOPs in the section D database based on its production experience at the time when the models were produced.[49] Thus, DunAn explained that the FOPs for model DG8 were based entirely on consumption rates during the previous administrative review.[50] However, for models DG16 and DG20, DunAn explained that it based the FOPs for the valve bodies, brass scrap, and most raw material inputs on the consumption rates of the prior POR,[51] but that it based FOPs for brass valve caps and stems,[52] assembly, and packing on the consumption rates for the current POR.[53]

After a careful examination of its questionnaire and supplemental responses, we have determined that DunAn's reporting methodology may not be appropriate for the purposes of this antidumping duty review. Because models DG16 and DG20 were completed (*e.g.,* entered into finished goods inventory) during the current POR, we consider these models to have been produced during the current POR.[54] Therefore, we have requested DunAn to revise its questionnaire response to report all factors of production (including factors for all material and packing inputs, components (tolled or produced in-house), tolled round brass bar, brass scrap, labor, energy, water, ammonia and acid wash) for models DG16 and DG20 based on its production experience during the current POR.[55]

Because this response is not due until after the preliminary results, we have used DunAn's reported FOPs as FA in accordance with section 776(a)(1) of the Act, for the purposes of these preliminary results.[56] However, for the final results of review, we will make our determination based on DunAn's full set of questionnaire responses, including its response to the Department's 5th Supplemental Questionnaire, as appropriate.

DunAn and Sanhua separately reported that they each generate brass scrap during the production process of merchandise under consideration and requested an offset for this scrap.[57] In addition, Sanhua reported that it also generates copper scrap in the production of merchandise under consideration, and requested an additional offset for this scrap.[58] Sanhua established that it sold all of the brass and copper scrap that it produced during the POR. Therefore, for these preliminary results, we have granted Sanhua a by-product offset for brass and copper scrap because it demonstrated that there is commercial value to this scrap.[59] DunAn also established commercial value for its scrap by demonstrating that it sold a portion of the scrap that it produced during the POR, and provided the remaining scrap to unaffiliated processors for production into recycled bar. Accordingly, we have granted DunAn a by-product offset for its brass scrap generated during production during the POR.[60]

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by DunAn and Sanhua for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Philippine SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Philippine import surrogate values a Philippine surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value DunAn's and Sanhua's reported FOPs may be found in the Factor Valuation Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Philippine import statistics in the Global Trade Atlas (''GTA'') and other publicly available Philippine sources in order to calculate SVs for DunAn and Sanhua's FOPs (*i.e.,* direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[61] The record shows that data in the Philippine import statistics, as well as those from the other Philippine sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[62] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Philippine Producer Price Index (''PPI'') inflators as published in the International Monetary Fund's *International Financial Statistics*.[63]

[45] *See* the ''Facts Available'' section of this notice.

[46] *See* DunAn's DQR at 2.

[47] *See* DunAn's 3rd SQR (Question 16) at 2.

[48] *See* DunAn's DQR at 2.

[49] *See* DunAn's DQR at 2 and DunAn's 3rd SQR (Question 16) at 1–2.

[50] *See* DunAn's DQR at 2.

[51] *See* DunAn's DQR at 2 and 15.

[52] *See* DunAn's 3rd SQR (Question 16) at 2.

[53] *See* DunAn's DQR at 2.

[54] *See* section 751(a)(2) of the Act (directing the Department in an administrative review to determine the normal value of each entry of subject merchandise); section 773(c)(1) of the Act (requiring the Department to determine normal value based upon ''the factors of production *utilized in producing* the merchandise'') (emphasis added).

[55] *See* the Department's letter to DunAn, ''Front Seating Service Values from the People's Republic of China: Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn''): Fifth Supplemental Questionnaire,'' dated April 10, 2012 (''5th Supplemental Questionnaire'').

[56] *See* the ''Facts Available'' section of this notice.

[57] *See* DunAn's DQR at D–8 and Exhibits D–5, D–15 through 18 and Sanhua's DQR at 17–19 and Exhibit D–10a.

[58] *See id.*

[59] *See* Sanhua's Preliminary Analysis Memorandum.

[60] *See* DunAn's Preliminary Analysis Memorandum.

[61] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[62] *See* Factor Valuation Memorandum.

[63] *See* Factor Valuation Memorandum. *See also, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009) (''*Kitchen Racks Prelim*''), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009) (''*Kitchen Racks Final*'').

However, with respect to four inputs, arsenic alloy, crystal silicon, phosphorus, and silicon, there was no reasonably contemporaneous import data into the Philippines was available. As a result, we valued these inputs using import data into Indonesia as recorded in the GTA. In accordance with section 773(c)(4) of the Act, the Department has determined that Indonesia is at a level of economic development comparable to the PRC and is a significant producer of merchandise comparable to the subject merchandise.[64] In addition, in accordance with our practice,[65] the GTA import data with respect to Indonesia represents non-export average values and is contemporaneous with the POR, product-specific, and tax-exclusive.

Furthermore, with regard to Philippine and Indonesian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, India, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[66] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[67] Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Philippine import-based SVs.

In these preliminary results, the Department calculated the labor input using data on industry-specific labor cost from the primary surrogate country (*i.e.,* the Philippines), as described in *Labor Methodologies.* The Department relied on the ILO's Yearbook Chapter 6A labor cost data for the Philippines for the year 2008, because this is the most recent Chapter 6A data available for the Philippines. The Department further determined that the two-digit description under ISIC–Revision 3–D (''28–Manufacture of Fabricated Metal Products'') is the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by the Philippines to the ILO under Sub-Classification 28 of the ISIC–Revision 3–D, in accordance with section 773(c)(4) of the Act. For further information on the calculation of the wage rate, *see* Factor Valuation Memorandum.

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Pursuant to *Labor Methodologies,* the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (*e.g.,* general and administrative expenses).[68] The financial statements used to calculate financial ratios in this review were sufficiently detailed to allow the Department to isolate labor expenses from other expenses such as selling, general and administrative expenses. Therefore, the Department revised its calculation of surrogate financial ratios consistent with *Labor Methodologies* to exclude items incorporated in the labor wage rate data in Chapter 6A of the ILO data. As a result, bonuses and other forms of compensation included in the ILO's calculation of wages are now excluded from our calculation of labor in our surrogate financial ratios.[69]

We valued electricity, diesel and kerosene using contemporaneous Philippine data from *The Cost of Doing Business in Camarines Sur* available at the Philippine government's Web site for the province: *http://www.camarinessur.gov.ph.* These data pertained only to industrial consumption.[70]

We valued natural gas using data obtained from EnergyBiz Magazine's January/February 2006 edition, in which the American Chemistry Council's data for Indonesian natural gas prices of January 2006 are cited. We inflated this rate to be contemporaneous with the POR by applying PPI inflators.[71]

We valued water using an average of the basic rates charged by The Philippines Maynilad for Business Group II (mostly industrial) users. These rates were in effect in 2011 and do not include taxes or surcharges. We did not inflate the rate since all data points are contemporaneous with the POR.[72]

We valued truck freight expenses by averaging the rates charged by the Confederation of Truckers Association of the Philippines, Inc. and the distances to 92 destinations within the Philippines. We adjusted the rates downward by 20 percent to account for price increases effective January 2011. The adjusted rates reflect prices in effect in 2010.[73]

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in the Philippines, as published in the World Bank's *Doing Business 2012, Economy Profile: Philippines* publication.[74]

We valued marine insurance using a price quote for July 2010, which we obtained from RJG Consultants. RJG Consultants is a market-economy provider of marine insurance. We did not inflate this rate since it is contemporaneous with the POR.[75]

19 CFR 351.408(c)(4) directs the Department to value overhead, general, and administrative expenses (''SG&A'') and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, Petitioner submitted the 2010 financial statements of Halcyon Technology Public Company Limited (''Halcyon Technology''), a Thai corporation engaged in manufacturing, customized production, and distribution of polycrystalline diamond (''PCD'') cutting tools to serve the manufacturers of electronic parts and the auto parts industries, and Patkol Public Company

[64] *See* Surrogate Country List; *see also* Petitioner's Surrogate Country Selection Letter at 2, showing that Indonesia had exports of 23 million USD of comparable merchandise during the POR.

[65] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[66] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); and *China Nat'l Mach. Import & Export Corp.* v. *United States,* 293 F. Supp. 2d 1334 (CIT 2003), *affirmed* 104 Fed. Appx. 183 (Fed. Cir. 2004).

[67] *See* H.R. Rep. No. 100–576 at 590 (1988).

[68] *See id.* at 36094.

[69] *See* Factor Valuation Memorandum.

[70] *See id.*

[71] *See id.; see also Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703, 67713 (November 2, 2011).

[72] *See* Factor Valuation Memorandum.

[73] *See id.*

[74] *See id.*

[75] *See id.*

Limited (''Patkol''), a Thai producer of machinery and equipment, and a supplier of engineering services in the ice making, commercial cool-store, and freezing industries; a producer of dairy, tuna, shrimp, and alcoholic beverage processing equipment; and a supplier of services for the on-site fabrication, transportation, and installation of tanks and/or plant and tank relocation.[76] Patkol is also a supplier of sanitary stainless steel machinery and equipment, including high velocity stainless steel pumps, pipes, tees, bends, valves, and fittings, which are imported from Europe and the United States. It is also a supplier of spare parts for evaporative condensers, axial fans, Luang Chi cooling towers, tube ice machines and block ice plants, equipment for refrigeration systems, refrigeration spare parts, and ammonia gas detectors, as well as a reseller of refrigeration pumps and spare parts from Germany.

DunAn provided the 2010 audited financial statements of Concord Metals, Inc. (''Concord Metals''), a Philippine producer of brass, and cast iron and galvanized iron fittings, and FVC Philippines, Inc. (''FVC Philippines''), a producer of cast iron valves serving the petroleum and chemical industry, the machinery and shipbuilding industries, the paper manufacturing and spinning industries, the electric power industry, and the gas and water service industry.[77]

We did not use Halcyon Technology's and Patkol's financial statements because there is no indication that either of these two companies produced merchandise that is identical or comparable to the subject merchandise and they are not located in our primary surrogate country. We did not use Concord Metals' because the financial statements indicated that all of its merchandise consists of purchased goods,[78] and its Web site indicates that its products may have been produced in the PRC.[79]

As a result, we have preliminarily determined to use the contemporaneous 2010 audited financial statements of FVC Philippines as the basis for calculating the surrogate financial ratios in this review. FVC Philippines produces valves and earned a profit during the POR. There is no record evidence to indicate that it received benefits that the Department has a basis to believe or suspect to be countervailable. Further, its audited financial statements are complete and sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses. For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* Factor Valuation Memorandum.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' [80]

In this instance, because DunAn was unable to obtain the FOPs of unaffiliated tollers for the production of the intermediate inputs of copper tubing, brass valve caps and valve stems, and two of its recycled brass bar tollers, and documented its attempts to obtain such information. We do not find that DunAn failed to cooperate by not acting in the best of its abilities. Consistent with our treatment of missing tolled FOPs of an intermediate input in the first administrative review of certain steel nails,[81] we have preliminarily applied facts available (''FA'') in accordance with section 776(a)(1) of the Act. The Department is using DunAn's reported FOP consumption of the intermediate inputs received from the tollers as FA (facts available without an adverse inference) for DunAn.

In addition, while we find that DunAn may not have used an appropriate methodology to report certain FOPs from the appropriate period,[82] we find that DunAn cooperated to the best of its ability during the course of this proceeding to comply with the Department's requests for information. DunAn appropriately alerted the Department of its reporting methodology in its original section D questionnaire response.[83] DunAn complied with all of the Department's requests for information.[84] Thus, we find that DunAn was forthcoming with the information requested by the Department in its requests for information. Thus, DunAn did not impede the Department's proceeding. Additionally, because the Department did not request that DunAn revise its FOP reporting prior to the preliminary determination, we do not find that DunAn failed to cooperate by not acting to the best of its ability to comply with a request for information.

Thus, pursuant to section 776(a)(1) of the Act, we have relied on FA with respect to DunAn's section D response, but without an adverse inference prescribed under section 776(b) of the Act. As FA, we relied on DunAn's FOPs as reported in its section D and supplemental questionnaire responses in our normal value calculations.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

Weighted-Average Dumping Margins

The preliminary weighted-average dumping margins are as follows:

[76] *See* letter from Petitioner, ''Petitioner's Pre-Preliminary Results Surrogate Value Submission in the Second Administrative Review of Certain Frontseating Service Valves from the People's Republic of China: Case No. A–570–933,'' dated November 28, 2011, at Attachment 2.

[77] *See* letter from DunAn, ''First Surrogate Value Submission for DunAn in the Antidumping Duty Investigation on Frontseating Service Valves from the People's Republic of China, dated November 28, 2011, (''DunAn's 1st SV Submission'') at Exhibit 9A (for Concord Metals) and 9B (for FVC Philippines).

[78] *See* DunAn's 1st SV Submission at Exhibit 9A, Notes to the Financial Statements, at note 7.

[79] *See* Factor Valuation Memorandum.

[80] *See* also Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316 at 870 (1994).

[81] *See Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 17.

[82] *See* ''Normal Value'' section, above.

[83] *See* DunAn's DQR at 2.

[84] *See, e.g.,* DunAn's 1st SQR, 3rd SQR (Question 16), 3rd SQR and 4th SQR.

FRONTSEATING SERVICE VALVES FROM THE PRC

Exporter	Weighted-average margin (percentage)
Zhejiang DunAn Hetian Metal Co. Ltd.	0.00%
Zhejiang Sanhua Co., Ltd.	0.00%

Disclosure

The Department intends to disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[85] Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs.[86] Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[87] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[88] Parties should confirm by telephone the date, time, and location of the hearing. The Department intends to issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[89] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1).[90] Where we calculate a margin by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions, in this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Where an importer (or customer)-specific per-unit rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific per-unit rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For DunAn and Sanhua, which have separate rates, the cash deposit rates will be those established in the final results of this review (except, if the rates are zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 55.62 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification To Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: April 30, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–10839 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–DS–P

[85] *See* 19 CFR 351.309(c)(1)(ii).

[86] *See* 19 CFR 351.309(d).

[87] *See* 19 CFR 351.310(c).

[88] *See* 19 CFR 351.310.

[89] *See* 19 CFR 351.212(b).

[90] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons. *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103, February 14, 2012.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review, and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the fourth administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') for the period April 1, 2010, through March 31,

2011. The Department has preliminarily determined that sales have been made below normal value (''NV'') by certain respondents examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

DATES: *Effective Date:* May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners [1] and certain PRC and other companies, in accordance with 19 CFR 351.213(b), during the anniversary month of April, to conduct a review of certain activated carbon exporters from the PRC. On May 27, 2011, the Department initiated this review with respect to all requested companies.[2]

On June 10, 2011, Petitioners withdrew their request for an administrative review for Calgon Carbon (Tianjin) Co., Ltd. (''CCT'') and Ningxia Huahui Activated Carbon Co., Ltd. (''Huahui''). On the same date, Huahui withdrew its request for a review of itself, and Albemarle Corporation (''Albemarle''), a company we previously determined to be a wholesaler of the domestic-like product, withdrew its request for review of CCT. Likewise, on June 15, 2011, CCT withdrew its request for a review of itself. On July 7, 2011, the Department published a notice of rescission in the **Federal Register** for these two companies for which the request for review was withdrawn.[3] On August 25, 2011, Petitioners withdrew the request for review with respect to an additional 166 companies.[4] On September 20, 2011, the Department published a second notice of rescission in the **Federal Register** for those 165 companies.[5] Nineteen companies remain subject to this review.[6]

On July 25, 2011, Shanxi Dapu International Trade Co., Ltd. (''Dapu'') submitted a letter certifying it had no shipments during the period of review (''POR'').[7] On September 30, 2011, the Department published a notice [8] extending the time period for issuing the preliminary results by 120 days to April 29, 2012.[9]

On April 2, 2012, the Department received comments from Datong Juqiang and Guanghua Cherishmet regarding surrogate country selection and certain surrogate values. However, because of the close proximity to the preliminary results, we are unable to take Datong Juqiang and Guanghua Cherishmet's comments into consideration for the preliminary results. Datong Juqiang and Guanghua Cherishmet's comments will be considered for the final results of this review.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the ''Act'') directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[10] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers, if it is not practicable to examine all exporters or producers for which the review is initiated.

On May 31, 2011, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (''APO'') to all interested parties having access to materials released under APO and invited comments regarding the CBP data and respondent selection. The Department received comments regarding respondent selection on June 9, 2011.

On July 11, 2011, the Department issued its respondent selection memorandum after assessing its resources, considering the number of individual exporters of certain activated carbon for which a review had been requested, and determining that it could reasonably examine three of the exporters subject to this review.[11] Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Datong Juqiang Activated Carbon Co., Ltd. (''Datong Juqiang''), Jacobi Carbons AB (''Jacobi''), and Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (''Guanghua Cherishmet'') as mandatory respondents.

Questionnaires

On July 11, 2011, the Department issued its initial non-market economy (''NME'') antidumping duty questionnaire to the mandatory respondents, Datong Juqiang, Guanghua Cherishmet, and Jacobi. Datong Juqiang, Guanghua Cherishmet, and Jacobi timely responded to the Department's initial and subsequent supplemental questionnaires between August 2011 and March 2012.

Period of Review

The POR is April 1, 2010, through March 31, 2011.

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and

[1] Collectively, Norit Americas Inc. (''Norit'') and Calgon Carbon Corporation (''Calgon'').

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912 (May 27, 2011) (''*Initiation Notice*'').

[3] *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 39581 (July 7, 2011).

[4] Petitioners also withdrew their request for review of United Manufacturing International (Beijing) Ltd. (''UMI''). However, UMI submitted a request on its behalf for an administrative review in the current segment of the proceeding. *See* Letter from UMI, dated April 21, 2011.

[5] *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 58246 (September 20, 2011).

[6] These companies are: Adsorbent Carbons Pvt, Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Cherishmet Incorporated; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yungang Activated Carbon Co., Ltd.; Hebei Foreign Trade and Advertising Corporation; Jacobi Carbons AB; Jilin Bright Future Chemicals Company, Ltd.; Jilin Province Bright Futures Industry and Commerce Co., Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi Dapu International Trade Co., Ltd.; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; Tianjin Maijin Industries Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

[7] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[8] *See Fourth Administrative Review of Certain Activated Carbon From the People's Republic of China: Extension of Time Limits for Preliminary Results,* 76 FR 60803 (September 30, 2011).

[9] Because April 29, 2011, is a Sunday, the actual deadline for issuing the preliminary results falls on April 30, 2012, the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533, 24533 (May 10, 2005).

[10] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

[11] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated July 11, 2011.

anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent to Partially Rescind Administrative Review

As discussed in the ''Background'' section above, Dapu filed a no-shipment certification indicating that it did not export subject merchandise to the United States during the POR. In order to examine this claim, we reviewed the CBP data used for respondent selection and found no discrepancies with the statement made by Dapu.[12] Additionally, we sent an inquiry to CBP asking if any CBP office had any information contrary to the no-shipments claim and requested that CBP alert the Department of any such information within ten days of receiving our inquiry. CBP received our inquiry on December 21, 2011. We have not received a response from CBP with regard to our inquiry which indicates that CBP did not have information that was contrary to the claim of Dapu. Therefore, because the record indicates that Dapu did not export subject merchandise to the United States during the POR, we intend to rescind this administrative review with respect to this company.[13]

Non-Market Economy Country Status

In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), the designation of a country as an NME country remains in effect until it is revoked by the Department. As such, we continue to treat the PRC as a NME in this proceeding. When the Department investigates imports from an NME country and available information does not permit the Department to determine NV, pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(1), the Department determines NV on the basis of the factors of production (''FOP'') utilized in producing the merchandise.

Surrogate Country

Section 773(c)(4) of the Act, directs the Department to value an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. From the countries that are both economically comparable and significant producers, the Department will select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.[14] In this review, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.[15]

On July 26, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing FOPs.[16] On October 27, 2011, Datong Juqiang, Jacobi, and Guanghua Cherishmet submitted comments on the selection of a surrogate country, contending that the Philippines is the appropriate surrogate country for this review.[17] On October 28, 2011,

[12] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated July 11, 2011 at Attachment I.

[13] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

[14] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''*Policy Bulletin 04.1''*), available on the Department's Web site at *http://ia.ita.doc.gov/policy/index.html.*

[15] *See* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, Import Administration, from Carole Showers, Director, Office of Policy, Import Administration re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China (''PRC''), dated July 25, 2011.

[16] *See* the Department's Letter to All Interested Parties; Fourth Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated July 26, 2011 (''Surrogate Country List'').

[17] *See* Letter from Jacobi regarding Surrogate Country Comments dated October 27, 2011; *see also* Letter from Guanghua Cherishmet and Datong Juqiang regarding Surrogate Country Comments dated October 27, 2011.

Petitioners submitted comments on the selection of a surrogate country, arguing that Indonesia or Thailand are appropriate surrogate countries for this review.[18] On November 16, 2011, the Department received information to value FOPs from Datong Juqiang, Jacobi, Guanghua Cherishmet and Petitioners.[19] On November 23, 2011, Jacobi submitted rebuttal surrogate value comments.[20] On November 28, 2011, Petitioners, Datong Juqiang, and Guanghua Cherishmet submitted rebuttal surrogate value comments.[21] On February 21, 2012, Jacobi submitted additional information to value FOPs.[22]

Economic Comparability

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of economic development.[23] Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria.[24]

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin 04.1* for guidance on defining comparable merchandise. The *Policy Bulletin 04.1* states that ''{t}he terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute.'' [25] The *Policy Bulletin 04.1* further states that ''{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.'' [26] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[27] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[28] ''In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.'' [29] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.,* inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.,* processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[30]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[31]

The legislative history provides that the term ''significant producer'' includes any country that is a significant ''net exporter,''[32] and it does not preclude reliance on additional or alternative metrics. In this case, because production data of identical or comparable merchandise from the countries on the surrogate country list are not available, we analyzed which of the six countries are exporters of identical or comparable merchandise as a proxy for production data. We obtained export data using the Global Trade Atlas (''GTA'') for Harmonized Tariff Schedule (''HTS'') 3802.10: Activated Carbon, which is identical to the merchandise under consideration. The GTA data demonstrates that Indonesia, the Philippines, and Thailand were significant net exporters of identical merchandise in 2010.[33] Accordingly, because Colombia, South Africa and Ukraine are not significant net exporters of activated carbon under HTS 3802.10, these countries will not be considered for primary surrogate country selection purposes at this time.

Since only Indonesia, the Philippines and Thailand of the potential surrogate countries have not been disqualified through the above analysis, the Department looks to the availability of surrogate value (''SV'') data to determine the most appropriate surrogate country.[34]

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.[35] There is no hierarchy among these criteria.[36] It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[37] With respect to Indonesia, although Petitioners placed certain surrogate value data on the record, surrogate financial statements from Indonesia are unavailable, whereas there are surrogate financial statements from both the Philippines and Thailand on the record; therefore, we will not consider Indonesia for primary surrogate country selection purposes at this time.

With Colombia, Indonesia, South Africa, and Ukraine disqualified, the Department is left with the Philippines and Thailand as potential surrogate countries. Again, we looked to data considerations in selecting the appropriate surrogate country and found that there are no usable import statistics for Philippine bituminous coal on the record. Specifically, all of the

[18] *See* Letter from Petitioners regarding Surrogate Country Comments dated October 28, 2011.

[19] *See* First Surrogate Value Submission from Cherishment and DJAC, dated November 16, 2011; *see* Jacobi's Surrogate Value Comments, dated November 16, 2011; *see* Petitioners Comments on Surrogate Values for Preliminary Results, dated November 16, 2011.

[20] *See* Letter from Jacobi Clarifying Factual Information, dated November 23, 2011.

[21] *See* Petitioners' Comments on Respondents' Surrogate Value Submissions for Preliminary Results, dated November 28, 2011; *see* First Surrogate Value Rebuttal Submission of Cherishmet Group and DJAC, dated November 28, 2011.

[22] *See* Jacobi's Supplemental Surrogate Value Comments, dated February 21, 2011.

[23] *See* Surrogate Country List.

[24] *See* section 773(c)(4)(A) of the Act.

[25] *See Policy Bulletin 04.1.*

[26] *See id.*

[27] The *Policy Bulletin 04.1* also states that ''{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.'' *See id.,* at n. 6.

[28] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 65674 (December 15, 1997) and accompany Issues and Decision Memorandum at Comment 1 (''to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute'').

[29] *See Policy Bulletin 04.1.*

[30] *See id.*

[31] *See* section 773(c)(1) of the Act; *Nation Ford Chem. Co.* v. *United States,* 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[32] *See* Conference Report accompanying H.R. 3, the 1988 Omnibus Trade & Competitiveness Act, H. Rep. No. 100–576, at 590 (1988) (''Conference Report'').

[33] GTA subtracts a country's imports from its exports to arrive at net exports. *See* Memorandum to the File through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry and Josh Startup, International Trade Specialists, Office 9, re: ''Fourth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results,'' dated concurrently with this notice (''Prelim SV Memo'') at Exhibit 3.

[34] *See Policy Bulletin 04.1.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

Philippine imports of bituminous coal under HTS 2701.12 are from Indonesia, which are excluded from the Department's calculation of surrogate values.[38] One respondent, Datong Juqiang, reported that it used bituminous coal with a calorific value over 5,833 kcal/kg, which indicates that the best surrogate value data to apply to its bituminous coal input is for HTS 2701.12. Therefore, we do not have a bituminous coal surrogate value from the Philippines that is specific to the input used by Datong Juqiang. The specificity of the inputs is one of the Department's SV selection criteria and the GTA has been consistently used as a reliable source of import statistics [39] that fulfill the other SV selection criteria. In addition, we have Thai SV data for all other inputs (with the exception of steam, which is also missing from the Philippines SV data) and a Thai financial statement to calculate surrogate financial ratios. Therefore, we have selected Thailand as the primary surrogate country over the Philippines. A detailed explanation of the SVs is provided below in the ''Normal Value'' section of this notice.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''[40] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[41] An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[42]

Jacobi's Excluded Producers

On July 22, 2011, Jacobi requested to be excused from reporting FOP data for certain Chinese producers. On August 1, 2011, Petitioners submitted comments on Jacobi's request. On August 12, 2011, the Department notified Jacobi that due to the large number of producers that supplied Jacobi during the POR, Jacobi would be excused from reporting certain FOP data.[43] Specifically, the Department did not require Jacobi to report FOP data for its eleven smallest producers.[44] Additionally, the Department notified Jacobi that it was not required to report FOP data for products that were purchased by Jacobi's suppliers, as indicated in Jacobi's July 22, 2011 letter.[45]

Guanghua Cherishmet's Excluded Producers

On September 9, 2011, Guanghua Cherishmet requested to be excused from reporting FOP data for a Chinese producer because of the limited quantity it produced. On September 19, 2011, the Department notified Guanghua Cherishmet that, because the quantity produced by one of its suppliers is limited and Guanghua Cherishmet produces comparable products during the POR, Guanghua Cherishmet would be excused from reporting certain FOP data.[46] Specifically, the Department did not require Guanghua Cherishmet to report FOP data for its smallest producer as indicated in its September 9, 2011, submission.[47]

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that Jacobi and Guanghua Cherishmet were excused from reporting. As facts available, the Department is applying the calculated average normal value of Jacobi and Guanghua Cherishmet's reported sales to the sales produced by their excluded producers, respectively. These issues are addressed in separate company-specific memoranda where a detailed explanation of the facts available calculation is provided.[48]

[38] *See China Nat'l Mach. Import & Export Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1336 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum, at Comment 4.

[39] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 4.

[40] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (''*SAA*''), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99.

[41] *See id.*

[42] *See id.*

[43] *See* the Department's Letter to Jacobi dated August 12, 2011.

[44] *See id.*

[45] *See id.*

[46] *See* the Department's letter to Guanghua Cherishmet dated September 19, 2010.

[47] *See id.*

[48] *See* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Joshua Startup, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the

Separate Rates

The designation of a country as an NME remains in effect until it is revoked by the Department.[49] In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[50]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.[51] It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[52] Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities.[53] The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[54] However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control.[55]

The Department received separate rate applications or certifications from the following companies: Adsorbent Carbons Pvt. Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Tangshan Solid Carbon Co., Ltd. (''Tangshan''); Tianjin Maijin Industries Co., Ltd.; and United Manufacturing International (Beijing) Ltd. (''UMI'').

Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from the mandatory respondents Datong Juqiang, Guanghua Cherishmet, and Jacobi, which contained information pertaining to the companies' eligibility for a separate rate. However, Hebei Foreign Trade and Advertising Corporation and Jilin Province Bright Future Industry and Commerce Co., Ltd., companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate-rate application or certification.

Companies Not Receiving a Separate Rate

On July 27, 2011, Adsorbent, an Indian activated carbon company, submitted a separate rate application as it claims it had sales of the subject merchandise to the United States during the POR.[56] On December 2, 2011, the Department issued a supplemental questionnaire to Adsorbent regarding its claim.[57] On December 22, 2011, Adsorbent responded to a supplemental questionnaire regarding its separate rate application, claiming that it had purchased activated carbon from unaffiliated PRC suppliers,[58] and reprocessed and repackaged the activated carbon in India for resale to its U.S. customer.[59] However, the CBP data used for respondent selection indicates no entries of the subject merchandise were made by Adsorbent.[60] Additionally, the CBP 7501 Forms provided by Adsorbent's importer indicate that the entries of the merchandise Adsorbent claims were subject PRC-origin were in fact made as non-subject ''Type 1'' entries.[61]

CBP data reviewed by the Department do not show any reviewable entries of subject merchandise made by the third-country exporter Adsorbent during the POR. There is no information on the record of this proceeding indicating that Adsorbent made entries of subject merchandise during the POR.[62] Additionally, we intend to refer this matter to CBP to investigate whether Adsorbent's entries were entered properly.

On July 22, 2011, the Department received a timely separate rate application from UMI, a company currently considered part of the PRC wide entity.[63] On November 21, 2011, the Department issued a supplemental questionnaire to UMI requesting clarification on certain deficiencies in its separate rate application.[64] However, UMI did not submit a response or request an extension to the Department's supplemental questionnaire by the deadline.

Therefore, because Hebei Foreign Trade and Advertising Corporation, Jilin Province Bright Future Industry and Commerce Co., Ltd., and UMI did not demonstrate their eligibility for separate rate status, we have preliminarily determined to consider these companies as part of the PRC-wide entity.

Separate Rate Recipients

1. Wholly Foreign-Owned

Jacobi reported that it is wholly-owned by a company located in an ME country, Sweden.[65] Therefore, there is no PRC ownership of Jacobi and, because the Department has no evidence indicating that Jacobi is under the control of the PRC, a separate rates analysis is not necessary to determine whether it is independent from

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Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice (''Jacobi Prelim Analysis Memo''); *see also* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice (''Guanghua Cherishmet Prelim Analysis Memo'').

[49] *See* section 771(18)(c)(i) of the Act.

[50] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[51] *See Initiation Notice,* 76 FR at 30912–30913.

[52] *See id.*

[53] *See id.*

[54] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'')

[55] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[56] *See* Letter from Adsorbent, dated July 27, 2011.

[57] *See* Letter from the Department dated December 2, 2011.

[58] *See* Letter from Adsorbent, dated July 27, 2011 at 12.

[59] *See* Letter from Adsorbent, dated December 11, 2011 at 3.

[60] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated May 31, 2011 at Attachment I.

[61] *See* Adsorbent's supplemental response, dated December 11, 2011, at Exhibit 2.

[62] *See Saccharin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 77 FR 21966, 21967 (April 12, 2012).

[63] *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70210 (November 17, 2010).

[64] *See* the Department's Letter to UMI, dated November 21, 2011.

[65] *See* Jacobi's Section A Questionnaire Response, dated August 11, 2011, at 2.

government control.[66] Additionally, one of the exporters under review not selected for individual review, Tangshan, demonstrated in its separate-rate certification that it is 100 percent ME foreign owned.[67] Accordingly, the Department has preliminarily granted separate rate status to Jacobi and Tangshan.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Datong Juqiang,[68] Guanghua Cherishmet,[69] and eight [70] of the separate rate applicants in this administrative review stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. In accordance with our practice, the Department has analyzed whether the separate-rate applicants have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[71] The evidence provided by Datong Juqiang, Guanghua Cherishmet, and the eight separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[72]

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[73] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Datong Juqiang, Guanghua Cherishmet, and the eight separate rate applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[74] Therefore, the Department preliminarily finds that Datong Juqiang, Guanghua Cherishmet, and eight separate-rate applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Rate for Non-Selected Companies

The eight companies which are not mandatory respondents and which submitted timely information as requested by the Department remain subject to this review as separate rate respondents.

The Department has preliminarily calculated a *de minimis* margin for Datong Juqiang. Furthermore, because using the weighted-average margin based on the calculated net U.S. sales quantities for Guanghua Cherishmet and Jacobi would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

For these preliminary results and consistent with our practice,[75] we determine that using the ranged total sales quantities reported by Guanghua Cherishemet and Jacobi from the public versions of their submissions is more appropriate than applying a simple average.[76] These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Guanghua Cherishmet and Jacobi. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.[77]

Because the calculated net U.S. sales values for Guanghua Cherishmet and Jacobi are business-proprietary figures, we find that 1.34 U.S. Dollars/kilogram (''USD/kg''), which we calculated using the publicly available figures of U.S.

[66] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104 (December 20, 1999).

[67] *See* Tangshan Solid Carbon Co. Ltd.'s Separate Rate Certification dated July 26, 2011, at Attachment 1.

[68] *See* Datong Juqiang's Section A Questionnaire Response, dated August 18, 2011, at 2–6.

[69] *See* Guanghua Cherishmet's Section A Questionnaire Response, dated August 18, 2011, at 2–8.

[70] These companies are: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; and Tianjin Maijin Industries Co., Ltd.

[71] *See Sparklers,* 56 FR at 20589.

[72] *See, e.g.,* Guanghua Cherishmet's Section A Questionnaire Response, dated August 18, 2011, at 5, Exhibit A–3, and Exhibit A–4; and Jilin Bright Future Chemicals Company, Ltd.'s Separate Rate Certification dated July 26, 2011, at 5–6.

[73] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[74] *See, e.g.,* Datong Juqiang 's Section A Questionnaire Response, dated August 18, 2011, at 2–8 and Exhibit A–4; and Shanxi Sincere Industrial Co., Ltd. Separate Rate Application, dated November 25, 2011, at 17–19.

[75] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158, 56160 (September 12, 2011) (''*Vietnam Shrimp*''); *see also Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 68407, 68415 (November 4, 2011) (''*Galvanized Wire LTFV*'').

[76] *See* Jacobi Section A questionnaire response (Public Version) dated September 13, 2011, at Exhibit 4; *see also* Guanghua Cherishmet Public Version of Exhibit SA–1 for the Section A Response, dated August 19, 2011.

[77] *See Vietnam Shrimp* at 56160; *see also Galvanized Wire LTFV* at 68415.

sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Guanghua Cherishmet and Jacobi.[78] For the PRC-wide entity, we have assigned the entity's 2.42 USD/kg, which is the current and only rate ever determined for the entity in this proceeding.[79]

Date of Sale

Datong Juqiang, Guanghua Cherishmet, and Jacobi reported the invoice date as the date of sale because they claim that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,[80] and in the absence of any information to the contrary, the Department preliminarily determines that the invoice date is the most appropriate date to use as Datong Juqiang's, Guanghua Cherishmet's, and Jacobi's date of sale.

Fair Value Comparisons

To determine whether sales of certain activated carbon to the United States by Datong Juqiang, Guanghua Cherishmet, and Jacobi were made at less than normal value, the Department compared constructed export price (''CEP'') to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections below.[81]

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for Datong Juqiang's sales to the United State because the first sale to an unaffiliated party was made before the date of importation, and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values.[82]

Constructed Export Price

For all of Guanghua Cherishmet and Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales of Chinese-origin merchandise were made on behalf of the companies located in the PRC by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company specific analysis memoranda, dated concurrently with this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input.[83] During the POR, Jacobi reported that it purchased certain inputs from an ME supplier and paid for the inputs in an ME currency.[84] The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[85] In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the

[78] *See* ''Memorandum to the File from Bob Palmer, International Trade Specialist, Office 9 Re: Calculation of Separate Rate,'' dated concurrently with this notice.

[79] *See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon From the People's Republic of China,* 72 FR 15099 (March 30, 2007); *see also Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208 (November 17, 2010) (''*AR2 Carbon*'').

[80] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

[81] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*''). In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[82] *See* Prelim SV Memo for details regarding the surrogate values for movement expenses.

[83] *See Lasko Metal Products, Inc.* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

[84] *See* Jacobi's Section D Questionnaire Response dated September 1, 2011, at page D–9, and Exhibit JT–2.

[85] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) (''*Antidumping Methodologies*'').

presumption.[86] When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33-percent threshold.[87]

The Department used Thai Import Statistics to value the raw material and packing material inputs that Datong Juqiang, Guanghua Cherishmet, and Jacobi used to produce the subject merchandise under review during the POR, except where listed below. In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.[88] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[89] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from these countries in calculating the Thai import-based surrogate values. Additionally, the Department disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[90]

In accordance with section 773(c) of the Act, for subject merchandise produced by Datong Juqiang, Guanghua Cherishmet, and Jacobi, the Department calculated NV based on the FOPs reported by Datong Juqiang, Guanghua Cherishmet, and Jacobi for the POR. The Department used data from Thai Import Statistics and other publicly available Thai sources in order to calculate surrogate values for Datong Juqiang's, Guanghua Cherishmet's, and Jacobi's FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Thai surrogate values (except as noted below). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[91]

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices. Specifically, the Department added to Thai import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States.*[92] For a detailed description of all surrogate values used for Datong Juqiang, Guanghua Cherishmet, and Jacobi, *see* Prelim SV Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Thai Producer Price Index as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim SV Memo at Attachment 6. Where necessary, the Department adjusted surrogate values for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per-kilogram or per-metric ton basis.

The Department valued electricity using data from the Electrical Generating Authority of Thailand, Annual Report 2010: Key Statistical Data. We calculated an average of the price of energy sales to various customers.[93]

Because water was used by the respondents in the production process of certain activated carbon, the Department considers water to be a direct material input, and not as overhead, and valued water with a SV according to our practice.[94] The Department valued water using data from Thailand's Board of Investment.[95] This source provides water rates for industrial users that are VAT exclusive. Although Petitioners suggested that we value water using information from Thailand's Metropolitan Waterworks Authority, we find that the information provided is approximate and not explicitly tax-exclusive. Therefore, the data provided by the Board of Investment provides a more specific and accurate surrogate value.[96]

The Department was unable to locate a suitable surrogate value for purchased steam from Thailand or from any of the other countries on the surrogate country list. As noted above, the Department prefers to use surrogate values chosen from the primary surrogate country, however, where no reliable data exists in the primary surrogate country, the Department may look to additional countries for reliable surrogate values.[97] The Department has preliminarily determined to use the 2010–2011 financial statement of Hindalco Industries Limited from India, which contains a surrogate value for steam,[98] as it is the only information currently on the record for valuing steam, and is a source we have used in previous segments of this proceeding.[99]

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[86] *See id.*

[87] *See id.*

[88] *See* Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100–576, at 590 (1988) (''*OTCA 1988*''), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[89] *See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006).

[90] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008),* unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[91] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

[92] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997).

[93] *See* Prelim SV Memo at 9.

[94] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

[95] *See* Prelim SV Memo at 8.

[96] *See id.*

[97] *See Policy Bulletin 04.1* at n. 7.

[98] *See* Jacobi's Surrogate Value Comments: Certain Activated Carbon from China, dated November 16, 2011, at Exhibit SV–7.

[99] *See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part,* 76 FR 23978, 23988 (April 29, 2011), unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142 (October 31, 2011).

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from Siam Partners Group Company Limited.[100] We calculated the per-unit inland freight costs using the distance from five different provinces in Thailand to Thailand's largest city, Bangkok.[101] We inflated the calculated a per-metric ton, per-kilometer surrogate inland freight because this source was from 2005.[102]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2011: Thailand,* published by the World Bank.[103]

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department used the 2010 audited financial statement of Carbokarn Co., Ltd., the only Thai financial statement available on the record of this review.[104] Because the Department has chosen Thailand as the primary surrogate country, the discussion here is limited to financial statements placed on the record from Thailand.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[105] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

For these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value the respondent's labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description Sub-Classification 24 under ISIC-Revision 3 (''Manufacture of Chemicals and Chemical Products'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing labor data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total 2005 manufacturing labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act. For the preliminary results, the calculated industry-specific wage rate is 135.93 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

As stated above, the Department used Thai ILO data reported in 2005 under Chapter 6A of the ILO Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to *Labor Methodologies,* the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (*e.g.,* general and administrative expenses).[106] However, the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department preliminary has made no adjustment to these financial statements.[107]

Treatment of Datong Juqiang's Packing Factors

For these preliminary results, we are applying partial adverse facts available to Datong Juqiang for packing bags for certain customers. In the initial Section D questionnaire, the Department informs parties that if they receive any inputs used in the production process for free, they must include the amount of that input used.[108] In its Section D questionnaire response, Datong Juqiang reported the amount of packing bags it used for its other customers.[109] On March 15, 2012, in response to a supplemental questionnaire and request for documentation, Datong Juqiang stated that its agreement with the customers was over the phone, that it had no agreement in writing, and that it could provide no evidence that packing bags were supplied by those certain customers.[110] Datong did not provide the Department with any additional information. Therefore, because Datong Juqiang has failed to cooperate at the Department's request to the best of its ability in reporting the total amount packing bags used in the production of subject merchandise, for these preliminary results the Department is applying as partial adverse facts available the highest single, per-unit consumption of packing bags reported by Datong Juqiang as the packing bags used by Datong Juqiang in the packing stage for those certain customers.[111]

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

[100] *See* Prelim SV Memo at 9.

[101] *See id.*

[102] *See id.,* at Exhibit 8.

[103] *See* Prelim SV Memo at 10.

[104] *See* Petitioners November 28, 2011, Surrogate Value Submission at Exhibits 5 & 6.

[105] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*''). This notice followed the Federal Circuit decision in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), which found that the regression-based method for calculating wage rates as stipulated by 19 CFR 351.408(c)(3) uses data not permitted by the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c)).

[106] See *Labor Methodologies,* 76 FR at 36093–94.

[107] *See* Prelim SV Memo at 9.

[108] *See* Ltr. From the Department to Datong Juqiang, re: ''NME Questionnaire'', dated July 11, 2011 at D–6.

[109] *See* Datong Juqiang's section D questionnaire response, dated September 12, 2011 at page 15 and Exhibit D–10.

[110] *See* Datong Juqiang's supplemental section D questionnaire response, dated March 15, 2012, at 5–6; *see also* Datong Juqiang's supplemental section A, C & D questionnaire response, dated November 29, 2011 at 23.

[111] For further details, *see* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice (''DJAC Prelim Analysis Memo'').

Exporter	Margin (dollars per kilogram) [112]
Datong Juqiang Activated Carbon Co., Ltd	* 0.00
Jacobi Carbons AB [113]	1.49
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd [114]	1.07
Datong Municipal Yunguang Activated Carbon Co., Ltd	1.34
Jilin Bright Future Chemicals Company, Ltd	1.34
Ningxia Mineral and Chemical Limited	1.34
Shanxi DMD Corporation	1.34
Shanxi Sincere Industrial Co., Ltd	1.34
Shanxi Industry Technology Trading Co., Ltd	1.34
Tangshan Solid Carbon Co., Ltd	1.34
Tianjin Maijin Industries Co., Ltd	1.34
PRC-Wide Rate [115]	2.42

* *De minimis*.

Disclosure and Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[116] Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[117] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for filing case briefs.[118] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[119]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept ''the submission of additional, previously absent-from-the-record alternative surrogate value or financial ratio information'' pursuant to 19 CFR 351.301(c)(1).[120] Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

Additionally, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice and file the request via the Department's Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[121] An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET). Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act unless the deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated exporter/importer (or customer)-specific assessment rates for

[112] In the second administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70210 (November 17, 2010).

[113] In *Activated Carbon AR3,* the Department found Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there has been no changes to this determination since the first administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 76 FR 67142 (October 31, 2011) (''*Activated Carbon AR3''*).

[114] In *Activated Carbon AR1,* the Department found Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Ningxia Guanghua Activated Carbon Co., Ltd. are a single entity and, because there has been no changes to this determination since the first administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results,* 74 FR 21317 (May 7, 2009), unchanged in *First Administrative Review of Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 57995 (November 10, 2009).

[115] The PRC-Wide entity includes Hebei Foreign Trade and Advertising Corporation; Jilin Province Bright Future Industry and Commerce Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

[116] *See* 19 CFR 351.224(b).

[117] *See* 19 CFR 351.309(c)(1)(ii).

[118] *See* 19 CRR 351.309(d).

[119] *See* 19 CFR 351.309(c), (d).

[120] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[121] *See* 19 CFR 351.310(c).

the merchandise subject to this review in accordance with 19 CFR 351.212(b)(1).[122] In this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Where an importer (or customer)-specific per-unit rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific per-unit rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the rate we calculated for the mandatory respondent whose rate was not *de minimis,* as discussed above. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity (including Dapu) at the PRC-wide rate. Finally, for those companies for which this review has been preliminarily rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $2.42 per kilogram [123]; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–10838 Filed 5–3–12; 8:45 am]

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[122] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

[123] *See AR2 Carbon* 70208, 70209 and accompanying Issues and Decisions Memorandum at Comment 3.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 24, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–013. *Applicant:* Washington University in St. Louis, 1 Brookings Dr., Saint Louis, MO 63130. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for research on primitive solar system materials extracted from meteorites as well as on samples from NASA sample return missions, such as STARDUST. The instrument will be used for the preparation of TEM thin sections of micron-sized stardust grains as well as samples extracted from STARDUST Al foils, to increase the understanding of the chemical origin of the solar system and the processes by which its small bodies evolved. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 29, 2012.

Docket Number: 12–018. *Applicant:* The Regents of the University of California, 1 Cyclotron Rd., MS 46R0125, Berkeley, CA 94720. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to investigate the structure and composition of micro- and nano-materials that will be used as light absorbers, catalysts, and membranes in photoelectrochemical devices that are engineered to convert solar energy to fuel. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 28, 2012.

Docket Number: 12–019. *Applicant:* Schepens Eye Research Institute, 20 Staniford St., Boston MA, 02114. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to investigate the genes and proteins that underlie normal and pathologic processes associated with human vision, to allow the repair, prevention, and cure of sight-threatening pathologies. The instrument will be used to examine the ultra structure of biological specimens including eye tissues, using conventional observation as well as immune-electron microscopy. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by*

Commissioner of Customs: March 28, 2012.

Docket Number: 12–020. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Rd., Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to examine the ultrastructural organization of biological specimens such as protein complexes, noninfectious virus and small cells at high resolution to help elucidate their functions. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* April 6, 2012.

Docket Number: 12–021. *Applicant:* Rice University, ECE Department MS 378 6100 Main Houston, TX. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to fabricate, image, and characterize novel metallic nanostructures, using high resolution imaging, lithography and electron beam assisted gas deposition. The instrument will be used to study the plasmonic properties of chemically synthesized nanoparticles and lithographically synthesized nanostructures. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* April 18, 2012.

Dated: April 25, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–10592 Filed 5–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: May 4, 2012.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on certain new pneumatic off-the-road tires (''tires'') from the People's Republic of China (''PRC''), received on March 30, 2012, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is September 1, 2011, through February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5849 and (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on tires from the PRC was published in the **Federal Register** on September 4, 2008.[1] On March 30, 2012, we received a timely request for a new shipper review from Trelleborg Wheel Systems (Xingtai) China Co. Ltd. (''TWS China'').[2] On April 16, 2012, the Department requested further information regarding discrepant and incomplete information in TWS China's request.[3] On April 18, 2012, TWS China submitted its response, which included documentation demonstrating that it has requested to file a corrected 7501 Entry form with U.S. Customs and Border Protection (''CBP'') to correct the manufacturer identification number and name on this form.[4] TWS China has certified that it produced all of the tires it exported, which is the basis for its request for a new shipper review.[5]

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(iii)(A) and 19 CFR 351.214(b)(2)(iii)(B), in its request for a new shipper review, TWS China, as an exporter and producer, certified that: (1) It did not export tires to the United States during the period of investigation (''POI'');[6] (2) since the initiation of the investigation, TWS China has never been affiliated with any company that exported subject merchandise to the United States during the POI;[7] and (3) its export activities were not controlled by the central government of the PRC.[8] In accordance with 19 CFR 351.214(b)(2)(iv), TWS China submitted documentation establishing the following: (1) The date on which it first shipped tires for export to the United States and the date on which the tires were first entered, or withdrawn from warehouse, for consumption;[9] (2) the volume of its first shipment;[10] and (3) the date of its first sale to an unaffiliated customer in the United States.[11]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.214(d)(1), we find that the request submitted by TWS China meets the threshold requirements for initiation of a new shipper review for shipments of tires from the PRC produced and exported by TWS China, pending its correction of the information discussed above.[12] Accordingly, TWS China must correct the manufacturer identification number and name on the 7501 Entry form with CBP in an appropriate amount of time to avoid rescission of this review. Furthermore, if the information supplied by TWS China is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available, depending upon the facts on record. The POR is September 1, 2011, through February 29, 2012.[13] The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, included in our questionnaire will be specific

[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008).

[2] *See* Letter from TWS China entitled ''New Shipper Review Request of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People's Republic of China,'' dated March 29, 2012 (''NSR Request'').

[3] *See* Letter from the Department entitled ''New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic Off-the Road Tires from the People's Republic of China: Request for Further Information,'' dated April 16, 2012.

[4] *See* Letter from TWS China entitled ''New Shipper Review Request of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People's Republic of China; Response To April 16, 2012 Supplemental Questionnaire,'' dated April 18, 2012.

[5] *See* NSR Request, at pg 1.

[6] *See* NSR Request, at Exhibit 2.

[7] *See* NSR Request, at Exhibit 3.

[8] *See* NSR Request, at Exhibit 4.

[9] *See* NSR Request, at Exhibit 1.

[10] *See Id.*

[11] See Id.

[12] *See* Memorandum to the File through Wendy J. Frankel entitled, ''Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of AD New Shipper Review for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.,'' dated April 23, 2012.

[13] *See* 19 CFR 351.214(g)(1)(i)(B).

questions for ascertaining its eligibility for a separate rate. The review will proceed if the responses provide sufficient indication that TWS China is not subject to either *de jure* or *de facto* government control with respect to its export of tires.

We will instruct CBP to allow, at the option of the importer until the completion of the review, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from TWS China in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because TWS China certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to TWS China only for subject merchandise which TWS China both produced and exported. Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: April 30, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10840 Filed 5–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting—Cloud Computing Forum & Workshop V

AGENCY: National Institute of Standards & Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST announces the Cloud Computing Forum & Workshop V to be held on Tuesday, Wednesday and Thursday, June 5, 6 and 7, 2012. The format is a two-day forum followed by a one-day hands-on workshop. This workshop will provide information on the U.S. Government (USG) Cloud Computing Technology Roadmap initiative. This workshop will also provide an updated status on NIST efforts to help develop open standards in interoperability, portability and security in cloud computing. This event is open to the public. In addition, NIST invites organizations to participate as Exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Cloud Computing Forum & Workshop V will be held Tuesday, Wednesday and Thursday, June 5, 6 and 7, 2012. Participants must pre-register by close of business Tuesday, May 29, 2012. Please see registration instructions in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The forum and workshop will be held at the Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: To submit a response to this request for exhibitors, and for further information contact Romayne Hines by email at *romayne.hines@nist.gov* or by phone at (301) 975–4090.

SUPPLEMENTARY INFORMATION: NIST hosted four prior Cloud Computing Forum & Workshop events in May 2010, November 2010, April 2011, and November 2011. The purpose of these workshops was to respond to the request of the Federal Chief Information Officer to NIST to lead federal efforts on standards for data portability, cloud interoperability, and security. The workshops' goals were to engage with industry to accelerate the development of cloud standards for interoperability, portability, and security; discuss the Federal Government's experience with cloud computing, report on the status of the NIST Cloud Computing efforts, launch and report progress on the NIST led initiative to collaboratively develop a USG Cloud Computing Technology Roadmap among multiple federal and industrial stakeholders, and to advance a dialogue between these groups. Building on the prior workshop events, the purpose of the fifth NIST-hosted Cloud Computing Forum & Workshop is to provide a forum to share international government perspectives on how the Cloud Computing Information Technology model can be used to improve public services, provide an update on NIST Cloud Computing working group progress, and to showcase examples of academic, industry, standards organizations and government partner efforts which relate to the USG Cloud Computing Technology Roadmap priorities.

NIST invites members of the public, especially cloud computing community stakeholders to participate in this event as exhibitors. On Tuesday and Wednesday, June 5 and 6, 2012, space will be available for 30 academic, industry, and standards developing organizations to exhibit their respective cloud computing work at a demonstration booth or table which is co-located with the event. Interested organizations should contact Romayne Hines at the email address or phone number given in the **FOR FURTHER INFORMATION CONTACT** section above. Exhibitors will be accepted in the order in which their responses are received. The first 30 organizations which respond will be accepted. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the exhibit location space and one work table free of charge. Exhibitors are responsible for the cost of the exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials.

Anyone wishing to attend this meeting must register at *http://www.nist.gov/itl/cloud/cloudworkshopv.cfm* by close of business Tuesday, May 29, 2012.

Dated: May 1, 2012.

David Robinson,

Associate Director for Management Resources.

[FR Doc. 2012–10811 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 120418419–2419–01]

Request for Information on Proposed New Program: National Network for Manufacturing Innovation (NNMI)

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for information.

SUMMARY: The NIST-hosted Advanced Manufacturing National Program Office (AMNPO) invites interested parties to provide input on a new public-private partnership program, the National Network for Manufacturing Innovation (NNMI or Network). The proposed Network will be composed of up to fifteen Institutes for Manufacturing Innovation (IMIs or Institutes) around the country, each serving as a hub of manufacturing excellence that will help to make United States (U.S.) manufacturing facilities and enterprises more competitive and encourage investment in the U.S. This program

was proposed in the President's fiscal year (FY) 2013 budget [1] and was announced by the President on March 9, 2012.[2] The NNMI program will be managed collaboratively by the Department of Defense, Department of Energy, Department of Commerce's NIST, the National Science Foundation, and other agencies. Industry, state, academic and other organizations will co-invest in the Institutes along with the NNMI program. For purposes of this notice, ''co-invest'' means that non-federal entities will contribute financial and other resources to the Institutes to complement federal investments.

DATES: Comments are due on or before 11:59 p.m. Eastern Time on October 25, 2012.

ADDRESSES: Comments will be accepted by email only. Comments must be sent to *nnmi_comments@nist.gov* with the subject line ''NNMI Comments.''

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schen, 301–975–6741, *michael.schen@nist.gov,* or Mr. Prasad Gupte, 301–975–5062, *prasad.gupte @nist.gov*.

SUPPLEMENTARY INFORMATION:

The Challenge

Numerous recent reports have highlighted the critical role of manufacturing to innovation,[3] jobs,[4] [5] the economy,[6] exports,[7] [8] and national security.[9] Current global trends raise serious concerns about U.S. competitiveness in manufacturing, including advanced manufacturing.[10] The Nation's trade balance for advanced technology products has deteriorated precipitously over the past decade, adding to the overall U.S. trade deficit in manufacturing.[11] One key source of the competitiveness challenge is a gap between research and development (R&D) activities and the deployment of technological innovations in domestic production of goods.[12] Many technologies fail to move to commercialization or reach full scale-up in the U.S. because the domestic private sector, particularly small and medium-sized enterprises (SMEs), finds that the risks of such investments are too great for an individual entity to make. The private sector also reports challenges in accessing key skills and technical infrastructure for demonstration and prototyping purposes.

The Response

To meet this challenge, the U.S. must build on its strengths, leverage its unique research, innovation, and workforce capabilities, and create an infrastructure for manufacturing innovation to ensure that the next generation of processes and products not only will be invented in the U.S., but scaled up and manufactured in the U.S. as well. The President has proposed that the federal government catalyze the creation of a NNMI as a central element of the U.S. response to the manufacturing competitiveness challenge.[1] In doing so, the President is building on recommendations made by his Council of Advisors on Science and Technology and a wide range of other experts and organizations.[3] [9] [10]

The NNMI will be composed of up to fifteen IMIs located around the country. The Institutes will bring together large companies, small and medium enterprises (SMEs), academia, federal agencies, and the states to accelerate innovation through co-investment in industrially relevant manufacturing technologies with broad applications. They will take full advantage of existing infrastructure by integrating current capabilities and building new ones where needed to foster innovation that can impact the manufacturing sector on a large scale.

The objectives of the NNMI are to bridge the gap between applied research and product development, provide shared assets to help companies gain access to cutting-edge capabilities and equipment, and create an unparalleled environment to continuously educate and train students and workers in advanced manufacturing skills. Each Institute will become a self-sustaining technical center of excellence, providing and integrating innovation resources that will help to make U.S. manufacturing facilities and enterprises more competitive and encourage investment in the U.S.

The NNMI program will be managed collaboratively by the Department of Defense (DoD), the Department of Energy (DOE), the Department of Commerce's NIST, the National Science Foundation (NSF), and other agencies. Industry, state, academic and other partners will co-invest in the Institutes. Should the NNMI be funded in FY2013, the federal government will make a $1 billion, one time investment through the NNMI program in a series of competitive solicitations staged over several years. This start-up investment will help support initial expenses for up to 15 Institutes. Participating agencies will oversee the solicitations, select award recipients, provide technical assistance to applicants, and manage the awards from the NNMI program funding.

Institute Objectives and Attributes

Each Institute will integrate capabilities and facilities required to reduce the cost and risk of commercializing new technologies and to address relevant manufacturing challenges on a production-level scale. Each will have a well-defined technical focus and will be selected through a competitive process.

Additional attributes will include:

- Long-term partnership between industry (including small, medium, and large firms), educational institutions, non-government organizations, and state, regional, and local economic development authorities;
- Flexibility to form integrated teams of industrial and academic experts from multiple disciplines to solve difficult problems and to develop the future workforce;
- Adaptability for education and workforce development at multiple levels, including K–12, professional credentialing, undergraduate and graduate education, and mentoring and professional development;
- Involvement of industry associations, professional societies, and economic development organizations for validation and linkages to broader industry and regional activities;
- Analytical capability to identify critical emerging technologies with transformational impact and operational capacity in translating these technologies into products and businesses for the market;

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[1] See *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/budget.pdf,* page 217.

[2] See *http://www.whitehouse.gov/the-press-office/2012/03/09/remarks-president-manufacturing-and-economy.*

[3] President's Council of Advisors on Science and Technology (2011) *Report to the President on Ensuring Leadership in Advanced Manufacturing.*

[4] Bureau of Labor Statistics, *2011 Employer Costs for Employee Compensation,* Table 6.

[5] National Science Board, *Science and Engineering Indicators 2012,* Appendix Table 4–14 and Table 3–32.

[6] Bureau of Economic Analysis, *2010 U.S. Economic Accounts by Industry,* see *http://www.bea.gov/industry/index.htm.*

[7] Bureau of Economic Analysis, *Industry-by-Industry Total Requirements Table,* see *http://www.bea.gov/industry/iotables/prod/.*

[8] Bureau of Economic Analysis and Census, *U.S. International Trade in Goods and Services.*

[9] National Science and Technology Council (2012) *A National Strategic Plan for Advanced Manufacturing, http://www.whitehouse.gov/sites/default/files/microsites/ostp/iam_advanced manufacturing_strategicplan_2012.pdf.*

[10] R. Atkinson and S. Andes, *The Atlantic Century II: Benchmarking E.U. and U.S. Innovation and Competitiveness.* Washington, DC: Information Technology and Innovation Foundation, 2011.

[11] NSTC (2012) *Advanced Manufacturing.*

[12] Deloitte Consulting LLP, Manufacturing Institute (2011), Boiling Point? *The skills gap in U.S. manufacturing.*

• Ability to engage and assist SMEs to effectively deploy technologies; and

• A sustained focus on innovation with a strong reputation for quality and success.

Examples of Potential Focus Areas

Each Institute will have a clear focus area that does not overlap with those of the other Institutes. The focus area could be an advanced material, a manufacturing process, an enabling technology, or an industry sector. The federal government does not intend to create or provide a complete list of focus areas for the NNMI. The NNMI solicitation will invite applicants to propose such areas. The following examples are meant only to be suggestive of focus areas that might serve national needs and improve the competitiveness of a broad base of domestic manufacturers.

Example 1 (Manufacturing Process): Refining standards, materials, and equipment for additive manufacturing to enable low-cost, low-volume production using digital designs that can be transmitted from designers located anywhere.

Example 2 (Advanced Materials): Developing lightweight materials, such as low-cost carbon fiber composites (CFCs), that will improve fuel efficiency and performance of the next generation of automobiles, aircraft, ships, and trains.

Example 3 (Enabling Technology): Creating a smart manufacturing infrastructure and approaches that integrate low-cost sensors into manufacturing processes, enabling operators to make real-time use of ''big data'' flows from fully instrumented plants in order to improve productivity, optimize supply chains, and reduce wastage of energy, water, and materials. Creating technology platforms for manufacturing Spintronics (spin-based electronics) devices and systems for next-generation electronics, and for new paradigms for manufacturing photonic assemblies for future all-optical networks and wireless communications.

Example 4 (Industry Sector): Improving biomanufacturing processes to enhance safety, quality, and consistency of bioproducts, such as pharmaceuticals or chemicals, by enabling rapid on-line sensing and analytical capabilities and creating new tools for process optimization, control and improvement to enable cost-effective production methods.

Request for Information: The objective of this request for information is to assist the NIST-hosted AMNPO in the development of the new program should the NNMI be funded in FY 2013. The questions below are intended to assist in the formulation of comments, and should not be construed as a limitation on the number of comments that interested persons may submit or as a limitation on the issues that may be addressed in such comments. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All comments will be made publicly available.

The NIST-hosted AMNPO is specifically interested in receiving input pertaining to one or more of the following questions:

Technologies With Broad Impact

1. What criteria should be used to select technology focus areas?

2. What technology focus areas that meet these criteria would you be willing to co-invest in?

3. What measures could demonstrate that Institute technology activities assist U.S. manufacturing?

4. What measures could assess the performance and impact of Institutes?

Institute Structure and Governance

5. What *business models* would be effective for the Institutes to manage business decisions?

6. What *governance models* would be effective for the Institutes to manage governance decisions?

7. What membership and participation structure would be effective for the Institutes, such as financial and intellectual property obligations, access and licensing?

8. How should a network of Institutes optimally operate?

9. What measures could assess effectiveness of Network structure and governance?

Strategies for Sustainable Institute Operations

10. How should initial funding co-investments of the Federal government and others be organized by types and proportions?

11. What arrangements for co-investment proportions and types could help an Institute become self-sustaining?

12. What measures could assess progress of an Institute towards being self-sustaining?

13. What actions or conditions could improve how Institute operations support domestic manufacturing facilities while maintaining consistency with our international obligations?

14. How should Institutes engage other manufacturing related programs and networks?

15. How should Institutes interact with state and local economic development authorities?

16. What measures could assess Institute contributions to long term national security and competitiveness?

Education and Workforce Development

17. How could Institutes support advanced manufacturing workforce development at all educational levels?

18. How could Institutes ensure that advanced manufacturing workforce development activities address industry needs?

19. How could Institutes and the NNMI leverage and complement other education and workforce development programs?

20. What measures could assess Institute performance and impact on education and workforce development?

21. How might institutes integrate R&D activities and education to best prepare the current and future workforce?

Dated: April 30, 2012.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–10809 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a National Cybersecurity Center of Excellence (NCCoE) Workshop

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of initial public workshop.

SUMMARY: NIST announces a National Cybersecurity Center of Excellence (NCCoE) Workshop to be held on Tuesday, June 26, 2012. This is an initial informational NCCoE workshop. The goals of this workshop are to provide a venue for discussion of the NCCoE public-private partnership structure, and to describe and gather input from individual participants on possible case studies that are expected to form a central focus of collaborative efforts. The workshop will also describe and explore opportunities for industry, academia, and Federal, state and local government agencies to participate in the NCCoE.

DATES: The NCCoE Workshop will be held on Tuesday, June 26, 2012 from 8 a.m. Eastern Time to 5 p.m. Eastern Time. Attendees must register by 5 p.m. Eastern Time on Tuesday, June 19, 2012.

ADDRESSES: The event will be held at the Universities at Shady Grove, 9630 Gudelsky Drive, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: For further information contact N. Lucy Salah by email at *nccoe@nist.gov* or by phone at (301) 975–4500. To register, go to: *https://www.fbcinc.com/NIST/nccoe/atreg1.aspx.* Additional workshop details will be available at *http://csrc.nist.gov/nccoe.*

SUPPLEMENTARY INFORMATION: The NCCoE is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE will bring 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; lower risk for companies and individuals in the use of IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

This initial workshop will provide a venue for discussion of the NCCoE public-private partnership structure, and describe and gather input from individual participants on possible case studies that are expected to form a central focus of collaborative efforts. The workshop will also describe and explore opportunities for industry, academia, and Federal, state and local government agencies to participate in the NCCoE.

The workshop is open to the general public; however, those wishing to attend must register at *https://www.fbcinc.com/NIST/nccoe/atreg1.aspx* by 5 p.m. Eastern Time on Tuesday, June 19, 2012, in order to attend.

For additional information on the NCCoE governance and NCCoE operational structure, visit the NCCoE Web site *http://csrc.nist.gov/nccoe.*

Dated: April 27, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–10810 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Multispecies Days-at-Sea Leasing Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 3, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Anna Macan, (978) 281–9165, or *Anna.Macan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of this information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the Northeast Multispecies fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations implementing the FMP are specified at 50 CFR part 648 Subpart F. The NE multispecies Days-at-Sea (DAS) leasing requirements at § 648.82(k) form the basis for this collection of information.

The NE Multispecies DAS leasing program was implemented in 2004 as a result of Amendment 13 (69 FR 22906) which substantially reduced the number of DAS available for the NE multispecies vessels. To mitigate some of the adverse impact associated with the reduction in DAS, the NE Multispecies Leasing Program was developed to enable vessels to increase their revenue by either leasing additional DAS from another vessel to increase their participation in the fishery, or by leasing their unused allocated DAS to another vessel.

NMFS requests DAS leasing application information in order to process and track requests from allocation holders to transfer DAS to another vessel. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ. The DAS leasing downgrade information is collected to allow vessel owners that are eligible to lease Northeast multispecies DAS a one-time downgrade in their baseline specifications to their current vessel specifications. This one-time downgrade provides greater flexibility for vessel owners to lease their DAS.

II. Method of Collection

Applicants can submit a DAS leasing request either through mail or electronically. Fillable applications may be completed online, but must be printed and signed to complete and the originals must be mailed. Applicants may choose to submit a lease electronically by logging into their personal fish-on-line accounts at *https://www.nero.noaa.gov/NMFSlogin/login/login* and clicking on the Days At Sea Leasing section.

III. Data

OMB Control Number: 0648–0475.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 505.

Estimated Time Per Response: DAS Leasing Application, 5 minutes; Request to Downgrade, 1 hour.

Estimated Total Annual Burden Hours: 88.

Estimated Total Annual Cost to Public: $495.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–10722 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Vessel Monitoring System (VMS) and Related Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 3, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Anik Clemens, (727) 551–5611 or *Anik.Clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the reef fish fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The vessel monitoring system (VMS) regulations for the Gulf reef fish fishery may be found at 50 CFR 622.9.

The Reef Fish Fishery Management Plan contains several area-specific regulations where fishing is restricted or prohibited in order to protect habitat or spawning aggregations, or to reduce fishing pressure in areas that are heavily fished. Unlike size, bag, and trip limits, where the catch can be monitored onshore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and the limited number of patrol vessels, resulting in a need to improve enforceability of area fishing restrictions through remote sensing methods. In addition, all fishing gears are subject to some area fishing restrictions. Because of the sizes of these areas and the distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. An electronic VMS allows a more effective means to monitor vessels for intrusions into restricted areas.

The VMS provides effort data and significantly aids in enforcement of areas closed to fishing. All position reports are treated in accordance with NMFS existing guidelines for confidential data. As a condition of authorized fishing for or possession of Reef Fish in or from the Gulf of Mexico Exclusive Economic Zone (EEZ), a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the United States Coast Guard (USCG), and their authorized officers and designees, access to the vessel's position data obtained from the VMS.

The currently approved reporting requirements are being renewed without change. The burden estimates, however, have changed due to adjustments. There are more vessels with VMS onboard and a larger number of transfers in which the new permit holder obtains a new vessel; therefore, start-up costs (purchase and installation of VMS units) will increase.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0544.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 905.

Estimated Time per Response: Installation of VMS, 4 hours; installation and activation checklist, 15 minutes; power-down exemption requests, 5 minutes; transmission of position reports, 1 second; and annual maintenance, 2 hours.

Estimated Total Annual Burden Hours: 2,380.

Estimated Total Annual Cost to Public: $911,567 in start-up transfer costs, operations and maintenance costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–10738 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC014

Marine Mammals; File No. 15777

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Northeast Fisheries Science Center, Woods Hole, MA (Responsible Party: Michael Simpkins), has applied in due form for a permit to take marine mammals during scientific research in coastal waters and adjacent waters off the northeast U.S.

DATES: Written, telefaxed, or email comments must be received on or before June 4, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15777 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to take harbor seals (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), harp seals (*Pagophilus groenlandicus*), and hooded seals (*Cystophora cristata*) during conduct of research to estimate distribution and abundance, determine stock structure and habitat requirements, study foraging ecology, assess health and determine the effects of natural and anthropogenic factors on these seal species. Types of take include harassment during shipboard, skiff, and aircraft transect and photo-identification surveys, and scat collection; and capture with tissue sampling and instrument or tag attachment. The applicant proposes to capture up to 175 harbor seals and 225 gray seals annually for measurement of body condition, collection of tissue samples (e.g., blood, blubber biopsy, skin, hair, swab samples, vibrissae), and attachment of telemetry devices. Up to 200 harp seals, 50 hooded seals, and an additional 18,000 harbor seals and 20,000 gray seals could be harassed annually incidental to surveys, scat collections and capture operations. The applicant requests unintentional mortality of up to 3 animals of each species annually. Permission is also sought to import and export pinniped specimen material (including soft and hard tissue, blood, extracted DNA, and whole dead animals or parts thereof) to/from any country. The study area includes waters within or proximal to the U.S. EEZ from North Carolina northward to Maine, and Canadian waters in the Gulf of Maine.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 1, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10847 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB114

Notice of Availability of Draft Documents for Public Comment Related to a Fishery Conservation Plan and Research Permits for the Washington State Department of Fish and Wildlife

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

ACTION: Notice; reopening of comment period.

SUMMARY: NMFS is reopening the comment period for a draft Environmental Assessment (EA) and Fishery Conservation Plan (Plan) related to scientific research and fisheries management measures in waters of the Puget Sound/Georgia Basin, Washington.

DATES: Written comments on the draft EA and proposed Plan and associated applications must be received on or before May 11, 2012.

ADDRESSES: Address all written comments to: Dan Tonnes, National Marine Fisheries Service, 7600 Sand Point Way NE., Building Number 1, Seattle, WA 98115–6349, facsimile (206) 526–6426. Comments may be submitted by email to the following address: *WDFWEA.nwr@noaa.gov.* In the subject line of the email, include the Document identifier: WDFWEA. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the **ADDRESSES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dan Tonnes, National Marine Fisheries Service, 7600 Sand Point Way NE., Building Number 1, Seattle, WA 98115–6349, facsimile (206) 526–6426, phone (206) 526–4643, email: *Dan.Tonnes@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a document in the **Federal Register** on March 30, 2012, concerning the availability of a draft documents for public comment related to a Fishery Conservation Plan and Research Permits for the Washington State Department of Fish and Wildlife. The comment period for this action expired on April 23, 2012. The comment period is being reopened to provide additional opportunity for public comment.

Reopening of Comment Period

The comment period is reopened through May 11, 2012.

Document Availability

The documents are available electronically on the World Wide Web at *http://www.nwr.noaa.gov.*

Dated: May 1, 2012.

Dwayne Meadows,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10841 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC015

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, May 23, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Advisory Panel (GAP) will meet to discuss pending groundfish management actions. The GAP will discuss possible adjustments to management measures for sectors. The focus of this discussion will be on possible changes to the sector monitoring program, but may also consider other sector management issues. The GAP will discuss dockside, at-sea, and electronic monitoring options. The GAP will also discuss possible changes to the treatment of Annual Catch Limits and Accountability Measures. Other business may also be discussed. GAP recommendations will be provided to the Groundfish Oversight Committee at a future meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–10760 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The SSC will meet Wednesday and Thursday, May 23–24, 2012 beginning at 10 a.m. on May 23 and conclude by 4 p.m. on May 24.

ADDRESSES: The meeting will be held at the Pier V Hotel, 711 Eastern Avenue, Baltimore, MD 21202; telephone: (410) 539–2000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The primary purpose of the SSC meeting includes: Review multi-year specifications for *Loligo* and *Illex* squid; reaffirm 2012 ABC recommendation for butterfish; review performance of butterfish mortality cap program; make 2013–15 ABC recommendations for butterfish and Atlantic mackerel; review and adopt criteria for establishing multi-year ABC recommendations; review RSA funded projects for 2012; and receive report of the Ecosystems Subcommittee (review Ecosystem Guidance Document outline).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–10763 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a Methodology Review Panel May 29–31, 2012. The meeting is open to the public.

DATES: The Methodology Review Panel will meet Tuesday, May 29 through Thursday, May 31, 2011. Business will begin the first day at 8:30 a.m., and will begin at 8 a.m. each subsequent day. Business will conclude each day at 5 p.m. or until business for the day is completed.

ADDRESSES: The meeting will be held in the Large Conference Room of the National Marine Fisheries Service's Southwest Fisheries Science Center, Torrey Pines Campus; 3333 North Torrey Pines Court, La Jolla, CA 92037–1023; telephone: (858) 546–7000.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Methodology Review Panel meeting is to consider the design of the West Coast Vancouver Island trawl survey, the data collected from the survey, the methods used to analyze the collected data, the utility of the data for use in stock assessment models for Pacific sardine, and the potential to use of the collected data to monitor trends at the population level.

Although non-emergency issues not contained in the meeting agenda may come before the Methodology Review Panel for discussion, those issues may not be the subject of formal action during this meeting. Methodology Review Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Methodology Review Panel's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam, at (858) 546–7170, at least 5 days prior to the meeting date.

Dated: May 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–10762 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC009

General Advisory Committee and Scientific Advisory Subcommittee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Scientific Advisory Subcommittee (SAS) on May 30, 2012, and a meeting of the General Advisory Committee (GAC) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on May 31, 2012. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the SAS will be held on May 30, 2012, from 9 a.m. to 5 p.m. PDT (or until business is concluded), and the meeting of the GAC will be held on May 31, 2012, from 9 a.m. to 5 p.m. PDT (or until business is concluded).

ADDRESSES: Both meetings will be held in the Conference Room 1 at Carlsbad Fish and Wildlife Service: 6010 Hidden Valley Road, Carlsbad, CA 92011. Please notify Heidi Taylor prior to May 18, 2012, of your plans to attend either meeting, or interest in a teleconference option.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, Southwest Region, NMFS at *Heidi.Taylor@noaa.gov,* or at (562) 980–4039.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The GAC and SAS support the U.S. Section to the IATTC in an advisory capacity; in particular, they provide advice on the development of U.S. policies, positions, and negotiating tactics. NOAA Fisheries Southwest Regional office administers the GAC and SAS in cooperation with the Department of State. The next annual meeting of the IATTC is scheduled for June 18–June 29, 2012, in La Jolla, CA. For more information on this meeting, please visit the IATTC's Web site: *http://www.iattc.org/HomeENG.htm.*

Meeting Topics

The SAS meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and albacore tunas; (2) updates on bycatch mitigation measures; (3) evaluation of the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; (4) AIDCP dolphin abundance surveys; (5) input to the GAC; and (6) other issues as they arise.

The GAC meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, and albacore tunas; (2) U.S. regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (3) updates on international agreements that could affect the IATTC; (4) the status of U.S legislation to implement the Antigua Convention; (5) outcomes of the IATTC Capacity Working Group meeting; (6) input from the SAS; (7) input and advice from the GAC on issues that may arise at the upcoming 2012 IATTC meetings, including the IATTC's recommended conservation measures, potential U.S. proposals, and potential proposals from other IATTC members; and (9) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Taylor at (562) 980–4039 by May 28, 2012.

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

Dated: May 1, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–10842 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel will hold a meeting.

DATES: The meeting will be held on May 29, 2012, from 9 a.m. to 5 p.m.

ADDRESSES: Buccaneer Hotel, 5007 Estate Shoys, Lot 7, Christiansted, St. Croix, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council's Outreach and Education Advisory Panel will meet to discuss the items contained in the following agenda:

- Call to order
- Inventory Resources
  —Presentation by Outreach and Education Panel Members
  —CFMC Outreach and Education Needs
- Ideas and Strategies for Outreach and Education
- Outline for the Outreach and Education Strategic Plan for the U.S. Caribbean
- Other Business

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–10761 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV40

Marine Mammals; File No. 14118

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Becky Woodward, Ph.D., University of Maine, 9500 Old Retriever Trail, Charles City, Virginia 23030 to conduct research on Eastern gray (*Eschrichtius robustus*), minke (*Balaenoptera acutorostrata*), and short- and long-finned pilot whales (*Globicephala spp.*) and endangered humpback (*Megaptera novaeangliae*) whales. Fin (*B. physalus*) and sei (*B. borealis*) whales may be incidentally harassed.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 23, 2010, notice was published in the **Federal Register** (75 FR 13730) that a request for a permit to conduct research on the species identified above had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes takes during research involving tagging using a peduncle belt type attachment mechanism, photo-identification, behavioral observations, tracking and monitoring, passive acoustics, photography and video both above and under water, and collection of sloughed skin. Research will occur in the North Atlantic from Maine to Texas, and in the North Pacific from Alaska to California, including Hawaii. Multiple research objectives would be addressed using data from the tags, including: (1) Long-term movement and habitat use studies using satellite/GPS/depth tags, (2) medium-term acoustic studies using an audio recording package to examine transmitted and received sound, and (3) extended fine-scale behavioral ecology studies using multi-sensor data recording packages. The permit is valid for five years from the date of issuance.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on April 27, 2012.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: May 1, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10846 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2012–0023]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the ''Act''), Public Law 106–113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). The USPTO is requesting nominations for three (3) members to the Patent Public Advisory Committee, and two (2) members to the Trademark Public Advisory Committee, for terms of three years that begin on expiration of the predecessors' terms.

DATES: Nominations must be postmarked or electronically transmitted on or before June 11, 2012.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé to John W. Cabeca, Senior Advisor, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Senior Advisor's attention at (571) 273–0464; or by mail marked to the Senior Advisor's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

FOR FURTHER INFORMATION CONTACT: John W. Cabeca, Senior Advisor, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, by facsimile transmission marked to his attention at (571) 273–0464, or by mail marked to his attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the ''Secretary'') and serve at the pleasure of the Secretary for three (3)-year terms. The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. The Committees must include members who have ''substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation'' (35 U.S.C. 5(b)(3)). In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent ''small business concerns, independent inventors, and nonprofit organizations,'' and at least one member must represent the independent inventor community (35 U.S.C. 5(b)(2)). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *http://www.whitehouse.gov/blog/2009/09/23/lobbyist-agency-boards-and-commissions* (Sept. 23, 2009, 2:33PM EST)); cf. Exec. Order No. 13490, 74 FR 4673 (January 21, 2009) (while Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years beginning at the expiration of his or her predecessor's term. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of Title 5, United States Code. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide clerical and other support services for the Committees as the Director may determine to be necessary and proper.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be Special Government Employees within the meaning of Section 202 of Title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment (5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b)).

• Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest (18 U.S.C. 208).

• Representation of foreign interests may also raise issues (35 U.S.C. 5(a)(1) and 18 U.S.C. 219).

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in confidential executive sessions when considering personnel, privileged, or other confidential matters. Nominees must have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumés for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Senior Advisor to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: April 30, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–10737 Filed 5–3–12; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Individual Eligibility Evaluation

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Notice; request for comments.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) will submit the collection of information listed below to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act. This notice solicits comments on this collection of information.

DATES: Submit your written comments on the information collection on or before July 3, 2012.

ADDRESSES: Submit your comments on the requirement to Lou Bartalot, Director Compliance, Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259; fax (703) 603–0655; or email *rulecomments@abilityone.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the applicable form or explanatory material, contact Lou Bartalot or Amy Jensen at information in above paragraph.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The Committee plans to submit a request to OMB that the initial and annual evaluations of competitive employability required by the Committee's regulations (41 CFR 51–4.3) be done on a standardized form. The Committee is requesting a 3-year term of approval for this recordkeeping activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The JWOD Act of 1971 (41 U.S.C. Chapter 85) is the authorizing legislation for the AbilityOne Program. The AbilityOne Program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit agencies employing such individuals. The AbilityOne Program is administered by the Committee. Two national, independent organizations, National Industries for the Blind (NIB) and NISH, help State and private nonprofit agencies participate in the AbilityOne Program.

The implementing regulations for the JWOD Act, which are located at 41 CFR Chapter 51, provide the requirements, procedures, and standards for the AbilityOne Program. Section 51–4.3 of the regulations sets forth the standards that a nonprofit agency must meet to maintain qualification for participation in the AbilityOne Program. Under this section of the regulations, a nonprofit agency that wants to continue to participate in the AbilityOne Program must conduct evaluations on each individual performing direct labor to determine their capability to perform competitive employment at least annually.

Overview of This Information Collection

This recordkeeping request seeks approval for the Committee to require the use of a standardized, Committee developed, form to record the evaluation beginning in January 2013. The development of the evaluation form is the result of consultation with multiple nonprofit agencies already participating in the AbilityOne Program and it is at the request of a number of these agencies that the Committee is seeking its mandatory use.

Type of Information Collection: New collection.

Title: AbilityOne Program Individual Eligibility Evaluation.

OMB Control Number: 3037–0011.

Form Number: Committee Form IEE.

Description of Respondents: Nonprofit agencies serving people who are blind or severely disabled that participate in the AbilityOne Program.

Annual Number of Respondents: About 610 nonprofit agencies serving people who are blind or severely disabled that participates in the AbilityOne Program.

Estimated Total Annual Burden Hours: Burden for conducting the evaluations is included in the Committee's recordkeeping requirement under OMB Control number 3037–005. It is estimated that requiring the use of a standardized form will not add to the recordkeeping burden once training is completed and the form adopted. The estimated burden to accomplish the training is estimated at 2 hours per agency. Total burden is 1220 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the 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 respondents.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–10732 Filed 5–3–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 6/4/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 3/2/2012 (77 FR 12816–12817) and 3/9/2012 (77 FR 14352–14353), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Steno Book, 6″ x 9″, Green

NSN: 7530–00–NIB–1012—60 Pages
NSN: 7530–00–NIB–1013—80 Pages
NPA: Alabama Industries for the Blind, Talladega, AL.
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY
COVERAGE: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Service:

Service Type/Location: Custodial Service, FEMA LA Recovery Office, Sherwood Forest Staging Area, 2695 Sherwood Forest, Baton Rouge, LA.
NPA: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA.
Contracting Activity: Department of Homeland Security, Federal Emergency Management Agency, Baton Rouge, LA.

Deletions

On 3/2/2012 (77 FR 12816–12817), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 USC 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Meal Kits (MORC Kits)

NSN: 8970–01–E59–0239A
NSN: 8970–01–E59–0240A
NSN: 8970–01–E59–0241A
NSN: 8970–01–E59–0242A
NSN: 8970–01–E59–0243A
NSN: 8970–01–E59–0244A
NPA: Topeka Association for Retarded Citizens, Topeka, KS.
Contracting Activity: Department of Defense/Office of The Secretary of Defense (Except Military Departments), Washington, DC.

Shaft, Propeller

NSN: 2520–01–171–4844
NPA: VIP Services, Inc., Elkhorn, WI.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–10799 Filed 5–3–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 6/4/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Steel Roller Mop & Refill

NSN: 7920–01–383–7927—Refill, Sponge Head
NSN: 7920–01–383–7799—Roller Mop, Industrial Steel, 12″ Head
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Nuts, Flexible Packaging

NSN: 8925–01–E62–1745—Almonds, Shelled, Sliced, Natural (2lb bag)
NSN: 8925–01–E62–1746—Almonds, Shelled, Sliced, Blanched (2lb bag)
NSN: 8925–01–E62–1747—Almonds, Shelled, Slivered, Blanched (2lb bag)
NSN: 8925–01–E62–1748—Walnuts, English, Shelled, Halves and Pieces (2lb bag)
NSN: 8925–01–E62–1749—Walnuts, English, Shelled, Halves and Pieces (2.75lb bag)
NPA: DePaul Industries, Portland, OR
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–10800 Filed 5–3–12; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on June 19–20, 2012 is to review new start research and development projects requesting Strategic Environmental Research and Development Program (SERDP) funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: Tuesday, June 19, 2012 from 9:00 a.m. to 4:15 p.m. and Wednesday, June 20 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: SERDP Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: May 1, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10764 Filed 5–3–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Notice of Intent To Prepare a Joint Draft Supplemental Environmental Impact Statement for a Proposed Navigation Improvement Project at Maalaea Harbor, Maui, HI (Second SEIS for the Project)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent (withdrawal).

SUMMARY: On July 9, 1997, the U.S. Army Corps of Engineers (USACE) announced its intent to prepare a joint Draft Supplemental Environmental Impact Statement (SEIS) in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, for the Proposed Navigation Improvement Project at Maalaea Harbor, Maui, Hawaii. The Maalaea Harbor project, sponsored by USACE and the State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR), was originally authorized under Section 101 of the Rivers and Harbors Act of 1968, as amended. The Draft SEIS would have evaluated the environmental impacts of potential alternatives to address navigational safety and surge-related problems in Maalaea Harbor.

Based on careful consideration of the implementation costs, regulatory requirements, and other concerns expressed by the community, the navigation improvement project for the Maalaea Harbor has been terminated by the project sponsors. Therefore, future preparation of an EIS is not necessary. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Further information is available on the Web site for the project at *http://www.maalaeaharborproject.com/* or from Ms. Cindy Barger, Project Manager, U.S. Army Corps of Engineers, Honolulu District, ATTN: CEPOH–PP–C, Room 307, Building 230, Ft. Shafter, HI 96858, email: *cindy.s.barger@usace.army.mil,* telephone: (808) 438–6940.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers (USACE) was investigating navigation improvements at Maalaea Harbor, Maui, Hawaii, originally authorized in 1968. The local sponsor of the project was the State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR). Over the course of time, a variety of alternative project designs, including

both external and internal breakwater structures were investigated to address the navigational safety and surge-related problems. However, concerns over impacts to adjacent surf breaks and biological resources were raised on several occasions, resulting in multiple delays in the planning process. Most recently, USACE and DOBOR re-initiated the project in 2009, with a focus on using stakeholder input and updated technical information to better define and inform the planning process. Through this effort, the decision to terminate the project was made based on careful consideration of the high cost associated with the proposed improvements (particularly in light of the current and foreseeable economic conditions), the regulatory constraints and mitigation requirements for unavoidable impacts to coral reefs, and community concerns regarding impacts to surf sites and natural resources.

A variety of technical studies and planning documents were produced in support of the project, including flushing studies, habitat surveys, and wave response modeling. The public may request copies of reports. The public will be notified of the termination of the project through a public notice, as well as a press release by the project sponsors. The press release will be published on the project Web site and posted at Maalaea Harbor.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–10793 Filed 5–3–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: June 6, 2012.

Location: The OMNI William Penn Hotel, 530 William Penn Place, Pittsburgh, PA 15219 at 412–281–7100 or 1–800–843–6664 or *www.omnihotels.com/FindAHotel/PittsburghWilliamPenn.aspx.*

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at approximately 1:00 p.m.

Agenda: The Board will be provided the status of funding for inland navigation projects and studies and the status of the Inland Waterways Trust Fund, the funding status for Fiscal Year (FY) 2012 and the FY 2013 budget, an update of the Inland Marine Transportation System (IMTS) Capital Projects Business Model, presentation of the IMTS Levels of Service Initiative, as well as an update of Olmsted Locks and Dam Project.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–ID, 441 G Street NW., Washington, DC 20314–1000; Ph: 202–761–4691.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–10771 Filed 5–3–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Proposed Priority; Technical Assistance on State Data Collection, Analysis, and Reporting—National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems; CFDA Number 84.373Z

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Technical Assistance on State Data Collection program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2012 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to States to improve their capacity to meet the Individuals with Disabilities Education Act (IDEA) data collection, analysis, and reporting requirements.

We propose to assist States in developing or enhancing statewide early childhood longitudinal data systems, by which we mean data systems that include child-level data for infants, toddlers, and young children with disabilities (birth through age 5) served through early childhood programs under IDEA Part C and Part B preschool programs. These statewide early childhood longitudinal data systems would be part of a coordinated early learning data system, by which we mean data systems that vertically and horizontally link child, program, and workforce data elements related to children (birth through age 5). This TA will build States' capacity to report high-quality data to meet IDEA reporting requirements.

DATES: We must receive your comments on or before July 18, 2012.

ADDRESSES: Address all comments about this notice to Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., room 4069, Potomac Center Plaza, Washington, DC 20202–2600. If you prefer to send your comments by email, use the following address: *meredith.miceli@ed.gov.*

You must include the term ''Data Collection Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli. *Telephone:* (202) 245–6028.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Invitation To Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 4069, 550 12th Street SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B to provide TA activities authorized under section 616(i). Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA.

Program Authority: 20 U.S.C. 1411(c), 1416(i), and 1418(c).

PROPOSED PRIORITY:

This notice contains one proposed priority.

National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems.

Background: States must provide an assurance that they will meet the Federal reporting requirements under the IDEA Part C and Part B preschool programs in order to receive these IDEA grant funds. IDEA reporting requirements include a State's submission of data as part of its State Performance Plan (SPP) and Annual Performance Report (APR) under section 616 of IDEA, as well as data required under section 618 of IDEA.

In the APR, each State must report to the Department on its progress in meeting the measurable and rigorous targets for each of the Part C indicators and Part B indicators.[1] Each State must report to the public, by posting on the State agency's Web site, data on the performance of each local program in meeting the targets under each indicator. In the APR, States must also provide both quantitative data under each of the indicators and qualitative information, such as an explanation of how the State's data reflect progress or lack of progress (i.e., ''slippage'') in meeting the State's targets under each indicator, and an analysis of how the State's improvement activities[2] address the factors that contributed to the State's progress or slippage in the data for each indicator. In the SPP, a State identifies and, where appropriate, revises its improvement activities based on its analysis of this qualitative and quantitative information.

Additionally, under section 618 of IDEA, States are required to annually collect and report data on infants, toddlers, and children with disabilities. States provide data on the number of eligible children served (''child count''), educational environments, discipline, dispute resolution, and personnel employed to provide services for children with disabilities, including children from ages 3 through 5 receiving services under IDEA Part B. States must also collect and report child count, exiting, dispute resolution, and service settings data for infants and toddlers receiving services under IDEA Part C.[3]

States, however, face significant practical challenges in successfully reporting to the Department and to the public the high-quality data required under the IDEA. The data States are required to collect and report in their IDEA Part B and Part C APRs include preschool and early intervention data that may be maintained by more than one entity, and each program needs information and data that are maintained by another program.

For example, to obtain accurate early childhood transition data to report under SPP/APR Indicators C8 and B12, which are included in Appendices A and B to this notice, sharing information between the IDEA Part C early intervention program and the IDEA Part B preschool program is required. Additionally, in order to analyze and report on the Part C child find[4] data under SPP/APR Indicators C5 and C6, which are included in Appendix B to this notice, the State must cross-validate its early intervention data with data from specific primary referral sources (e.g., the newborn hearing screening programs, maternal and child health or other programs that do not provide IDEA services) that may not be part of an IDEA early childhood data system. Even in situations where States are sharing data to meet IDEA reporting requirements, there are concerns about the quality of the data shared between agencies. In addition, appropriately sharing personally identifiable information between and among the various State agencies responsible for managing the data systems, while still ensuring compliance with the privacy protections under the Family Educational Rights and Privacy Act (FERPA) and IDEA Parts B and C, is a challenge for many States (Keller-Allen, 2009).[5]

States can address these challenges, in part, by coordinating their data systems to link and share certain child-level data vertically (i.e., across different age ranges) across programs serving children with disabilities at different age ranges over time (i.e., birth through age 2, age 3 through 5/preschool, age 6 through 21/school age).

States can also improve their IDEA data reporting by linking and sharing data horizontally (sharing data across programs for the same child) across various early learning and development programs[6] serving infants, toddlers, and young children with disabilities at a particular time (e.g., child care, home visiting programs, Head Start, Early Head Start, and publicly unded State preschool programs and services). Taking these steps can help States improve the quality (i.e., reliability and validity) of the qualitative and

[1] The following Web sites provide more information on the 616 SPP/APR Indicators: *www.ed.gov/policy/speced/guid/idea/capr/index.html* and *www2.ed.gov/policy/speced/guid/idea/bapr/index.html.*

[2] States are required to describe the improvement activities they implemented to improve performance for each indicator, including activities, timelines, and resources, in the Annual Performance Report under section 616 of IDEA. Source: Part C State Performance Plan (SPP) and Annual Performance Report (APR) Instruction Sheet. Available from: *http://www2.ed.gov/policy/speced/guid/idea/capr/2012/index.html.*

[3] The following Web sites provide more information on IDEA 618 data tables: *www.ideadata.org/PartCForms.asp* and *www.ideadata.org/PartBForms.asp.*

[4] For the purposes of this priority, ''child find'' is defined as ''all children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services'' (20 U.S.C. 1412(a)(3)(A)).

[5] Keller-Allen, C. (April 2009). Using unique identifiers to promote data sharing between Part C and Part B. Retrieved August 24, 2010 from: *www.projectforum.org/docs/UsingUniqueIdentifiers toPromoteDataSharingBtwnPartCandPartB.pdf.*

[6] For the purposes of this priority, ''early learning and development program'' means ''any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) preschool program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; and (d) a non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting. A State should include in this definition other programs that may deliver early learning and development services in a child's home, such as the Maternal, Infant and Early Childhood Home Visiting; Early Head Start; and part C of IDEA.'' 76 FR 53569 (August 26, 2011). Application for New Awards: Race to the Top—Early Learning Challenge. Available at: *www.federalregister.gov/articles/2011/08/26/2011-21756/applications-for-new-awards-race-to-the-top-early-learning-challenge#p-122.*

quantitative data they must report to meet IDEA reporting requirements. In developing such a data system, a State must also meet critical data management, governance, and requirements to protect the confidentiality of these infants, toddlers, and young children with disabilities and their families.

As previously noted, within a State, data about children with disabilities from birth through age 5 typically originate from multiple sources and are managed and stored within multiple organizations with different operating procedures. Therefore, in order to coordinate and report high-quality data to meet the IDEA reporting requirements, a State must implement a data governance plan. Many States, however, may not have sufficiently detailed governance plans for data on infants, toddlers, and children with disabilities.

Data governance provides a structure for a diverse group with shared responsibility for high-quality data to establish and implement policies and procedures to manage data and information (Privacy Technical Assistance Center, n.d.[7]) and evaluate and address data quality issues (Cheong & Chang, 2007; [8] Neely & Cook, 2011 [9]). Examples of data quality issues related to the data that are collected on children with disabilities include timeliness of data submissions to the Department, accuracy of data elements being reported, and completeness of data submissions. Thus, a data governance plan would provide an organizing structure that would build shared understanding among agencies that collect such data about responsibilities, policies, and procedures for data quality management, and it would clarify expectations for data and information management including those for personnel who collect, store, validate, and use the data. Such a plan would also allow the State to meet its responsibilities to ensure that child-level data are maintained securely and that the State meets the confidentiality requirements under IDEA and FERPA and other applicable Federal, State, and local confidentiality requirements (Haug & Arlbjorn, 2011; [10] Neely & Cook, 2011).

Under the priority we are proposing in this notice, the grantee would be required to assist States in meeting these challenges, and specifically to provide TA to States on the development and enhancement of statewide early childhood longitudinal data systems that link child-level data for children served under the IDEA that are collected through those programs providing IDEA services to those other programs that provide early childhood education, care, and health services to children served under the IDEA. These statewide early childhood longitudinal data systems would be part of a State's coordinated early learning data system, by which we mean a data system that vertically and horizontally links child, program, and workforce data related to children (birth through age 5).

Thus, such a system should horizontally link States' early childhood IDEA Part C and Part B preschool data to other early learning data systems to the extent that such systems collect data that are similar to the quantitative and qualitative information reported under IDEA. For example, data on the settings in which children receive services are collected not only by the State programs implementing IDEA, but also by child care, home visiting programs, Head Start, Early Head Start, and publicly funded State preschool programs.

A coordinated early learning data system should also vertically link a State's early childhood IDEA Part C and Part B preschool data to other statewide longitudinal data systems to the extent that such systems collect data on the quantitative and qualitative information reported under IDEA. For example, transition and child outcome information are collected and analyzed by State programs implementing the IDEA but are also found in other data systems of school-aged children, such as pre-kindergarten (P)-grade 12 systems, kindergarten (K)-grade 12 systems, P-grade 20 systems, and K-grade 20 systems.

The Race to the Top—Early Learning Challenge program [11] and the Statewide Longitudinal Data System (SLDS) program [12] identify the following as essential data elements for a coordinated early learning data system: [13] [14]

1. A unique statewide child identifier or another highly accurate, proven method to link data on that child, including Kindergarten Entry Assessment [15] data, to and from the Statewide Longitudinal Data System and the coordinated early learning data system (if applicable);

2. A unique statewide Early Childhood Educator identifier;

3. A unique program site identifier;

4. Child and family demographic information;

5. Early Childhood Educator demographic information, including data on educational attainment and State credential or licenses held, as well as professional development information;

6. Program-level data on the program's structure, quality, child suspension and expulsion rates, staff retention, staff compensation, work environment, and all applicable data reported as part of the State's Tiered Quality Rating and Improvement System; [16] and

[7] Privacy Technical Assistance Center. Data Governance and Stewardship. Retrieved on April 17, 2012 from: *http://www2.ed.gov/policy/gen/guid/ptac/pdf/issue-brief-data-governance-and-stewardship.pdf.*

[8] Cheoung, L.K. & Chang, V. (2007). The Need for Data Governance: A Case Study. *ACIS 2007 Proceedings.* Paper 100. *http://aisel.aisnet.org/acis2007/100.*

[9] Neely, M.P., Cook, J.S. (2011). Fifteen Years of Data and Information Quality Literature: Developing a Research Agenda for Accounting. *Journal of Information Systems, 25*(1), pp. 79–108.

[10] Haug, A. & Arlbjorn, J.S. (2011). Barriers to Master Data Quality. *Journal of Enterprise Information Management, 24*(3), pp. 288–303.

[11] For additional information on the Race to the Top—Early Learning Challenge, please see: *http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/index.html.*

[12] For additional information on the SLDS program, please see: *http://nces.ed.gov/programs/slds/.*

[13] U.S. Department of Education (2011). Race to the Top—Early Learning Challenge Application for Initial Funding. Retrieved March 13, 2012 from: *http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/2011-412.doc.*

[14] U.S. Department of Education (2011). Request for Applications: Grants for Statewide, Longitudinal Data Systems. Retrieved March 13, 2012 from: *http://ies.ed.gov/funding/pdf/2012_84372.pdf.*

[15] For the purposes of this priority, ''kindergarten entry assessment'' means ''an assessment that: (a) Is administered to children during the first few months of their admission into kindergarten; (b) covers all Essential Domains of School Readiness; (c) is used in conformance with the recommendations of the National Research Council reports on early childhood; and (d) is valid and reliable for its intended purposes and for the target populations and aligned to the Early Learning and Development Standards. Results of the assessment should be used to inform efforts to close the school readiness gap at kindergarten entry and to inform instruction in the early elementary school grades. This assessment should not be used to prevent children's entry into kindergarten'' (U.S. Department of Education, 2011, Race to the Top—Early Learning Challenge Application for Initial Funding, page 17).

[16] For the purposes of this priority, ''Tiered Quality Rating and Improvement System'' means ''the system through which the State uses a set of progressively higher Program Standards to evaluate the quality of an Early Learning and Development Program and to support program improvement. A Tiered Quality Rating and Improvement System consists of four components: (a) Tiered Program Standards with multiple rating categories that clearly and meaningfully differentiate program quality levels; (b) monitoring to evaluate program quality based on the Program Standards; (c) supports to help programs meet progressively higher standards (*e.g.,* through training, technical assistance, financial support); and (d) program quality ratings that are publically available; and includes a process for validating the system'' (U.S. Department of Education, 2011, Race to the Top—Early Learning Challenge Application for Initial Funding, page 19).

7. Child-level program participation and attendance data.

Establishing coordinated early learning data systems that have these elements is important to improve the quality of data because these systems require States and other entities to standardize data definitions and submission procedures. Linking systems also offers opportunities for States to validate and analyze data across programs to improve the quality of the data States must report under the IDEA to both the Department and the public.

For example, if Head Start data were linked horizontally to data collected under the Part B preschool program, a State could validate the time the child is spending in the regular early childhood program for reporting on the child's educational environments and Indicator B6, which is included in Appendix A to this notice. A State could also link its early intervention data to its preschool data and its preschool data to its K–12 data in order to better interpret the State's data on preschool and early intervention outcomes and transitions (i.e., IDEA section 618 Exiting data, and Indicators C3, C8, B7, and B12, which are included in Appendices A and B to this notice). If a State wanted to validate its data on positive social-emotional skills reported in Indicator C3, it might vertically link its Early Intervention data to the State's Head Start data.

A statewide early childhood longitudinal data system that links to a statewide early childhood workforce system, which includes data on IDEA service providers' qualifications, could also allow States to improve the quality of the personnel data they submit to meet IDEA reporting requirements. By linking data on children receiving special education services in an IDEA Part B, preschool program to data on early childhood program providers and those providers' qualifications, a State could validate its data on the qualification status of special education teachers, paraprofessionals, and related services personnel who work with young children with disabilities served under IDEA.[17]

States recognize the need to improve coordination in collecting, analyzing, and reporting their early childhood data. In their Federal fiscal year (FFY) 2009–10 APRs, a number of States identified the importance of horizontally and vertically linking or sharing their early childhood data among various programs.[18] [19] The States also identified as an improvement activity for Indicators C3 (early childhood outcome), C5 and C6 (child count), and B12 (early childhood transition), the importance of developing and implementing methods to share data across programs, such as IDEA Part C and Part B preschool programs, neonatal intensive care units, Child Abuse and Prevention Treatment Act programs, and Early Hearing Detection and Intervention programs. States also identified developing and expanding comprehensive data systems to capture, analyze, and report performance data as an improvement activity for Indicator C1 (timely service provision), which is included in Appendix B to this notice.

The Federal government has provided support for States to develop and implement data systems that coordinate early learning and development data through the Statewide Longitudinal Data Systems program and the Race to the Top—Early Learning Challenge program. However, most statewide longitudinal education data systems do not yet include the data on infants, toddlers, and children with disabilities (birth through age 5) that are needed to meet the IDEA reporting requirements.

For the reasons described, to support States in the development and enhancement of statewide early childhood longitudinal data systems, the Office of Special Education Programs (OSEP) proposes a priority for funding the National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems. The center would provide TA to States to help them horizontally link data, including child-level data, on the IDEA Part C and Part B preschool programs with data from other early learning and development programs (e.g., child care, home visiting programs, Head Start, Early Head Start, and publicly-funded State preschool programs and services) and vertically link these data to other statewide longitudinal education data systems, including those funded under the SLDS program grants (e.g., P–12 systems, K–12 systems, K–20 systems).

The TA would be focused on assisting States to improve their capacity to report high-quality data to meet their IDEA reporting requirements through the development or enhancement of a statewide early childhood longitudinal data system. The TA would include helping States develop appropriate data governance plans and ensure that the entry, sharing, and reporting of personally identifiable information into the data systems complies with the privacy protections under the applicable IDEA Part B, IDEA Part C, and FERPA requirements. Although this TA would focus on the data used to meet IDEA reporting requirements, we intend for this early childhood data system to be coordinated, and not conflict, with the States' ongoing work to build other statewide longitudinal education data systems, including those funded under the SLDS program grants (e.g., P–12 systems, K–12 systems, and K–20 systems).

In addition, this TA center may, but would not be required to, develop software or implement data services through advanced programing interfaces (APIs) that permit data from disparate statewide early childhood data systems, statewide systems for school-aged children (e.g., K–12 data systems, P–20 data systems), and any other early learning data systems to be linked and accessed from a single data dashboard. Any software or other technology developed through this grant would be required to be made available as open source and provided at no cost to States. In order to ensure that software or other technology developed through this grant is versatile enough to be interoperable with the different configurations of statewide data systems related to IDEA data collection and reporting requirements in each State, the grantee would be required to use the Common Education Data Standards.[20]

Proposed Priority:

The purpose of this proposed priority is to fund a cooperative agreement to support the establishment and operation of a National IDEA Technical Assistance Center on Early Childhood Longitudinal Data Systems (Center). This Center would provide TA to States on the development and enhancement of statewide early childhood longitudinal data systems to improve the States' capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA. This Center must provide TA to States on developing or enhancing statewide early childhood longitudinal data systems that horizontally link child-level data on

[17] States are required to report on the number of special education teachers, paraprofessionals, and related services personnel by qualification status in the IDEA Personnel data collection.

[18] 2011 Part C Indicator Analysis Document. (2011). Available at *www.nectac.org/~pdfs/partc/part-c_sppapr_11.pdf.*

[19] 2011 Part B Indicator Analysis Document. (2011). Available at *www.nectac.org/~pdfs/sec619/part-b_sppapr_11.pdf.*

[20] ''The Common Education Data Standards is a specified set of the most commonly used education data elements to support the effective exchange of data within and across States, as students transition between educational sectors and levels, and for federal reporting.'' National Center for Education Statistics. Common Education Data Standards. Retrieved February 8, 2012 from: *http://nces.ed.gov/programs/ceds/.* For more information, see *https://ceds.ed.gov/Default.aspx.*

infants, toddlers, and young children with disabilities (birth through age 5) from one data system to child-level data in other early learning data systems (including those developed with funding provided by the Department's Race to the Top—Early Learning Challenge program), vertically link these child-level data to statewide longitudinal data systems for school-aged children (including those developed with funding provided by the Department's SLDS program), and meet the data system capabilities and elements described under paragraph (b) in the *Technical Assistance and Dissemination Activities* section of this priority. These statewide early childhood longitudinal data systems should allow States to: (1) Accurately and efficiently respond to IDEA-related data submission requirements (e.g., IDEA sections 616 and 618 requirements); (2) continuously improve processes for defining, acquiring, and validating the data; and (3) comply with applicable Federal, State, and local privacy laws, including the requirements of FERPA and privacy requirements in IDEA. This TA must be focused on building the State's capacity to report high-quality data to meet IDEA reporting requirements and must be conducted in coordination with other statewide longitudinal data system work being conducted in the State.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A plan for recruiting and selecting a minimum of 10 States to receive intensive TA on developing or enhancing their statewide early childhood longitudinal data systems to improve the States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA. This TA may include supporting each State in developing a statewide early childhood longitudinal data system that links to other statewide data systems (i.e., other statewide early learning data systems and statewide longitudinal education data systems) in order to accurately and efficiently respond to all of a State's IDEA-related data submission requirements for infants, toddlers, and young children (birth through age 5) with disabilities. The intensive TA may also include enhancing an existing statewide data system (e.g., SLDS) by including the child-level data on infants, toddlers, and young children (birth through age 5) with disabilities that are needed to meet the IDEA reporting requirements. To ensure that the Center provides TA to support States in overcoming the additional challenge of sharing early childhood data between State agencies (e.g., State Department of Health and State Department of Education), when selecting States for intensive TA, a preference must be given to States that have IDEA Part C lead agencies (LAs) that are not the State educational agency (SEA).

Note: The Center must obtain approval from OSEP on the final selection of intensive TA States.

(e) To prevent duplication of TA efforts around early childhood data systems, a plan for, and description of, how the Center will collaborate with the SLDS program (including SLDS TA efforts [21]), the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative, the Privacy Technical Assistance Center,[22] and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program [23]);

(f) A budget for a summative evaluation to be conducted by an independent third party;

(g) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of the award a post-award teleconference must be held between the OSEP Project Officer and grantee's project director or other authorized representative.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A two-day Leveraging Resources Conference in Washington, DC, during each year of the project period.

(4) Two two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(h) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

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[21] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf.*

[22] The Privacy Technical Assistance Center is one component of the Department's comprehensive privacy initiatives. It offers technical assistance to State education agencies, local education agencies, and institutions of higher education related to the Privacy, Security, and Confidentiality of student records. For the Privacy Technical Assistance Center Help Desk, email *PrivacyTA@ed.gov* or call, toll free, 855–249–3072. For more information, see *http://www2.ed.gov/policy/gen/guid/ptac/index.html.*

[23] The Comprehensive Center program ''supports 21 comprehensive centers to help increase state capacity to assist districts and schools meet their student achievement goals. The 16 regional centers provide services primarily to State Education Agencies (SEAs) to enable them to assist school districts and schools, especially low performing schools. At a minimum, each regional center provides training and technical assistance in the implementation and administration of programs authorized under the Elementary and Secondary Education Act (ESEA) and the use of research-based information and strategies. The five content centers focus on specific areas, with one center in each of five areas: Assessment and accountability, instruction, teacher quality, innovation and improvement, and high schools. These centers supply much of the research-based information and products in the specific area that regional centers use when working with SEAs.'' U.S. Department of Education. Comprehensive Centers Program. Retrieved April 17, 2012 from: *http://www2.ed.gov/programs/newccp/index.html.*

Knowledge Development Activities.

(a) Conduct a survey of all 56 Part C LAs and 56 IDEA Part B preschool programs administered by SEAs in the first year to assess their capacity to collect, analyze, and report high-quality data required under sections 616 and 618 of IDEA and identify the policies and practices that facilitate or hinder a statewide early childhood longitudinal data system to link to other early learning data systems and the statewide longitudinal educational data system for school-aged children (e.g., SLDS). Additionally, review State information from sources such as SPPs and APRs to assess State data system and data quality needs for the 56 LAs that have IDEA Part C programs and 56 SEAs that have IDEA Part B preschool programs. The Center must analyze the information from the surveys, SPPs/APRs, and other sources, as appropriate, and prepare papers that summarize the findings that can be disseminated according to a dissemination plan described in paragraph (f) of the *Technical Assistance and Dissemination Activities* section of this priority. These findings must be used in the selection of States for intensive TA.

(b) Using the findings from the survey described in paragraph (a), identify a minimum of four States to partner with to develop a statewide early childhood longitudinal data system framework (see paragraph (c)). This framework will be a TA resource for other States trying to develop or enhance statewide early childhood longitudinal data systems. Each partnering State must have commitments from its IDEA Part C early intervention and Part B preschool programs to participate in the activities of the Center. Additionally, the partnering States must be a combination of States with Department of Education LAs and non-Department of Education LAs (e.g., State Departments of Health, State Departments of Developmental Services). Factors for consideration in selecting these States could include the demographic and geographic characteristics of the State, the history of data system development in the State, and the collection and analysis of high-quality data required under sections 616 and 618 of IDEA. There may be overlap between these partnering States and those States selected to receive intensive TA. The Center must obtain approval from OSEP on the final selection of partnering States.

Note: To fulfill the requirements of paragraph (b) of the *Application Requirements* section of this priority, applicants must describe the methods and criteria they propose to use to recruit and select the four partnering States.

(c) Within the first year of the project period, partner with the States identified in paragraph (b) of this section to develop, implement, and evaluate a statewide early childhood longitudinal data system framework for IDEA Part C early intervention and Part B preschool programs. In developing this framework, the Center must work with the partner States to identify, describe, and document the components and processes needed to develop or enhance a statewide early childhood longitudinal data system that provides data necessary to accurately and efficiently respond to reporting requirements under sections 616 and 618 of IDEA and addresses the data system requirements and capabilities listed under paragraph (b) of the *Technical Assistance and Dissemination Activities* section of this priority. Through this work, the Center must develop guidance and exemplar tools and processes that any State can use to develop or enhance and implement a statewide early childhood longitudinal data system framework within its unique setting.

(d) Develop documents and resources on best practices and lessons learned that can be used to improve States' capacity to develop or enhance their statewide early childhood longitudinal data systems for the purposes of collecting high-quality data required under sections 616 and 618 of IDEA.

Technical Assistance and Dissemination Activities.

(a) Provide intensive TA to a minimum of 10 States to develop and implement a project management and data governance plan with the goal of a fully implemented statewide early childhood longitudinal data system, as described in paragraph (b) of this section. The intensive TA will be based on the statewide early childhood longitudinal data system framework described in paragraph (b) of the *Knowledge Development Activities* section of this priority.

Note: To fulfill the requirements in paragraph (a) in the *Technical Assistance and Dissemination Activities* section of this priority, applicants must describe the methods and criteria they will use to recruit and select States. The Center must obtain approval from OSEP on the final selection of intensive TA States.

(b) The statewide early childhood longitudinal data system must meet the following requirements:

(1) Have the following specific data system capabilities:

(i) Enable the State staff to efficiently respond to all IDEA-related data submission requirements (e.g., sections 616 and 618 data) with accurate and valid IDEA data by—

(A) Improving the quality of IDEA data related to child find, child count, settings, and educational environments data; and Indicators C2, C5, C6, and B6, which are included in Appendices A and B to this notice, by linking early childhood IDEA Part C and Part B preschool child-level data horizontally to other statewide early learning data systems when available (e.g., child care, home visiting programs, Head Start, Early Head Start, and publicly-funded State preschool programs and services);

(B) Improving the quality of the IDEA data related to early childhood and preschool outcomes; and Indicators C3, C8, B7, and B12 by linking early childhood IDEA Part C and Part B preschool child-level data vertically to other statewide longitudinal education data systems, including those funded under the Department's SLDS grants (e.g., P–12 systems, K–12 systems, P–20 systems, and K–20 systems);

(C) Improving the quality of the IDEA personnel data by linking child-level early childhood IDEA Part C and Part B preschool data with early intervention and preschool service providers so that an individual child may be matched with the particular providers primarily responsible for providing services to that child; and

(D) Improving the quality of the data about personnel providing services under IDEA Part B by linking early intervention and preschool service providers with data on their qualifications, certification, and preparation programs, including the institutions at which providers received their training;

(ii) Enable the State to improve the accuracy of the IDEA data through validity and reliability checks (e.g., data verification) and to provide access to the information needed to analyze and explain progress or slippage in the Parts B and C indicators;

(iii) Enable the State to examine progress in the implementation of IDEA (e.g., improving transitions from Part C to Part B IDEA services) and the outcomes (e.g., social-emotional skills, the use of appropriate behaviors to meet needs, and the acquisition and use of knowledge and skills) over time of infants, toddlers, and young children receiving services under IDEA and ensure data are easily generated for analysis and decision-making, including timely reporting to various IDEA Part C and preschool service providers across the State on the progress of infants, toddlers, and young children receiving services under IDEA; and

(iv) Ensure the quality (i.e., validity and reliability) of all data.

(2) In order to improve the State's capacity to collect and analyze high-quality data, have the following data system elements:

(i) A unique statewide child identifier accepted by, and aligned with, the State's P–20/P–12 unique identifier that does not permit a child to be individually identified by users of the system (except as allowed by Federal and State law).

(ii) An early intervention and preschool service provider identifier system with the ability to match early intervention and preschool service providers to children;

(iii) Child-level enrollment, demographic, and program participation data.

(iv) Child-level data on the identification of the child under IDEA (including data on the timeliness of the child's evaluation and assessment) and services identified as needed and received, including timeliness of services and service settings.

(v) Child and family outcome [24] data.

(vi) Child-level data about the points at which children start and stop receiving early intervention services or preschool special education services (including reasons for exiting).

(vii) Child-level data about the extent to which children receive timely transition planning to support their movement to preschool and other appropriate community services by their third birthday.

(viii) A State data audit system to assess data quality (i.e., reliability and validity).

(3) Have a data system interoperability plan that—

(i) Allows for linking the statewide early childhood longitudinal data systems to other statewide longitudinal education data systems and other statewide early learning data systems; and

(ii) Complies with applicable Federal, State, and local privacy laws, including the requirements of FERPA and the privacy requirements in IDEA.

(c) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to States to assist them in developing or enhancing statewide early childhood longitudinal data systems to improve States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA, which may include the development of open source data system software that addresses the unique needs of each State. General TA will be provided to all States and intensive TA will be provided to a minimum of 10 States.

(d) Provide a continuum of general TA and dissemination activities (e.g., managing Web sites, listservs, and communities of practice, and holding conferences and training institutes) on best practices that promote the efficient collection of accurate and valid data required under sections 616 and 618 of IDEA to improve the educational results and functional outcomes of all children with disabilities.

(e) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).[25]

(f) Prepare and disseminate reports, documents, and other materials on statewide early childhood longitudinal data systems, and related topics as requested by OSEP for specific audiences including IDEA Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available for Part C LAs, SEAs, policymakers, local educational agencies, service providers, and teachers in both English and Spanish.

(g) Develop materials and guidance for States and provide targeted TA related to the performance and compliance indicator(s) on their APRs and SPPs, as requested by OSEP.

Leadership and Coordination Activities.

(a) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet annually in Washington, DC, and consist of representatives of IDEA Part C LAs, representatives of SEAs, individuals with disabilities, other TA providers, parents of individuals with disabilities, data system experts, representatives of other early learning and development programs, representatives of other Federal offices working to improve State data systems, and software developers with expertise in statewide longitudinal data systems and interoperability. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(b) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects and other relevant Federal-funded projects, including the SLDS program, SLDS TA efforts,[26] the Race to the Top—Early Learning Challenge program, the Common Education Data Standards initiative,[27] the Privacy Technical Assistance Center, and, as appropriate, other Federal programs that provide TA in the area of early childhood data (e.g., Comprehensive Centers program). This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(c) Participate in, organize, or facilitate communities of practice if they align with the needs of the project's target audience. Communities of practice should align with the project's objectives to support discussions and collaboration among key stakeholders. The following Web site provides more information on communities of practice: *www.tadnet.org/communities.*

(d) Prior to developing any new product, submit a proposal for the product to the TACC database for approval from the OSEP Project Officer. The development of new products should be consistent with the product definition and guidelines posted on the TACC Web site (*www.tadnet.org*).

(e) Contribute, on an ongoing basis, updated information on the Center's approved and finalized products and services to a database at the TACC.

(f) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Maintain ongoing communication with the OSEP Project Officer through

[24] An outcome is formed by the impact that services and supports have on the functioning of children and families. Early Childhood Outcome Center. Outcomes 101: ECO Q&A. Available at: *www.fpg.unc.edu/~eco/pages/faqs_view_item.cfm?id=7.* For further information on early childhood child and family outcomes, see the Early Childhood Outcomes (ECO) Center Web site (*www.fpg.unc.edu/~eco/index.cfm*).

[25] For more information regarding the TACC products and services database, please see: *www.tadnet.org.*

[26] More information on the SLDS TA efforts is available at *http://nces.ed.gov/programs/slds/pdf/TechAssistance.pdf.*

[27] ''The Common Education Data Standards is a specified set of the most commonly used education data elements to support the effective exchange of data within and across States, as students transition between educational sectors and levels, and for federal reporting.'' National Center for Education Statistics. Common Education Data Standards. Retrieved February 8, 2012 from: *http://nces.ed.gov/programs/ceds/.* For more information, see *http://ceds.ed.gov/Default.aspx.*

monthly phone conversations and email communication.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice and improved the States' capacity to collect and report high-quality data required under sections 616 and 618 of IDEA by developing and enhancing of statewide early childhood longitudinal data systems.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563:

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are proposing this priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 30, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix A—IDEA Part B SPP/APR Indicators

The Individuals with Disabilities Education Act (IDEA) reporting requirements include a State's submission of data as part of its State Performance Plan (SPP) and Annual Performance Report (APR) under section 616 of IDEA. In the APR, each State must report to the Department on its progress in meeting the measurable and rigorous targets for each of the following Part B indicators:

1. Percent of youth with individualized education programs (IEPs) graduating from high school with a regular diploma.

2. Percent of youth with IEPs dropping out of high school.

3. Participation and performance of children with IEPs on statewide assessments:

A. Percent of the districts with a disability subgroup that meets the State's minimum ''n'' size that meet the State's adequate yearly progress (AYP) targets for the disability subgroup;

B. Participation rate for children with IEPs; and

C. Proficiency rate for children with IEPs against grade level, modified and alternate academic achievement standards.

4. Rates of suspension and expulsion:

A. Percent of districts that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and

B. Percent of districts that have: (a) A significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.

5. Percent of children with IEPs aged 6 through 21 served:

A. Inside the regular class 80 percent or more of the day;

B. Inside the regular class less than 40 percent of the day; and

C. In separate schools, residential facilities, or homebound/hospital placements.

6. Percent of children aged 3 through 5 with IEPs attending a:

A. Regular early childhood program and receiving the majority of special education and related services in the regular early childhood program; and

B. Separate special education class, separate school or residential facility.

7. Percent of preschool children aged 3 through 5 with IEPs who demonstrate improved:

A. Positive social-emotional skills (including social relationships);

B. Acquisition and use of knowledge and skills (including early language/communication and early literacy); and

C. Use of appropriate behaviors to meet their needs.

8. Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.

9. Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.

10. Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.

11. Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.

12. Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.

13. Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

14. Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were:

A. Enrolled in higher education within one year of leaving high school.

B. Enrolled in higher education or competitively employed within one year of leaving high school.

C. Enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school.

15. General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.

16. Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.

17. Percent of adjudicated due process hearing requests that were adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines.

18. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.

19. Percent of mediations held that resulted in mediation agreements.

20. State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.

Appendix B—IDEA Part C SPP/APR Indicators

The Individuals with Disabilities Education Act (IDEA) reporting requirements include a State's submission of data as part of its State Performance Plan (SPP) and Annual Performance Report (APR) under section 616 of IDEA. In the APR, each State must report to the Department on its progress in meeting the measurable and rigorous targets for each of the following Part C indicators:

1. Percent of infants and toddlers with individualized family service plans (IFSPs) who receive the early intervention services on their IFSPs in a timely manner.

2. Percent of infants and toddlers with IFSPs who primarily receive early intervention services in the home or community-based settings.

3. Percent of infants and toddlers with IFSPs who demonstrate improved:

A. Positive social-emotional skills (including social relationships);

B. Acquisition and use of knowledge and skills (including early language/communication); and

C. Use of appropriate behaviors to meet their needs.

4. Percent of families participating in Part C who report that early intervention services have helped the family:

A. Know their rights;

B. Effectively communicate their children's needs; and

C. Help their children develop and learn.

5. Percent of infants and toddlers birth to 1 with IFSPs compared to national data.

6. Percent of infants and toddlers birth to 3 with IFSPs compared to national data.

7. Percent of eligible infants and toddlers with IFSPs for whom an initial evaluation and initial assessment and an initial IFSP meeting were conducted within Part C's 45-day timeline.

8. The percentage of toddlers with disabilities exiting Part C with timely transition planning for whom the Lead Agency has:

A. Developed an IFSP with transition steps and services at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday;

B. Notified (consistent with any opt-out policy adopted by the State) the SEA and the LEA where the toddler resides at least 90 days prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services; and

C. Conducted the transition conference held with the approval of the family at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services.

9. General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.

10. Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.

11. Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline or a timeline that is properly extended by the hearing officer at the request of either party.

12. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements (applicable if Part B due process procedures are adopted).

13. Percent of mediations held that resulted in mediation agreements.

14. State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.

[FR Doc. 2012–10831 Filed 5–3–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0009]

Request for Information To Gather Technical Expertise Pertaining to the Disaggregation of Asian and Native Hawaiian and Other Pacific Islander Student Data and the Use of Those Data in Planning and Programmatic Endeavors

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Request for Information.

SUMMARY: The U.S. Department of Education (the Department) is seeking to gather and share information about practices and policies regarding existing education data systems that disaggregate data on subgroups within the Asian and Native Hawaiian or Other Pacific Island (ANHPI) student population. The Department anticipates making use of this information to help State educational agencies (SEAs), local educational agencies (LEAs), schools, and institutions of higher education (IHEs) identify, share, and implement promising practices and policies for identifying and overcoming challenges to gathering and disaggregating data on subgroups within the ANHPI student population. SEAs, LEAs, schools, and IHEs might then use those data to improve their ability to respond to the unique needs and issues that might exist for these subgroups.

The Department is issuing this request for information (RFI) to collect information about promising practices and policies regarding existing education data systems and models that disaggregate data on subgroups within the ANHPI student population. The Department poses a series of questions to which we invite interested members of the public, including experts and data collection practitioners, to respond. The Department will publish a document that contains a summary of the recommendations that we will develop using information obtained as a result of the RFI and through other outreach efforts.

This RFI has no effect on the existing Federal data collection and aggregate reporting requirements for racial and ethnic data by educational agencies and institutions. The Department is not considering modifying its racial and ethnic data collection and reporting requirements set forth in its 2007 Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education (2007 Guidance), 72 FR 59266 (October 19, 2007). *http://www2.ed.gov/legislation/FedRegister/other/2007-4/101907c.html*.

DATES: Written submissions must be received by the Department on or before July 3, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''Data Disaggregation Response'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Donald Yu, Attention: ANHPI Student Data Disaggregation RFI, U.S. Department of Education, 400 Maryland Avenue SW., room 7C157, Washington, DC 20202–6132.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

While this RFI is seeking to gather information related to policies and practices, you should still make certain your comments do not include disclosures of personally identifiable information from students' education records in a manner that violates the Family Educational Rights and Privacy Act of 1974 (FERPA).

FOR FURTHER INFORMATION CONTACT: Donald Yu, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W104, Washington, DC 20202–6132 by phone at 202–205–4499.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Department is seeking information on disaggregation practices that SEAs, LEAs, schools, and IHEs use when collecting and reporting data on Asians and Native Hawaiians or Other Pacific Islanders.[1] This is a request for information only. This RFI is specifically inquiring about examples of: (1) Existing data systems and models that disaggregate data on subgroups within the ANHPI student population; (2) the categories for which these systems and models disaggregate data by ANHPI subgroup, including, but not necessarily limited to, languages spoken, English language proficiency, and graduation rates; (3) the challenges that administrators of those systems and models have encountered in gathering high-quality disaggregated data on subgroups within the ANHPI student population, and the actions they have taken to overcome those challenges; and (4) how educational agencies or institutions have used, or are using, disaggregated data on ANHPIs to improve their ability to identify and respond to unique educational needs and issues of those populations.

This RFI has no effect on the existing Federal data collection and aggregate reporting requirements for racial and ethnic data by educational agencies and institutions. The Department is not considering modifying its racial and ethnic data collection and reporting requirements. The 2007 Guidance sets forth requirements that aim to strike the balance between minimizing the burden for educational agencies and institutions while also ensuring the availability of high-quality racial and ethnic data for carrying out the Department's responsibilities in such areas as civil rights enforcement, program monitoring, the identification and placement of students in special education, research and statistical analyses, and accountability for student achievement. Beyond the Federal collection and reporting requirements, an educational agency or institution has the flexibility to collect data on subcategories of racial and ethnic data for their own educational purposes. In the 2007 Guidance, the Department noted that an educational institution may collect racial and ethnic data on sub-categories of students, so long as the educational institution can aggregate the data into Federal reporting categories. The Department has encouraged educational agencies and institutions to pursue this option if they determine that it would benefit their educational purposes, provided that they can still aggregate the data into the reporting categories required by the Department. Any additional racial and ethnic subcategories may be used by the State or educational institution and are not reported to the Department.

It is with this flexibility in mind that we are publishing this RFI, to learn from and better understand what SEAs, LEAs, schools, and IHEs around the country are doing with regard to collecting racial and ethnic data on sub-categories of students and to make any promising practices available to other educational agencies and institutions that may be interested in adopting similar policies or practices.

This RFI is issued solely for information and planning purposes and is not a request for proposals (RFP) or notice inviting applications (NIA) or a promise to issue an RFP or NIA. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not now seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

2. Background

Disaggregating data on subgroups within the ANHPI student population has long been a priority for some educators, researchers, and advocates. Although data are limited, evidence shows large disparities among ANHPI subgroups in terms of income and educational attainment (Maramba, 2011). For instance, Southeast Asian Americans (SEAAs) have some of the highest poverty rates in the Nation: 37.8 percent of Hmong-Americans, 29.3 percent of Cambodian-Americans, 18.5 percent of Laotian-Americans, and 16.6 percent of Vietnamese-Americans in the United States live in poverty (Reeves and Bennett, 2004; Teranishi, 2010).

In terms of educational attainment, data from the 2010 U.S. Census reveal that 37 percent of Cambodian-Americans, 38 percent of Hmong-Americans, 33 percent of Laotian-Americans, and 29 percent of Vietnamese-Americans over 25 years of age had less than a high school education in 2010, compared with only 5.4 percent of Japanese-Americans and 7 percent of Indonesian-Americans. Additionally, according to the 2010 Census, only 13 percent of Native Hawaiians and Pacific Islanders in the United States 25 years of age and older had at least a bachelor's degree. By contrast, 37.8 percent of Filipino-Americans 25 and older had at least a bachelor's degree. On the issue of limited English language proficiency, 44 percent of Bangladeshi-Americans and 51 percent of Vietnamese-Americans indicated they did not speak English very well (2010 U.S. Census).

Data on the ANHPI student population as a whole, without disaggregation, mask the hidden achievement gaps among subgroups of ANHPI students and creates a need for further disaggregation of educational data among ANHPI student subgroups (Maramba, 2011). Without disaggregated data, educational agencies and institutions might lack the critical and in-depth information they need to identify, target, and effectively address the unique needs of the subgroups of students who are not succeeding.

There could be several applications for disaggregated data. For instance, SEAs, LEAs, schools, and IHEs could use those data to:

- Identify achievement gaps within the population of ANHPI students;
- Ensure that support services are available to the most needy ANHPI subgroups;
- Analyze graduation rates and college enrollment rates for the purpose of making decisions on LEA- and school-level interventions;
- Examine disparities in school discipline; and
- Identify rates of enrollment in rigorous courses (e.g., high-level science, technology, engineering, and mathematics course; honors courses; advanced placement and International Baccalaureate courses).

While this list of potential uses of disaggregated data is not exhaustive, some SEAs, LEAs, schools, and IHEs might be using disaggregated data in innovative ways, and the Department would like to know how this information is being used to improve achievement for ANHPI student subgroups.

[1] OMB defines ''Asian'' as a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. It includes people who indicate their race as ''Asian Indian,'' ''Chinese,'' ''Filipino,'' ''Korean,'' ''Japanese,'' ''Vietnamese,'' and ''Other Asian'' or provide other detailed Asian responses. ''Native Hawaiian or Other Pacific Islander'' is defined as a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. It includes people who indicate their race as ''Native Hawaiian,'' ''Guamanian or Chamorro,'' ''Samoan,'' and ''Other Pacific Islander'' or provide other detailed Pacific Islander responses.

The Department has made some progress in revealing hidden achievement gaps among ANHPI subgroups. In 2007, in its Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782 (October 30, 1997), the Department changed the racial and ethnic data reporting requirements that implement the Government-wide standards established by the Office of Management and Budget; *www.whitehouse.gov/omb/fedreg/1997standards.html.* This change has required educational institutions to report ''Asian'' data separately from ''Native Hawaiian or Other Pacific Islander'' data to the Department beginning in school year 2010–11.

In accordance with the 2007 Guidance and for the first time in 2011, the Department's National Center for Education Statistics (NCES) reported data for Asian American students separately from Native Hawaiian and Other Pacific Islander students in the National Assessment of Educational Progress (NAEP) reports. NAEP reports serve as a common metric for all States, providing a clear picture of student academic progress over time. New baseline data from these NAEP reports show that Native Hawaiians and Other Pacific Islanders face achievement gaps typically reported of other minority students.

Further, on October 14, 2009, President Obama signed Executive Order 13515 ''Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs'' (EO 13515). EO 13515 requires that each participating Federal agency—including the Department—develop a plan for ''improv[ing] the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs in which Asian Americans and Pacific Islanders may be underserved.''

The Department submitted its plan to the President in October 2010. The plan includes a goal to ''identify and highlight three models with potential for replication of how schools and colleges use disaggregated data systems for * * * students to increase attainment and achievement.'' The plan further states that ''[a]lthough data on educational achievement and attainment are generally disaggregated by major racial and ethnic groups * * *, a lack of further disaggregation * * * masks hidden achievement gaps.''

This RFI is one step the Department is taking to achieve the goal previously described. The RFI seeks information about existing practices and policies about collecting data and its use to improve instructions for ANHPI student subgroups. In addition, we are interested in receiving technical information about these systems, legal obstacles that were encountered and how those obstacles were resolved (including any regulatory solutions), and other information that would help the public understand how these practices and policies for the collection and use of data on subgroups within the ANHPI student population could be implemented by other SEAs, LEAs, schools, and IHEs.

The Department plans to develop a summary of the recommendations drawn from the responses to the RFI that will be used to help inform interested organizations. Further, it is the Department's goal to take what we have learned from the RFI and deliver voluntary technical assistance to SEAs and LEAs.

3. Context for Responses

3.1 The primary goal of this RFI is to gather information related to the disaggregation and use of student data on subgroups within ANHPI student populations, and then to disseminate that information to the public, specifically to SEAs, LEAs, schools, and IHEs. Toward that end, the Department welcomes responses that address SEA, LEA, school, and IHE policies and practices related to the issues discussed in this notice and to applicable Federal, State, and local laws. To help focus our consideration of the responses provided, we have developed several questions. Because the questions are only guides to helping us better understand the issues surrounding ANHPI data disaggregation in various education communities, respondents do not have to respond to any specific question and may provide comments in a format that is most convenient to them. Commenters may also provide relevant information that is not responsive to a particular question but might, nevertheless, be helpful.

3.2 *General Questions Regarding Disaggregation of Data on Subgroups within Asian and Native Hawaiian or Other Pacific Islander Student Populations.*

3.2.1 *Disaggregation Policies and Practices.* We would be interested in learning whether your SEA, LEA, school, or IHE has a policy for disaggregating data on ANHPI racial or ethnic subgroups. If you do have such a policy, we would appreciate learning how your educational agency or institution disaggregates the data. For instance, when data for ANHPI student subgroups are disaggregated, what are the specific categories that are used, and why? It would be helpful to know whether the categories are primarily based upon categories used by the U.S. Census, e.g., Asian Indian, Cambodian, Hmong, and Laotian. If not, we would be interested in learning what categories are used and why. We would also find it helpful if commenters could describe the information about ANHPI student subgroups that is most helpful in identifying and addressing the educational needs of these student subgroups, e.g., ethnicity, language, background, gender, etc.

3.2.3 *Data Collection and Systems.* Please describe how the data are collected. For example, are the data collected through an annual questionnaire or survey given to parents or students? What data systems, such as a statewide longitudinal data system, are currently being used to collect and maintain disaggregated data? What, if anything, had to be changed about your data system in order to collect disaggregated data regarding ANHPI student subgroups?

3.2.4 *Effective Use of Disaggregated Data.* Has your practice of collecting and using disaggregated data for ANHPI students improved your SEA's, LEA's, school's or IHE's ability to identify and respond to the unique educational needs and issues of ANHPI student subgroups? If so, how? Have specific programs been created or specific interventions been implemented in response to the disaggregated data? Please describe these programs or interventions and how they have targeted specific communities.

3.2.5 *Barriers.* What barriers or challenges exist that make adoption of these practices and policies at the SEA, LEA, school, or postsecondary levels difficult? Are there common capacity challenges (e.g., training or technology) that SEAs, LEAs, schools, and IHEs might face when disaggregating data on ANHPI student subgroups? Did your SEA, LEA, school, or IHE encounter privacy issues with the smaller subgroups resulting from disaggregating data on the ANHPI student population? What are the general lessons learned from the adoption of these disaggregation practices?

3.2.6 *Reporting and Transparency.* For SEAs, LEAs, schools, and IHEs that have disaggregated data for ANHPI student subgroups, how are disaggregated data being publicly reported and used? For example, how have the data been used in outreach efforts, curricula development, adaptation of English language proficiency programs, and dropout prevention efforts?

References:

Maramba, D. C. 2011. ''The Importance of Critically Disaggregating Data: The Case of Southeast Asian American College Students.'' aapi nexus Vol. 9, No. 1&2 (Fall 2011): 127–133.

Reeves, T. J. and C.E. Bennett. 2004. ''We the people: Asians in the United States.'' Washington, DC: U.S. Census Bureau.

Teranishi, R. T. 2010. *Asians in the Ivory Tower: Dilemmas of Racial Inequality in American Higher Education.* New York: Teachers College Press.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format, e.g., braille, large print, audiotape, or compact disc, on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 1, 2012.

Martha Kanter,

Under Secretary.

Michael Yudin,

Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–10835 Filed 5–3–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–157–000]

Northern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, Enterprise Field Services, LLC; Notice of Application

Take notice that on April 18, 2012, Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, on behalf of itself and other owners, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services, LLC, filed an application in Docket No. CP12–157–000 pursuant to section 4 and section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place certain inactive gathering facilities consisting of 16.8 miles of 24-inch diameter pipeline and appurtenances located in the Mustang Island and Matagorda Island Areas in Federal offshore waters of Texas (MOPS Phase III Facilities).

Any questions concerning this application may be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, or phone at (402) 398–7103, or email at *mike.loeffler@nngco.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 17, 2012.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10791 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–164–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on April 19, 2012, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP12–164–000, a request for authority, pursuant to 18 CFR part 157 and section 7(b) of the Natural Gas Act, to abandon, in place and by removal, certain pipeline facilities and associated ancillary facilities in Montgomery County, Texas. Specifically, Texas Eastern proposes to abandon, in place, approximately 5.7 miles of 24-inch diameter auxiliary pipeline and abandon, by removal, related ancillary facilities between mile post (MP) 97.54 and MP 103.23. across the Lake Conroe Reservoir. Texas Eastern states that the proposed abandonment will not cause a reduction in firm service to existing customers, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Marcy F. Collins, Associate General Counsel, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, telephone no. (713) 627–6137, facsimile no. (713) 989–3191, and email: *mfcollins@spectraenergy.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 21, 2012.

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10785 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–23–000]

Hope Gas, Inc.; Notice of Baseline Filing

Take notice that on April 26, 2012, Hope Gas, Inc. (Hope Gas) submitted a baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) to comply with a Delegated Letter Order issued March 27, 2012, in Docket No. CP12–27–000 (138 FERC ¶ 62,304).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, May 8, 2012.

Dated: April 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10781 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–630–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Great Lakes Gas Transmission Limited Partnership Annual Operational Purchases and Sales Report for 2011.
Filed Date: 4/24/12.
Accession Number: 20120424–5108.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–631–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Change of Business FAX Number to be effective 5/25/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5000.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–632–000.
Applicants: Questar Pipeline Company.
Description: Change of Business FAX Number to be effective 5/25/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5001.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–633–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Change of Business FAX Number to be effective 5/25/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5002.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–634–000.
Applicants: White River Hub, LLC.
Description: Change of Business FAX Number to be effective 5/25/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5003.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–635–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Removal of Expiring Negotiated Rate Agreements to be effective 5/1/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5065.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–636–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Modify 90 Day Rule to be effective 6/1/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5092.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–637–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Antero 2 to Tenaska 461 Capacity Release Negotiated Rate Agreement filing to be effective 5/1/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5096.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–638–000.
Applicants: Texas Gas Transmission, LLC.
Description: Amendment to Negotiated Rate Agreement—Southwestern 27434 to be effective 5/1/2012.
Filed Date: 4/25/12.
Accession Number: 20120425–5133.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–639–000.
Applicants: Gas Transmission Northwest LLC.
Description: Gas Transmission Northwest LLC submits tariff filing per 154.204: Maps 2012 to be effective 5/28/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5047.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–640–000.
Applicants: Portland Natural Gas Transmission System.
Description: Portland Natural Gas Transmission System submits tariff filing per 154.204: Maps 2012 to be effective 5/28/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5048.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–641–000.
Applicants: ANR Storage Company.
Description: ANR Storage Company Operational Purchases and Sales of Gas Report for 2011.
Filed Date: 4/26/12.
Accession Number: 20120426–5069.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–642–000.
Applicants: Blue Lake Gas Storage Company.
Description: Blue Lake Gas Storage Company Operational Purchases and Sales of Gas Report for 2011.
Filed Date: 4/26/12.
Accession Number: 20120426–5070.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–643–000.
Applicants: Bison Pipeline LLC.
Description: Bison Pipeline LLC Operational Purchases and Sales of Gas Report for 2011.
Filed Date: 4/26/12.
Accession Number: 20120426–5071.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–644–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Iberdrola Energy Negotiated Rate to be effective 5/1/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5076.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–645–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits tariff filing per 154.204: Maps 2012 to be effective 5/28/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5109.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–646–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.204: 20120426 DCP and Eagle Rock Non-conforming to be effective 5/27/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5126.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–647–000.
Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.
Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.204: Negotiated Rates Filing 5/1/2012 for CES 3641 and LER 3621 to be effective 5/1/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5133.
Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: RP12–648–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2012 April Revisions to be effective 4/1/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5134.
Comments Due: 5 p.m. ET 5/8/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–88–002.
Applicants: National Fuel Gas Supply Corporation.
Description: RP12–88 Interim Settlement Rates to be effective 5/1/2012.
Filed Date: 4/24/12.
Accession Number: 20120424–5109.
Comments Due: 5 p.m. ET 5/7/12.
Docket Numbers: RP12–624–001.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.205(b): TETLP 2012 Tariff Map Filing Amendment to be effective 5/21/2012.
Filed Date: 4/26/12.
Accession Number: 20120426–5114.
Comments Due: 5 p.m. ET 5/8/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2012 .

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10774 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioners and Staff Attendance at FERC Leadership Development Program Graduation/Induction Ceremony

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following event:

FERC Leadership Development Program Graduation/Induction Ceremony: 888 First Street NE., Washington, DC 20426.

May 8, 2012 (10:00 a.m.–11:00 a.m.).

The event will introduce and welcome 17 employees selected for the 2012 Leadership Development Program and graduate 15 employees from the 2011 program.

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10786 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–61–000]

City of Alexandria, LA, Louisiana Energy and Power Authority, Lafayette Utilities System v. Cleco Power, LLC; Notice of Complaint

Take notice that on April 25, 2012, pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, City of Alexandria, Louisiana, Louisiana Energy and Power Authority, and Lafayette Utilities System (Complainants) filed a formal complaint against Cleco Power, LLC (Respondent) requesting that the Commission institute an investigation under Section 206 of the Federal Power Act and establish a refund effective date while the Commission evaluates the justness and reasonableness of Respondent's transmission rates, particularly those set forth in the ongoing, related proceedings initiated by Respondent under Section 205 of the Federal Power Act in Docket Nos. ER12–1378–000 and ER12–1379–000. Complainants also request that the Commission consolidate the instant proceeding with the ongoing proceedings in Docket Nos. ER12–1378–000 and ER12–1379–000.

Complainants certify that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 15, 2012.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10787 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12715–003]

Fairlawn Hydroelectric Company, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for an original license for the proposed 14,000-kilowatt (kW) Jennings Randolph Hydroelectric Project located on the North Branch Potomac River in Garrett County, Maryland and Mineral County, West Virginia, at the U.S. Army Corps of Engineers' (Corps) Jennings Randolph Dam and has prepared a final environmental assessment (EA) in cooperation with the U.S. Army Corps of Engineers. In the final EA, Commission staff analyzes the potential environmental effects of licensing the project and concludes that issuing a license for the construction and operation of the project, with

appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information contact Allyson Conner at (202) 502–6082.

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10780 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6627–001]

Vigue, Peter A.; Notice of Filing

Take notice that on April 26, 2012, Peter A. Vigue submitted for filing, a supplement to the application for authority to hold interlocking positions filed on March 6, 2012, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2011) and section 45.8 of Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.8 (2011).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 17, 2012.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10788 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–123–000]

ANR Storage Company; Notice of Informal Settlement Conference

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on May 3, 2012 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE. Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. A person wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Marc Gary Denkinger, 202–502–8662, *marc.denkinger@ferc.gov,* or Lorna J. Hadlock, 202–502–8737, *lorna.hadlock@ferc.gov.*

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10782 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1626–000]

Topaz Solar Farms LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Topaz Solar Farms LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public

Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10773 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1613–000]

Hill Energy Resource & Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hill Energy Resource & Services, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10776 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–6–000]

El Paso Natural Gas Company; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Proposed Willcox Lateral 2013 Expansion Project and Request for Comments on Environmental Issues

As previously noticed on December 2, 2011, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Willcox Lateral 2013 Expansion Project (Project) proposed by El Paso Natural Gas Company (EPNG). The Project involves modification, construction, and operation of certain meter, compressor, and lateral facilities in Cochise County, Arizona to accommodate a proposed increase in the maximum allowable operating pressure (MAOP) of the Willcox Lateral. The Commission will use the EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

Since issuance of the Commission's initial notice of intent (NOI) for the Project, EPNG has determined that additional modifications are necessary to operate the Willcox Lateral at the proposed increase in MAOP and has identified 21 public road crossings where replacement with thicker-walled pipe would be required. In addition, EPNG would install Over Pressure Protection (OPP) at the Line 2163/2164 Bifurcation Facility and limit the downstream facilities to an MAOP of 1219 pounds per square inch gauge. EPNG states the replacements are required to comply with the Pipeline Hazardous Material Safety Administration design factor requirements for public road crossings as codified in 49 Code of Federal Regulations (CFR) 192.111(b)(1) and (2).

This Supplemental NOI addresses these changes and announces the opening of a scoping period the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on May 30, 2012.

Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for the entire Project. The mailing list includes the affected 28 landowners of the 21 public roads crossings where replacement with thicker-walled pipe would be required. EPNG has notified these landowners affected by the road crossing replacements. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

EPNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

The Project involves the modification of EPNG's existing pipeline system and installation of new facilities in Cochise County, Arizona including:

- A new 400-foot-long, 16-inch-diameter lateral pipeline to connect the Douglas Meter Station to EPNG's existing Line No. 2164;
- Replacement of compressor modules and station yard piping at the existing Willcox Compressor Station;

- Expansion of the existing Douglas Meter Station by installing updated flow control and pressure regulation equipment;
- Replacement of the existing two 8-inch orifice meters with two 8-inch ultrasonic meters to increase the capacity at the El Fresnal Meter Station; and
- Replacement of existing pipeline at 21 existing public road crossings along the Project route with thicker-walled pipe and installation of OPP at the Bifurcation Facility.

Land Requirements for Construction

Total ground disturbance activities associated with pipeline replacement at the 21 public road crossings would affect approximately 24.51 acres of land located on private property and lands administered by the Arizona State Land Department and the Bureau of Land Management. EPNG proposes to use the existing line Nos. 2163 and 2164 50-foot permanent right-of-way and additional temporary workspace at each of the identified road crossing locations. Pipeline replacement segments would vary in length from 75 to 175 feet, and would be installed using traditional open cut or non-intrusive methods, such as a bore or pull. All ground disturbances related to the proposed construction activities would be temporary in nature. No new access roads or expansion of existing roads would be required for replacement activities. Figure 1 identifies the proposed activity locations for all road crossing sites.

EPNG proposes to utilize the existing Bifurcation Facility located at milepost 61.4 for staging of construction equipment, pipe fabrication storage, and construction work space for the installation of the OPP equipment. Approximately 1.1 acres of temporary workspace/staging is proposed at the existing location.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us [1] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- Land use and recreation;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary (FERC's records information system, see the Additional Information section of this Notice). To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. Comments on the EA will be considered before we make our recommendations to the Commission.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect the environmental issues of this project to formally cooperate with us in the preparation of the EA.[2] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Arizona State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status on consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before May 31, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP12–6–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at (*www.ferc.gov)* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister''. You must select

[1] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field (i.e., CP12–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10783 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618–194]

Alabama Power Company; Notice of Application for Amendment of License Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment of License.

b. *Project No.:* 618–194.

c. *Date Filed:* April 20, 2012.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Hydroelectric Project.

f. *Location:* On the Coosa River, in Elmore, Chilton and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Barry Lovett, Alabama Power Company, Supervisor Hydro Services, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1268.

i. *FERC Contact:* Ms. Andrea Claros, (202) 502–8171, *andrea.claros@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is May 11, 2012. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–618–194) on any comments, motions, or recommendations filed.

k. *Description of Request:* Due to drought conditions in the Coosa River basin, Alabama Power proposes to release from Jordan Dam no less than a continuous flow of 2,000 cubic feet per second (cfs), beginning immediately after Commission approval until December 31, 2012. Under normal operation Alabama Power is required to release 2,000 cfs from Jordan Dam July 1 through March 31 and release a continuous base flow of 4,000 cfs for 18 hours/day and an 8,000 cfs pulse flow for 6 hours/day from April 1 through May 31. During the month of June the base and pulse flows are stepped down in daily increments to the continuous flow of 2,000 cfs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10789 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14382–000]

Black Mountain Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 10, 2010, Black Mountain Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Black Mountain Pumped Storage Project (Black Mountain Project or project) to be located on two artificial reservoirs created from natural depressions approximately 11 miles southeast of Yerington, in Mineral County, Nevada. The entire project would be located on federal lands managed by the Bureau of Land Management. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 176-acre upper-reservoir having a total storage capacity of 6,040 acre-feet at a normal maximum operating elevation of 7,480 feet above mean sea level (msl); (2) a 106-acre lower-reservoir having a total storage capacity of 6,450 acre-feet at a normal maximum operating elevation of 5,520 feet above msl; (3) a 2,200-foot-long concrete-lined headrace; (4) a 7,250-foot-long concrete-lined pressure tunnel; (5) a 2,950-foot-long concrete-lined tailrace; (6) a pump-powerhouse with four 250-megawatt reversible pump-turbines; (7) a new 4.6-mile-long double-circuit 230-kilovolt (kv) transmission line running from the powerhouse to the Pacific Direct Current Intertie (PDCI); (8) a new secondary interconnection consisting of either: (i) an 18-mile-long, 230-kv transmission line running from the powerhouse to Sierra Pacific Power's Fort Churchill generating station, parallel to an existing 120-kv transmission line, or (ii) a new 18-mile-long, 230-kv transmission line running from the powerhouse to the PDCI and then parallel to the PDCI to the Fort Churchill generating station; and (9) appurtenant facilities. The water for the project would be purchased from entities holding existing water rights and would be identified during the study phase of the permit term. The estimated annual generation of the Black Mountain Project would be 2,628 gigawatt-hours.

Applicant Contact: Mr. Mathew Shapiro, Chief Executive Officer, Gridflex Energy, LLC, 1210 W. Franklin Street, Boise, ID 83702; phone: (208) 246–9925.

FERC Contact: Joseph Hassell; phone: (202) 502–8079.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14382) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10790 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–144–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on April 13, 2012, CenterPoint Energy Gas Transmission Company, LLC (CEGT), 1111 Louisiana Street, Houston, Texas filed a prior notice application pursuant to sections 157.208(b) and 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and CEGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, for authorization to abandon in place and by sale approximately 8 miles of 12-inch diameter pipeline and associated facilities and construct approximately 17 miles of 12-inch diameter pipeline around the city of Conway, Arkansas. CEGT states that the proposed abandonment and reroute is necessary due to encroachment and to ensure safe operation, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michelle Willis, Manager Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, LLC, P.O. Box 21743, Shreveport, Louisiana 71151, or call (318) 429–3708, or fax (318) 429–3133 or email *Michelle.Willis@CenterPointEnergy.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: April 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10779 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–158–000]

UGI Storage Company; Notice of Request Under Blanket Authorization

Take notice that on April 18, 2012 UGI Storage Company (UGI Storage), One Meridian Boulevard, Suite 2C01, Wyomissing, Pennsylvania 19610, filed in the above Docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), for authorization to construct and operate approximately 3,450 horsepower (hp) of gas fired compression at its existing Palmer Station in Tioga County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

UGI Storage proposes to construct two 1,380 hp compressor units and one 690 hp unit at the Palmer Station located at the downstream terminus of the TL–94 pipeline. UGI Storage states that the additional facilities will allow UGI Storage to receive gas for storage from Tennessee Gas Pipeline Company and local production on a firm basis and facilitate additional wheeling services. UGI Storage states that the proposed compression will not change the certificated parameters of its existing Tioga Storage Complex.

Any questions concerning this application may be directed to Jeffrey England, Project Engineer, UGI Energy Services, Inc., One Meridian Boulevard, Suite 2C01, Wyomissing, Pennsylvania 19610 at (610) 373–7999 extension 222, or by facsimile at (610) 374–4288, or by email at *jengland@ugies.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed

documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: April 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10778 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–160–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on April 18, 2012 Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP12–160–000, a Prior Notice request pursuant to Sections 157.205, 157.208, and 157.210 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate certain natural gas transmission facilities in Chesterfield County, Virginia. Specifically, Columbia proposes to construct a 1.3 mile, 24-inch diameter pipeline that would tie into Columbia's VM108 pipeline northwest of the current terminus of Columbia's existing VM109 pipeline. The VM109 Extension Project will provide 15,000 Dth/d of incremental capacity from Columbia's existing Boswell's Tavern and Leach receipt points all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Fredric J. George, Senior Counsel, Columbia Gas Tranmission, LLC, P.O. Box 1273, Charleston, West Virginia 22030, or call (304) 357–2359, or fax (304) 357–3206 or by email *fgeorge@nisource.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: April 30, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–10784 Filed 5–3–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0227; FRL–9668–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Servicing of Motor Vehicle Air Conditioners, EPA ICR Number 1617.07, OMB Control Number 2060–0247

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 3, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0227 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA Docket Center (EPA/DC) Mailcode: 6102T, Attention Docket ID No. EPA–HQ–OAR–2012–0227, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2012–0227. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0227. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Yaidi Cancel, Stratospheric Protection Division, Office of Atmospheric Programs, (MC 6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9512; fax number: (202) 343 2338; email address: *cancel.yaidi@epa.gov*.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0227, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1744.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25 people) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are new and old motor vehicle dealers, motor vehicle air conditioning service stations, general automotive repair shops, and automotive repair shops not elsewhere classified.

ICR numbers: EPA ICR No. 1617.07, OMB Control No. 2060–0247.

ICR status: This ICR is currently scheduled to expire on May 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 609 of the Clean Air Act Amendments of 1990 (Act) provides general guidelines for motor vehicle air conditioning (MVAC) refrigerant handling and MVAC servicing. It states that ''no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recovery and/or recovery and recycling equipment (hereafter referred to as ''refrigerant handling equipment'') and no such person may perform such service unless such person has been properly trained and certified.''

In 1992, EPA developed the initial regulations under section 609 that were published in 57 FR 31242, and codified at 40 CFR Subpart B (§ 82.30 *et seq.*). The information required to be collected under the Section 609 regulations is currently approved for use through May 31, 2012. This statement is submitted to justify an extension of the approval of use of this information. Pursuant to new requirements under the Paperwork Reduction Act, a notice was published in the **Federal Register** on June 9, 2008 (73 FR 32570), announcing the intent to extend the renewal of this Information Collection Request and requesting comment on the renewal. Descriptions of the recordkeeping and reporting requirements mandated by section 609 and delineated in 40 CFR 82 subpart B are summarized below in this section.

Approved Refrigerant Handling Equipment: In accordance with Section 609(b)(2)(A), 40 CFR 82.36 requires that refrigerant handling equipment be certified by EPA or independent standards testing organization. Certification standards are particular to

the type of equipment and the refrigerant to be recovered, and must be consistent with the Society of Automotive Engineers (SAE) standards for MVAC equipment.

Approved independent standards testing organizations: Section 609(b)(2)(A) of the Act requires independent laboratory testing of refrigerant handling equipment to be certified by EPA. The Stratospheric Protection Division (SPD) requires independent laboratories to submit an application that documents: The organization's capacity to accurately test equipment compliance with applicable standards consistent with the SAE standards for handling refrigerant, an absence of conflict of interest or financial benefit based on test outcomes, and an agreement to allow EPA access to verify application information. Once an independent laboratory has been approved by EPA, the application is kept on file in the SPD. Two laboratories—Underwriters Laboratories Inc. and ETL Testing Laboratories—are currently approved to test refrigerant handling equipment. EPA does not anticipate that any organizations will apply to EPA in the future to become approved independent standards testing organizations. Therefore, annual hours and costs related to information submitted by these organizations have been eliminated.

Technician training and certification: According to Section 609(b)(4) of the Act, automotive technicians are required to be trained and certified in the proper use of approved refrigerant handling equipment. Programs that perform technician training and certification activities must apply to the SPD for approval by submitting verification that its program meets EPA standards. The information requested is used by the SPD to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians.

Due to rapid developments in technology, the Agency requires that each approved technician certification program conducts periodic reviews and updates of test material, submitting a written summary of the review and program changes to EPA every two years. After the test has been approved by EPA, a hard copy remains on file with SPD. Currently, 19 testing programs are approved by EPA to train technicians in the proper use of refrigerant handling equipment. Five of these programs are designed specifically for individual company's own employees.

Certification, reporting and recordkeeping: To facilitate enforcement under Section 609, EPA developed several recordkeeping requirements codified at 40 CFR 82.42(b). All required records must be retained on-site for a minimum of three years, unless otherwise indicated.

According to Section 609(c) of the Act states that by January 1, 1992, no person may service any motor vehicle air conditioner without being properly trained and certified, nor without using properly approved refrigerant handling equipment. The regulation at 40 CFR 82.42(a) states that by January 1, 1993, each service provider must have submitted to EPA on a one-time basis a statement signed by the owner of the equipment or another responsible officer that provides the name of the equipment purchaser, the address of the service establishment where the equipment will be located, the manufacturer name, equipment model number, date of manufacture, and equipment serial number. The statement must also indicate that the equipment will be properly used in servicing motor vehicle air conditioners and that each individual authorized by the purchaser to perform service is property trained and certified. The information is used by EPA to verify compliance with Section 609 of the Act.

Any person who owns approved refrigerant handling equipment must maintain records of the name and address of any facility to which refrigerant is sent. Additionally, any person who owns approved refrigerant handling equipment must retain records for a minimum of three years demonstrating that all persons authorized to operate the equipment are certified technicians.

Finally, any person who sells or distributes a class I or class II refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a properly trained and certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only, and must indicate the purchaser's name and business address. When a certified technician purchases small containers of refrigerant for servicing motor vehicles, the seller must have a reasonable basis for believing the accuracy of the information presented by the purchaser. In all cases, the seller must display a sign where sales occur that states the certification requirements for purchasers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.13 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 52,721.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 4,522.5 hours.

Estimated total annual costs: $35,313.59.

This includes an estimated burden cost of $35,313.59 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a decrease of 2,114 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. There are two reasons for this decrease in burden hours. In 2008, it was estimated that there would be 1,370 purchases of small containers of class I and class II refrigerant for resale only by uncertified purchasers. It is estimated that at the time (in 2008), there were an estimated 3 million R–12 MVACs on the road. Today, it is estimated that there are only 600 thousand R–12 MVACs on the road, or roughly 2.4 million or 80% less than there were in 2008. Therefore, to account for the decreased market for small containers of CFC–12 refrigerant, this ICR estimates that the number of purchases for resale only by uncertified purchasers of small cans will be 80% less than in 2008, or approximately 274 purchases.

The second reason the burden hours have decreased is that CFC–12 refrigerant sent off-site for reclamation to an approved refrigerant reclaimed by owners of refrigerant recycling equipment certified under 40 CFR 82.36(a) has decreased and is

anticipated to continue decreasing due to the significant decline of CFC–12 vehicles on road. The third reason the burden hours have decreased is that there are less approved technician certification programs in business than in the previous ICR. However, EPA anticipates a slow increase of one organization approval per year as new alternative refrigerants become available and new businesses become interested in certifying technicians for MVAC servicing for consideration.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 26, 2012.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2012–10804 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0608; FRL–9347–6]

Amendment/Extension of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; email address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0608. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. EUP

EPA has issued the following EUP: *67979–EUP–8.* Amendment/Extension. Syngenta Seeds, Inc.—Field Crops, P.O. Box 12257, Research Triangle Park, NC 27709. This EUP amendment/extension allows the use of the plant-incorporated protectant (PIP) [Event 5307] *Bacillus thuringiensis* eCry3.1Ab protein and the genetic material necessary for its production (vector pSYN12274) in Event 5307 corn (SYN–Ø53Ø7–1) and combined and single trait hybrids with one or more of the following additional PIPs: (1) [Bt11] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material (as contained in plasmid vector pZO1502) necessary for its production in corn, (2) [DAS–59122–7] *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material (vector PHP 17662) necessary for their production in Event DAS–59122–7 corn, (3) [MIR162] *Bacillus thuringiensis* Vip3Aa20 and the genetic material necessary for its production (vector pNOV1300) in event MIR162 maize (SYN–IR162–4), (4) [MIR604] Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in corn (SYN–IR604–8), and 5) [TC1507] *Bacillus thuringiensis* Cry1F protein and the genetic material (vector PHP8999) necessary for its production in Event TC1507 corn. 11.137 pounds (lbs.) of eCry3.1Ab, 0.012 lbs. of Cry1Ab, 8.883 lbs. of Cry34Ab1, 0.122 lbs. of Cry35Ab1, 0.306 lbs. of Vip3Aa20, 0.238 lbs. of mCry3A, and 0.194 lbs. of Cry1F are authorized on 3,796 PIP acres. 3,122 acres of non-PIP corn are also authorized.

Two protocols will be conducted, including: Efficacy evaluation and regulatory studies. The program is authorized only in the States of Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Puerto Rico, South Carolina, South Dakota, Texas, Washington, and Wisconsin. The EUP amendment/extension is effective from March 1, 2012 to December 31, 2013. No comments were received on the notice of receipt document, which published in the **Federal Register** on January 19, 2011 (76 FR 3135) (FRL–8855–3).

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 24, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10676 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 04/23/2012 through 04/27/2012 Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating

the need to submit paper copies to EPA headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov*.

EIS No. 20120128, Final Supplement, NOAA, 00, Amendment 11 to the Fishery Management Plan for Spiny Lobster, Establish Trap Line Marking Requirements and Closed Areas to Protect Coral Species, Gulf of Mexico and South Atlantic Regions, *Review Period End:* 06/04/2012, *Contact:* Roy E. Crabtree 727–824–5701.

EIS No. 20120129, Final Supplement, FHWA, 00, Louisville-Southern Indiana Ohio River Bridges Projects, New Circumstances and Modifications, Cross-River Mobility Improvements between Jefferson County, KY and Clark County, IN, Coast Guard Bridge Permit, USACE Section 10 and 404 Permits, Jefferson County, KY and Clark County, IN, *Review Period End:* 06/04/2012, *Contact:* Janice Osadczuk 317–226–7486.

EIS No. 20120130, Final EIS, USFS, CA, Algoma Vegetation Management Project, Proposing to Protect and Promote Conditions of Late-Successional Forest Ecosystem on 5, 6000 Acres within the 14,780 Acre Unit of the Algoma Late-Successional Reserve (LSR), Shasta-Trinity National Forest, Siskiyou County, CA, *Review Period Ends:* 06/11/2012, *Contact:* Emelia Barnum 530–926–9600.

EIS No. 20120131, Final EIS, BLM, OR, Celatom Mine Expansion Project, Proposal to Approve, or Approve with Condition, Authorized Mine Plan of Operation Permit, Harney and Malheur Counties, OR, *Review Period End:* 06/04/2012, *Contact:* Bill Dragt 541–573–4473.

EIS No. 20120132, Draft EIS, BLM, CA, Haiwee Geothermal Leasing Area, Evaluation of Potential Impacts of Opening for Lease of Federal Mineral Estate for Geothermal Energy Exploration and Development, Approval of Lease Applications, Inyo County, CA, *Comment Period Ends:* 08/01/2012, *Contact:* Peter Godfrey 951–697–5385.

EIS No. 20120133, Draft EIS, USFWS, CA, Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, Measures to Restore Riparian Habitat and to Protect the Alignment of the Sacramento River, USACE Section 10 and 404 Permits, Sacramento River National Wildlife Refuge, Butte and Glenn Counties, CA, *Comment Period Ends:* 06/25/2012, *Contact:* Daniel W. Frisk 530–934–2801.

EIS No. 20120134, Final EIS, NRC, FL, Levy Nuclear Plant Units 1 and 2, Application for Combined Licenses (COLs) for Construction Permits and Operating Licenses, (NUREG–1941), Levy County, FL, *Review Period End:* 06/04/2012, *Contact:* Douglas Bruner 301–415–2730.

EIS No. 20120135, Final EIS, USFS, CO, Colorado Roadless Areas Rulemaking, Proposal To Establish Regulatory Direction for Managing Approximately 4.2 million Acres of Roadless Areas, Arapaho and Roosevelt; Grand Mesa, Uncompahgre, and Gunnison; Manti-La Sal (portion in Colorado); Pike and San Isabel; Rio Grande; Routt; San Juan; and White River National Forests, CO, *Review Period End:* 06/04/2012, *Contact:* Ken Tu 303–275–5156.

Amended Notices

EIS No. 20120120, Draft EIS, BLM, AZ, Mohave County Wind Farm Project, Application for a Right-of-Way Grant to Construct, Operate, Maintain and Decommission a Wind Powered Electrical Generation Facility, White Hills, Mohave County, AZ, *Comment Period Ends:* 06/11/2012, *Contact:* Jerry Crockford 505–360–0473.

Revision to FR Notice Published 04/27/2012; Change Project State from CO to AZ.

Dated: May 1, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–10826 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0988; FRL–9347–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; email address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0988. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. EUP

EPA has issued the following EUP:

29964 EUP–11. Issuance. Pioneer Hi-Bred International, P.O. Box 1000, Johnston, IA 50131–1000. This EUP allows the use of combined and single trait corn containing one or more of the following plant-incorporated protectants (PIPs): (1) [Bt11] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material (via elements of vector pZO1502) necessary for its production in corn (SYN–BTØ11–1), (2) [DAS–59122–7] *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (PHP17662 T–DNA) in event DAS59122–7 corn (Organization for Economic Co-operation and Development (OECD) Unique Identifier: DAS–59122–7), (3) [MIR162] *Bacillus thuringiensis* Vip3Aa20 and the genetic material necessary for its production (vector pNOV1300) in event MIR162 maize (SYN–IR162–4), (4) [MIR604] Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in corn (SYN–

IR604–8), (5) [TC1507] *Bacillus thuringiensis* Cry1F protein and the genetic material (plasmid insert PHI8999A) necessary for its production in corn event DAS– Ø15Ø7–1, and (6) [MON810] *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (Vestor PV–ZMCT01) in event MON 810 corn (OECD Unique Identifier: MON–ØØ81Ø–6). The focus of the EUP are the three breeding stacks: (1) MIR604 × 1507 × 59122 × MON 810, (2) MIR604 × 59122 × MON810, and (3) MIR604 ×1507. 0.0184 pounds (lbs.) of MON810 Cry1Ab, 0.0585 (lbs.) of Bt11 Cry1Ab, 5.513 (lbs.) of Cry34Ab1, 0.754 (lbs.) of Cry35Ab1, 0.123 (lbs.) of Vip3Aa20, 0.147 (lbs.) of mCry3A, and 0.170 (lbs.) of Cry1F, are authorized on, 2,672 PIP acres. 664 acres of non-PIP and border row corn are also authorized. Two protocols will be conducted, including: Insect resistance management and efficacy/expression. The program is authorized only in the States of Arkansas, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin. The EUP is effective from March 3, 2011, to June 30, 2012. One comment was received in response to the January 26, 2011, notice of receipt in the **Federal Register**, 76 FR 4683, FRL–8856–2. One comment was received from an anonymous individual who objected in general terms to EPA granting this experimental use permit with *Bacillus thuringiensis*-based plant-incorporated protectants claiming that insufficient safety testing has been required. The Agency understands that some individuals are opposed to all biotechnology based pesticide use. Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, EPA may issue a permit for experimental use of a pesticide if the Agency determines that such experimental use may be conducted in such a manner as to not result in unreasonable adverse effects on the environment. EPA has conducted a comprehensive analysis of data and information related to the requested experimental uses and, based on that analysis, EPA has determined that the experimental uses, if conducted in accordance with the terms of the permit, will not result in unreasonable adverse effects on the environment.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 24, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10725 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9668–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the City Storage Superfund Site, located in Sulphur, Calcasieu Parish, Louisiana.

The settlement requires the three (3) settling parties to pay a total of $145,000 as payment of response costs to the Hazardous Substances Superfund plus $2,750.23 in calculated interest. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days beginning on the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before June 4, 2012.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Lance Nixon at, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–2203. Comments should reference the City Storage Superfund Site, located in Sulphur, Calcasieu Parish, Louisiana and EPA Docket Number 06–07–09, and should be addressed to Lance Nixon at the address listed above.

FOR FURTHER INFORMATION CONTACT: Gloria Moran, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–3139.

Dated: April 19, 2012.

Samuel Coleman,

Acting Regional Administrator (6RA).

[FR Doc. 2012–10807 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9668–5]

Workshop on Using Mode of Action To Support the Development of a Multipollutant Science Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Workshop.

SUMMARY: EPA is announcing a workshop, organized by EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development, to explore the possible ways by which mode-of-action and toxicity pathways approaches may contribute to interpretation of cumulative human health risks of the criteria air pollutants. The workshop will be held on May 31, 2012, in Research Triangle Park, North Carolina and will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held on May 31, 2012, beginning at 8:00 a.m. and ending at 5:00 p.m.

ADDRESSES: The workshop will be held in the auditorium of EPA's main campus, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. An EPA contractor, ICF International, is providing logistical support for the workshop.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the workshop should be directed to Whitney Kihlstrom, ICF International, Conference Coordinator, 2222 East NC–54, Suite 480, Durham, North Carolina 27713; telephone: 919–293–1646; facsimile: 919–293–1645; email: *EPA_Multipollutant@icfi.com.*

Questions regarding the scientific and technical aspects of the workshop should be directed to Dr. Beth Owens, telephone: 919–541–0600; facsimile: 919–541–2895; email: *owens.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Workshop

Sections 108 and 109 of the Clean Air Act require periodic review and, if appropriate, revisions of the National Ambient Air Quality Standards (NAAQS) and the air quality criteria on which they are based. As a part of this process, NCEA reviews and integrates scientific information from across scientific disciplines in drawing conclusions related to exposure and health impacts of each of the criteria air pollutants in the Integrated Science Assessment (ISA). EPA is planning the development of a companion assessment to the ISAs, the Multipollutant Science Assessment, whereby the health effects of exposure to a mixture of pollutants, principally the criteria air pollutants, may be systematically evaluated. To this end, EPA conducted a workshop in February 2011, entitled *Multipollutant Science and Risk Analysis: Addressing Multiple Pollutants in the NAAQS Review Process.* One of the sessions focused on using mode-of-action and toxicity pathways approaches to interpret health evidence from toxicological and controlled human exposure studies of criteria air pollutants. NCEA is planning to further discuss issues related to the interpretation and organization of evidence used to characterize health effects resulting from exposure to real-world mixtures of air pollutants at the one-day workshop on May 31, 2012. The goal of the workshop is to explore the possible ways by which mode-of-action and toxicity pathways approaches may contribute to interpretation of cumulative human health risks of the criteria air pollutants. Discussion points will include current EPA plans related to an approach in which experimental health results are organized around key events or biological pathways that are linked to endpoints and outcomes of interest. In addition, discussion will focus on the means by which information from epidemiologic panel studies can be integrated into this framework, as well as how mixtures have been evaluated in other media and by other groups.

II. Workshop Information

Members of the public may attend the workshop as observers. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: April 20, 2012.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–10805 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 06–181; DA 12–514]

Notice of Need To File Updated Information for Some Closed Captioning Exemption Petitions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau) alerts certain entities that filed petitions for exemption from the Commission's closed captioning rules prior to the passage of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), of the need to either (1) affirm that the information provided in their previously submitted petition is still accurate and up-to-date, (2) update previously submitted petitions with the information indicated below, or (3) withdraw their previously submitted petitions. The intended action is to ensure that information provided in each petition is current and accurate.

DATES: Effective May 4, 2012, Petitions subject to document DA 12–514 will be dismissed on July 5, 2012, without prejudice to filing a new petition for exemption, if not affirmed, updated, or withdrawn as set forth in document DA 12–514.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, Consumer and Governmental Affairs Bureau, at (202) 418–0569 (voice), (202) 418–0537 (TTY); email: *Traci.Randolph@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, document DA 12–514, released April 2, 2012, in CG Docket No. 06–181. The full text of document DA 12–514 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA 12–514 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at its Web site: *http://www.bcpiweb.com*, or by calling (202) 488–5300. Document DA 12–514 and the Appendix listing Unresolved Petitions for Individual Closed Captioning Exemptions can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/encyclopedia/economically-burdensome-exemption-closed-captioning-requirements*.

Synopsis

From October 2005 through August 2006, the Commission received approximately 600 petitions for individual closed captioning exemptions under section 713(d)(3) of the Act. In 2006, the Commission's Consumer and Governmental Affairs Bureau (Bureau) granted two of these petitions in the *Anglers Order,* 21 FCC Rcd 10094, and during the weeks that followed, granted an additional 303 petitions in reliance on the reasoning of the *Anglers Order.* In 2006, the Commission received an Application for Review that challenged the exemptions granted in and those that relied on the *Anglers Order.* On October 20, 2011, the FCC granted the Application for Review, and in the *Anglers Reversal MO&O,* published at 76 FR 67376, November 1, 2011; 76 FR 67377, November 1, 2011; and at 76 FR 67397, November 1, 2011, reversed these exemptions. The *Anglers Reversal MO&O* also set forth guidance on the information and documentation that closed captioning petitions should contain, along with standards that the Bureau should use to determine when a closed captioning exemption is warranted.

At issue in document DA 12–514 are the unresolved petitions for exemption that are not subject to the *Anglers Reversal MO&O,* and that were filed before passage of the CVAA. Although some of these petitions were previously placed on public notice, no decision to grant or to deny was ever made regarding these petitions. The Bureau is now ready to apply the standards restored by the *Anglers Reversal MO&O* to resolve the claims for an exemption by these petitioners. However, the Bureau realizes that considerable time has passed since many of these petitions were first filed, and that various circumstances including, but not limited to, the financial status of the petitioners and the cost of captioning, may have changed.

Accordingly, in order to ensure that information provided in each petition is current and accurate, the Bureau requires each petitioner whose petition is listed in document DA 12–514 to do one of the following by July 5, 2012: (1) File an affirmation with the FCC that its previously submitted petition and supporting information is accurate and up-to-date; (2) file updated information in accordance with the factors listed below to support its claim that captioning its program(s) would be economically burdensome; or (3) withdraw its previously submitted petition.

Any petitioner listed in document DA 12–514 that does not take one of the steps listed above by July 5, 2012, will have its pending petition dismissed without prejudice on July 5, 2012. A petitioner that is interested in continuing to request a closed captioning exemption for its programming must include up-to-date evidence, supported by affidavit, demonstrating that it would be economically burdensome to provide closed captioning on the specific programming for which an exemption is sought. Specifically, each petition should contain current and detailed documentation, in accordance with the original factors outlined in section 713(e) of the Act and § 79.1(f) of Commission's rules, to support a claim that providing closed captions would be economically burdensome (would result in a ''significant difficulty or expense'') as defined by the following criteria: (1) The nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

In order to make the above showing that providing captioning would be economically burdensome, each petitioner must:

- Provide documentation of its financial status sufficient to demonstrate its inability to afford closed captioning—for example, profit and loss statements or bank statement information. (This documentation should not just include the resources devoted to or the costs associated with the television program(s) at issue);
- Provide information about the costs of captioning the specific program for which the exemption is sought;
- Verify that it has sought closed captioning assistance (*e.g.,* funding, services) from its video programming distributor and note the extent to which such assistance has been provided or rejected;
- Verify that it has sought additional sponsorship sources or other sources of revenue for captioning, and show that, even if these efforts have not successfully produced assistance, it does not otherwise have the means to provide captioning for its programming; and
- Provide information on the type of its operation(s) and the impact that providing captions would have on its programming activities, for example, the extent to which its programming might not be shown if it is required to provide captions.

In addition, each petitioner may describe other factors that it deems relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirements. Each petition should also contain a specific list of names of the program(s) for which the petitioner is seeking an exemption. Finally, as noted above, each petition must be supported by an affidavit. Failure to support an exemption request with adequate explanation and evidence to make these showings, supported by an affidavit, will result in dismissal of the request.

Each updated petition that provides sufficient information will be placed on public notice to allow the public to comment on the merits of the petition. After giving the public an opportunity to submit comments, the Bureau will conduct an individual review of each petition to determine the extent to which providing captioning would be economically burdensome for the petitioner, based on information provided in the petition and any comments received, and will issue an order either granting or denying the petition.

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–10815 Filed 5–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before July 3, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 4534.

Average Time per Response: 27.91 hours.

Total Annual Burden: 126,544 hours.

General Description of Collection: The information collection requirements are contained in 12 CFR part 344. The regulation's purpose is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate records concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of May 2012.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

[FR Doc. 2012–10824 Filed 5–3–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On February 23, 2012 (77 FR 10743), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Asset Purchaser Liability (OMB No. 3064–0135). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before June 4, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Asset Purchaser Eligibility.

OMB Number: 3064–0135.

Form Number: FDIC 7300/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 300 hours.

General Description of Collection: The FDIC will use the Asset Purchaser Eligibility Certification to assure compliance with statutory restrictions on who may purchase assets held by the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of May 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–10797 Filed 5–3–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 30, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10434	Bank of the Eastern Shore	Cambridge	MD	4/27/2012.
10435	HarVest Bank of Maryland	Gaithersburg	MD	4/27/2012.
10436	Inter Savings Bank, FSB D/B/A/InterBank, fsb	Maple Grove	MN	4/27/2012.
10437	Palm Desert National Bank	Palm Desert	CA	4/27/2012.
10438	Plantation Federal Bank	Pawleys Island	SC	4/27/2012.

[FR Doc. 2012–10796 Filed 5–3–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8050–N]

Medicare Program; Meeting of the Medicare Economic Index Technical Advisory Panel—May 21, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Economic Index Technical Advisory Panel (''the Panel'') will be held on Monday, May 21, 2012. The purpose of the Panel is to review all aspects of the Medicare Economic Index (MEI). This first meeting will focus on MEI inputs and input weights. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Monday, May 21, 2012 from 8:30 a.m. until 5:00 p.m., Eastern Daylight Time (EDT).

Deadline for Submission of Written Comments: Written comments must be received at the mailing or email address specified in the section of this notice entitled, **FOR FURTHER INFORMATION CONTACT**, by 5 p.m. EDT, Monday, May 14, 2012. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5 p.m., EDT, Monday, May 14, 2012. Speakers may register by contacting Toya Via, HCD International, by phone at (301) 552–8803 or via email at *MEITAP@hcdi.com*. Materials that will be used in support of an oral presentation must be received at the mailing or email address specified in the section entitled, **FOR FURTHER INFORMATION CONTACT**, by 5 p.m., EDT, Monday, May 14, 2012.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.hcdi.com/mei/* or by phone by contacting Toya Via, HCD International, at (301) 552–8803 by 5 p.m. EDT, Monday, May 14, 2012.

We will be broadcasting the meeting live via Webcast. Webcast details will be sent to registered attendees.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Designated Federal Officer as specified in the section entitled, **FOR FURTHER INFORMATION CONTACT**, by 5 p.m., EDT, Monday, May 14, 2012.

ADDRESSES: *Meeting Location:* The meeting will be held in Room C–114 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: John Poisal, Designated Federal Officer, Centers for Medicare & Medicaid Services, Office of the Actuary, Mail stop N3–02–02, 7500 Security Boulevard, Baltimore, MD 21244 or contact Mr. Poisal by phone at (410) 786–6397 or via email at *John.Poisal@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Economic Index Technical Advisory Panel (''the Panel'') was established by the Secretary to conduct a technical review of the Medicare Economic Index (MEI). The review will include the inputs, input weights, price-measurement proxies, and productivity adjustment. For more information on the Panel, see the October 7, 2011 **Federal Register** (76 FR 62415). You may view and obtain a copy of the Secretary's charter for the Panel at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/MEITAP.html*. The members of the Panel are: Dr. Ernst Berndt, Dr. Robert Berenson, Dr. Zachary Dyckman, Dr. Kurt Gillis, and Ms. Kathryn Kobe.

This notice announces the Wednesday, May 21, 2012 public meeting of the Panel. This meeting will focus on MEI inputs and input weights.

II. Meeting Format

This meeting is open to the public. There will be up to 45 minutes allotted at this meeting for the Panel to hear oral presentations from the public. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 5 p.m., EDT, Wednesday, May 16, 2012. Any presentations that are not selected based on the lottery will be forwarded to the panel for consideration. For this meeting, public comments should focus on the MEI inputs and input weights. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Panel will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. The Panel will also allow up to 15 minutes for an unscheduled open public session for any attendee to address issues specific to the topics under consideration.

III. Registration Instructions

HCD International is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.hcdi.com/mei/or* by phone by contacting Toya Via, HCD International, at (301) 552–8803, by 5 p.m. EDT, Monday, May 14, 2012. Please provide your full name (as it

appears on your government-issued photographic identification), address, organization, telephone, and email address. At the time of registration, you will be asked to designate if you plan to attend in person or via webinar. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

Dated: April 27, 2012.

Marilyn B. Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–10702 Filed 5–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–OGM–PPR–Form B—Program Indicators.

OMB No.: New Collection.

Description: The Office of Grants Management (OGM), in the Administration for Children and Families (ACF) is proposing the collection of program performance data for ACF's discretionary grantees. To collect this data OGM has developed a form from the basic template of the OMB-approved reporting format of the Program Performance Report. OGM will use this data to determine if grantees are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and if funding should be continued for another budget period.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in: (1) OMB Circular A–102. Grants and Cooperative Agreements with States and Local Governments, also known as the ''Common Rule'' [codified at 45 CFR Part 92] and (2) OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations [codified at 2 CFR Part 215].

Respondents: All ACF Discretionary Grantees. State governments, Native American Tribal governments, Native American Tribal Organizations, Local Governments, and Nonprofits with or without 501 (c)(3) status with the IRS.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–OGM–PPR–B	6000	1	1	6000

Estimated Total Annual Burden Hours: 6000.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–10746 Filed 5–3–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0113]

Determination of Regulatory Review Period for Purposes of Patent Extension; GILENYA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GILENYA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an

application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GILENYA (fingolimod). GILENYA is indicated for treatment of patients with relapsing forms of multiple sclerosis to reduce the frequency of clinical exacerbations and to delay the accumulation of physical disability. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GILENYA (U.S. Patent No. 5,604,229) from Novartis Pharmaceuticals Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 25, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GILENYA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GILENYA is 4,296 days. Of this time, 4,021 days occurred during the testing phase of the regulatory review period, while 275 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 19, 1998. The applicant claims December 25, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 19, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 21, 2009. The applicant claims December 18, 2009, as the date the new drug application (NDA) for GILENYA (NDA 22–527) was initially submitted. However, FDA records indicate that NDA 22–527 was submitted on December 21, 2009.

3. *The date the application was approved:* September 21, 2010. FDA has verified the applicant's claim that NDA 22–527 was approved on September 21, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 3, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 31, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10819 Filed 5–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0153]

Determination of Regulatory Review Period for Purposes of Patent Extension; EGRIFTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EGRIFTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EGRIFTA (tesamorelin acetate). EGRIFTA is indicated for the reduction of excess abdominal fat in HIV-infected patients with lipodystrophy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EGRIFTA (U.S. Patent No. 5,861,379) from Theratechnologies, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EGRIFTA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EGRIFTA is 3,284 days. Of this time, 2,753 days occurred during the testing phase of the regulatory review period, while 531 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* November 15, 2001. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 15, 2001.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 29, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for EGRIFTA (NDA 22–505) was submitted on May 29, 2009.

3. *The date the application was approved:* November 10, 2010. FDA has verified the applicant's claim that NDA 22–505 was approved on November 10, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 3, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 31, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10808 Filed 5–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0139]

Determination of Regulatory Review Period for Purposes of Patent Extension; EQUIDONE GEL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EQUIDONE GEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was

marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA approved for marketing the animal drug product EQUIDONE GEL (domperidone). EQUIDONE GEL is indicated for prevention of fescue toxicosis in periparturient mares. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EQUIDONE GEL (U.S. Patent No. 5,372,818) from Dechra, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2011, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of EQUIDONE GEL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EQUIDONE GEL is 6,378 days. Of this time, 6,336 days occurred during the testing phase of the regulatory review period, while 42 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective:* March 26, 1993. The applicant claims February 24, 1992, as the date the investigational new animal drug application (IND) became effective. However, the date that a major health or environmental effects test is begun or the date on which the Agency acknowledges the filing of a notice of claimed investigational exemption (NCIE) for a new animal drug, whichever is earlier, is the effective date for the IND. According to FDA records, the applicant's first submission of an NCIE was March 26, 1993, which is the effective date for the IND.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the Federal Food, Drug, and Cosmetic Act:* July 30, 2010. The applicant claims July 27, 2010, as the date the new animal drug application (NADA) for EQUIDONE GEL (NADA 141–314) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgement letter assigning a number to NADA 141–314 was July 30, 2010, which is considered to be the initially submitted date for NADA 141–314.

3. *The date the application was approved:* September 9, 2010. FDA has verified the applicant's claim that NADA 141–314 was approved on September 9, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either written or electronic comments and ask for a redetermination by July 3, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 31, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10853 Filed 5–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0049]

Determination of Regulatory Review Period for Purposes of Patent Extension; FERAHEME

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FERAHEME and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory

review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FERAHEME (ferumoxytol). FERAHEME is indicated for the treatment of iron deficiency anemia in adult patients with chronic kidney disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FERAHEME (U.S. Patent No. 6,599,498) from AMAG Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FERAHEME represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FERAHEME is 3,680 days. Of this time, 3,120 days occurred during the testing phase of the regulatory review period, while 560 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* June 5, 1999. The applicant claims June 4, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 5, 1999, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 19, 2007. The applicant claims December 18, 2007, as the date the new drug application (NDA) for FERAHEME (NDA 22–180) was initially submitted. However, FDA records indicate that NDA 22–180 was submitted on December 19, 2007.

3. *The date the application was approved:* June 30, 2009. FDA has verified the applicant's claim that NDA 22–180 was approved on June 30, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,209 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 3, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 31, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10849 Filed 5–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0661 and FDA–2010–E–0662]

Determination of Regulatory Review Period for Purposes of Patent Extension; JEVTANA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for JEVTANA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when

the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product JEVTANA (cabazitaxel). JEVTANA, in combination with prednisone, is indicated for treatment of patients with hormone-refractory metastatic prostate cancer previously treated with a docetaxel-containing treatment regimen. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for JEVTANA (U.S. Patent Nos. 5,847,170 and 6,331,635) from Aventis Pharma S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 11, 2011, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of JEVTANA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for JEVTANA is 4,250 days. Of this time, 4,171 days occurred during the testing phase of the regulatory review period, while 79 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* October 30, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 30, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 31, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for JEVTANA (NDA 201023) was submitted on March 31, 2010.

3. *The date the application was approved:* June 17, 2010. FDA has verified the applicant's claim that NDA 201023 was approved on June 17, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,591 days and 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 3, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 31, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–10828 Filed 5–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: 2012 National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality (CBHSQ), is requesting approval for a revision to the National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119), which expires on February 28, 2013. The N–MHSS provides national and state-level data on the number and characteristics of mental health treatment facilities in the United States.

An immediate need under N–MHSS in 2012 is to update the information about facilities on SAMHSA's online Mental Health Facility Locator (see: *http://store.samhsa.gov/mhlocator*), which was last updated with information from the 2010 N–MHSS. A full N–MHSS is anticipated within about two years, and a separate request for OMB approval will be submitted for that collection. However, until then, an abbreviated version of the N–MHSS will be conducted to collect only the information needed to update the Locator, such as the facility name and address, specific services offered, and special client groups served. The data on the Locator are becoming outdated and need an update method. Other fields in the full N–MHSS not needed for updating the Locator, such as client counts and client demographics, will not be collected in the Locator survey. In addition to the data collection for updating facilities on the Locator, a data collection in conjunction with adding new facilities to the Locator is being requested. Both activities will use the same abbreviated N–MHSS–Locator instrument.

This requested revision seeks to change the content of the currently approved full-scale N–MHSS survey instrument into an abbreviated survey

instrument, henceforth referred to as the N–MHSS–Locator, to accommodate two related N–MHSS activities:

(1) Collection of information from the full N–MHSS universe of mental health treatment facilities during 2012, 2013, and 2014. This abbreviated subset of N–MHSS data will update and expand SAMHSA's existing online Mental Health Facility Locator (see: *http://store.samhsa.gov/mhlocator*), which was last updated with information from the 2010 N–MHSS; and

(2) Collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the Locator.

The survey mode for both data collection activities will be Web with telephone follow-up.

The database resulting from the 2012 N–MHSS–Locator will be used to update SAMHSA's online Mental Health Facility Locator and to produce a 2012 compact disk (CD) directory of facilities, both for use by consumers and service providers. In addition, a data file derived from the survey will be used to produce an annual report providing state and national data on the number and types of treatment facilities and services. The annual report and a public-use data file to be released in conjunction with the report will be used by researchers, mental health professionals, State governments, the U.S. Congress, and the general public.

The following table summarizes the estimated response burden for the two survey activities:

ESTIMATED TOTAL RESPONSE BURDEN FOR THE N–MHSS

Type of respondent	Number of respondents	Responses per respondent	Average hours per response	Total hour burden
Facilities in annual N–MHSS–Locator universe	15,000	1	.42	6,300
Newly identified facilities [1]	1,500	1	.42	630
Total Facilities	16,500			6,930

[1] Collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the Locator.

Written comments and recommendations concerning the proposed information collection should be sent by June 4, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2012–10759 Filed 5–3–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: 2012 National Survey on Drug Use and Health (NSDUH) Questionnaire Field Test—NEW

The National Survey on Drug Use and Health (NSDUH) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

In order to continue producing current data, SAMHSA's Center for Behavioral Health Statistics and Quality (CBHSQ) must update the NSDUH periodically to reflect changing substance abuse and mental health issues. CBHSQ is planning to redesign the NSDUH for the 2015 survey year. The redesign will seek to achieve two main goals: (1) To revise the questionnaire to address changing policy and research data needs, and (2) to modify the survey methodology to improve the quality of estimates and the efficiency of data collection and processing. SAMHSA is requesting approval to conduct a Questionnaire Field Test (QFT) to test revisions to the questionnaire associated with these goals.

The field test will consist of 2,000 English-speaking respondents in the continental United States. The sample size of the survey will be large enough to detect differences between data collected using the annual NSDUH compared to the redesigned procedures. The total annual burden estimate is shown below:

ESTIMATED BURDEN FOR 2012 NSDUH QFT

Instrument	Number of respondents	Responses per respondent	Hours per response	Total burden hours	Hourly wage rate	Annualized costs
Household Screening	3,338	1	0.083	277	$14.45	$4,003

ESTIMATED BURDEN FOR 2012 NSDUH QFT—Continued

Instrument	Number of respondents	Responses per respondent	Hours per response	Total burden hours	Hourly wage rate	Annualized costs
Interview	2,000	1	1.250	2,500	14.45	36,125
Screening Verification	100	1	0.067	6.7	14.45	97
Interview Verification	300	1	0.067	20	14.45	289
Total	3,338			2,804		40,514

Written comments and recommendations concerning the proposed information collection should be sent by June 4, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2012–10758 Filed 5–3–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0077]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0014, Request for Designation and Exemption of Oceanographic Research Vessels and 1625–0088, Voyage Planning for Tank Barge Transits in the Northeast United States. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before June 4, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0077] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must

also contain the docket number of this request, [USCG 2012–0077], and must be received by June 4, 2012. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0077], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–0077'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0077'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0014 and 1625–0088.

Privacy Act

Anyone can search the electronic form of comments received in 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 9951, February 21, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 1625–0014.

Type of Request: Revision of a currently approved collection.

Respondents: Owners or operators of certain vessels. *Abstract:* This collection requires submission of specific information about a vessel in order for the vessel to be designated as an Oceanographic Research Vessel (ORV).

Forms: None.

Burden Estimate: The estimated burden has increased from 35 hours to 51 hours a year.

2. *Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

OMB Control Number: 1625–0088.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and operators of towing vessels.

Abstract: The information collection requirement for a voyage plan serves as a preventive measure and assists in ensuring the successful execution and completion of a voyage in the First Coast Guard District. This rule (33 CFR 165.100) applies to primary towing vessels engaged in towing certain tank barges carrying petroleum oil in bulk as cargo.

Forms: None.

Burden Estimate: The estimated burden has decreased from 2,692 hours to 1,116 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: April 27, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–10751 Filed 5–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–1106]

Mobile Offshore Drilling Unit Dynamic Positioning Guidance

AGENCY: Coast Guard, DHS.

ACTION: Notice of Recommended Interim Voluntary Guidance.

SUMMARY: On December 29, 2011, the Coast Guard published a notice of availability and request for comments regarding a draft policy letter on Dynamic Positioning (DP) Systems, Emergency Disconnect Systems, Blowout Preventers, and related training and emergency procedures on a Mobile Offshore Drilling Unit. We received comments both as submissions to the docket and at a public meeting held on February 9, 2012, at Coast Guard Headquarters. Based on the comments received, the Coast Guard intends to adjust the scope of the policy described in that notice. The Coast Guard is publishing this notice to recommend interim voluntary DP system guidance and recommend DP incident reporting criteria.

DATES: The policy outlined in this document is effective May 4, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–1106 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–1106 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Commander Joshua Reynolds, U.S. Coast Guard, Office of Design and Engineering Standards, Human Element and Ship Design Division (CG–5211), telephone (202) 372–1355. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. General

A. Background and Intent To Publish Rule

Over the past several decades, the expansion of offshore exploration, development and production into deeper water has transformed an industry once characterized by relatively simple, domestic shallow water fixed platforms and small logistical vessels into an industry with complex, international floating vessels supplied and serviced by other large, international multipurpose vessels. This has given rise to the use of DP as a practical means for keeping these vessels within precise geographic limits. Failure of a DP system on a vessel conducting critical operations such as oil exploration and production could have severe consequences including loss of life, pollution, and property damage. This is particularly true for Mobile Offshore Drilling Units (MODUs), where a loss of position could result in a subsea spill and potentially catastrophic environmental consequences. The Deepwater Horizon incident demonstrated the serious challenges associated with subsea spill response. In a preliminary effort to better understand critical systems, training, and emergency procedures put in place to prevent or mitigate a loss of position on a dynamically positioned MODU and inform any related future rulemaking, the Coast Guard published a notice in the **Federal Register** (76 FR 81957) requesting public comment on a draft policy. We received comments both as submissions to the docket and at a public meeting held on February 9, 2012. The Coast Guard was encouraged to publish a rule for areas where no standard has been set and to consider industry standards and guidance when developing the rule. The Coast Guard agrees and intends to initiate a rulemaking that addresses DP incident reporting requirements and minimum DP system design and operating standards.

B. Immediate Areas of Concern

As discussed in the draft policy letter published with the notice of availability on December 29, 2011, there have been several DP incidents in the Gulf of Mexico involving both DP system equipment failures and human error on MODUs. Because of the consequences associated with a deepwater subsea spill, the Coast Guard believes DP incidents on MODUs engaged in drilling represent the most immediate concern and chooses to address them first.

To ensure sufficient safety measures are developed, the Coast Guard needs to improve its awareness of DP incidents on MODUs. The existing regulations on the reporting of marine casualties have proven ill-suited for reporting of DP related incidents, as they do not require a MODU (either U.S. or foreign) to report DP incidents to the Coast Guard. There are also reporting disparities between U.S. and foreign flagged MODUs. For example, U.S. flagged MODUs are required by 46 CFR 4.05 to report some equipment failures to the Coast Guard, but there is confusion and ambiguity over how these requirements apply to DP related incidents, and they do not apply to foreign flagged MODUs. Some MODU vessel operators have voluntarily reported some DP incidents to the Coast Guard, but the Coast Guard believes this practice is not universal. The Coast Guard is considering updates to its marine casualty reporting requirements, and will consider past recommendations, including public comments on a notice of proposed rulemaking, ''Outer Continental Shelf Activities,'' published on December 7, 1999 (64 FR 68416) and the recommendations of the National Offshore Advisory Committee (NOSAC) subcommittee on incident reporting, and will provide further opportunity for public comment.

Coast Guard regulations currently do not include specific DP system design and operating standards. In addition, there is a disparity between requirements for U.S. and foreign flagged MODUs. For U.S. dynamically positioned MODUs, the Coast Guard views a DP system, as defined in International Maritime Organization (IMO) Maritime Safety Committee Circular 645 paragraph 1.3.2, as a vital system under our regulations in 46 CFR part 62. While Part 62 contains a ''failsafe'' concept that could be directly applied for an Equipment Class 1 DP system, it does not have an equivalent concept that directly applies to DP system reliability for Equipment Class 2 or 3 as discussed in paragraph 2 of the Circular. Because the Coast Guard believes that a dynamically positioned MODU engaged in drilling should meet a minimum of Equipment Class 2 as defined in paragraph 2.2 of the Circular, Part 62 should be updated to make it more directly applicable to U.S. dynamically positioned MODUs. Foreign flagged MODUs have several options for compliance with coastal state regulations in 33 CFR 143.207, one of which is compliance with the 1979 MODU Code (IMO Assembly Resolution A.414(XI)). This Code does not contain any standards applicable to DP systems. Although more recent versions of the MODU Code reference IMO circulars with DP system guidelines, the Coast Guard has not yet adopted these Codes in its regulations. The Coast Guard is considering adopting updated versions of the MODU code, including any DP circulars referenced by these versions, and any DP related recommendations by the NOSAC. These areas of concern are likely to be the subject of a future rulemaking.

II. Interim Voluntary DP System Guidance

On July 7th, 2010, in response to a request from the Coast Guard, NOSAC issued the report ''Recommendations for Dynamic Positioning System Design and Engineering, Operational and Training Standards.'' The report contained draft guidelines from the Marine Technology Society (MTS) Dynamic Positioning Committee, which the MTS has since completed. The Coast Guard has reviewed the guidance, referred to it when responding to known DP incidents and found it to be comprehensive and highly useful. Until the Coast Guard publishes a DP Rule, the Coast Guard recommends owners and operators of dynamically positioned MODUs (not leaseholders who contract MODUs) operating on the U.S. Outer Continental Shelf (OCS) voluntarily follow guidance provided in the ''DP Operations Guidance Prepared through the Dynamic Positioning Committee of the Marine Technology Society to aid in the safe and effective management of DP Operations'', March 2012 Part 2 Appendix 1 (dynamically positioned MODUs), available at *http://www.dynamic-positioning.com/dp_operations_guidance.cfm*.

It is particularly important they identify the DP System's Critical Activity Mode of Operation (CAMO) and ensure Well Specific Operating Guideline (WSOGs) are developed for operations at every well and location. A MODU attached to the seafloor of the U.S. OCS should be operated in accordance with the appropriate WSOG. The WSOG should clearly state which

well operations are critical and require the DP System configured in its CAMO for these operations.

In addition to following the MTS DP Operations Guidance, MODU owners or operators are encouraged to voluntarily report to the Coast Guard reactive changes of DP status from ''green'' to ''red'' as described paragraph 4.11 using the procedures listed in 46 CFR 4.05.

III. Authority

This document is issued under the authority of 5 U.S.C. 552(a), 43 U.S.C. 1331, *et seq.,* and 33 CFR 1.05–1. The guidance contained in this notice is not a substitute for applicable legal requirements, nor is it itself a regulation. It is not intended to nor does it impose legally binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and State regulators, in applying statutory and regulatory requirements. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations.

Dated: April 27, 2012.

J.G. Lantz,

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

[FR Doc. 2012–10669 Filed 5–2–12; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2012–0018]

Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on May 22, 2012, in Savannah, GA. The meeting will be open to the public. As an alternative to on-site attendance, U.S. Customs and Border Protection (CBP) will also offer a live webcast of the COAC meeting via the Internet.

DATES: COAC will meet on Tuesday, May 22, 2012 from 1:00 p.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

Registration: If you plan on attending via webcast, please register online at *https://apps.cbp.gov/te_registration/?w=76* by close-of-business on May 18, 2012. Please feel free to share this information with interested members of your organizations or associations. If you plan on attending on-site, please register either online at *https://apps.cbp.gov/te_registration/?w=75* or by email to *tradeevents@dhs.gov,* or by fax to 202–325–4290 by close-of-business on May 18, 2012.

If you have completed an online webcast registration and wish to cancel your registration, you may do so at *https://apps/cbp.gov/te_registration/cancel.asp?w=76*.

If you have completed an online on-site registration and wish to cancel your registration, you may do so at *https://apps.cbp.gov/te_registration/cancel.asp?w=75*.

ADDRESSES: The meeting will be held at Hyatt Regency Savannah Hotel on the Historic Riverfront, Two West Bay Street, Savannah, GA 31401, in Ballroom A&B. All visitors report to the foyer of Ballroom A&B in the hotel.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at 202–344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than May 14, 2012, and must be identified by USCBP–2012–0018 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 5.2A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Do not submit personal information to this docket.

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

There will be two public comment periods held during the meeting on May 22, 2012. On-site speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for on-site speakers may end before the time indicated on the schedule that is posted on the CBP web page at the time of the meeting. Comments can also be made electronically anytime during the COAC meeting webcast, but please note that webcast participants will not be able to provide oral comments. Comments submitted electronically will be read into the record during the two (2) public comment periods.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 5.2A, Washington, DC 20229; telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

Agenda

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, and formulate recommendations on how to proceed on those topics:

- The work of the Land Border Security Subcommittee: Recommendations on the expansion of the Customs–Trade Partnership Against Terrorism (C–TPAT) Program and the National Strategy for Global Supply Chain Security.
- The work of the Trade Facilitation Subcommittee: Recommendations on CBP's Trade Transformation initiatives.
- The work of the One U.S. Government at the Border Subcommittee: Updates on subcommittee discussions with the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), the Food Safety Inspection Service (FSIS), and the Consumer Product Safety Commission (CPSC).
- The work of the Role of the Broker subcommittee: Recommendation to

continue educational webinars on current topics for the trade community.

Prior to the COAC taking action on any of these topics of the four above-mentioned subcommittees, members of the public will have an opportunity to provide comments orally or, for comments submitted electronically during the meeting, by reading the comments into the record.

The COAC will also receive an update and discuss the following Initiatives and Subcommittee topics that were discussed at its February 21, 2012 meeting:

- The National Strategy for Global Supply Chain Security as it relates to the Committee's effort to solicit, consolidate, and provide input to DHS sector and stakeholders on the implementation of the National Strategy.
- The Automated Commercial Environment (ACE) and International Trade Data System (ITDS).
- The Air Cargo Security Subcommittee work on the Air Cargo Advance Screening (ACAS) pilot.
- The Bond Subcommittee work on proposed modifications to the CBP Form 5106; input on single transaction bond centralization; and liquidated damages mitigation guidelines.
- The Intellectual Property Rights Enforcement Subcommittee work on the distribution chain management project.
- The Anti-Dumping/Countervailing Duties Subcommittee work on educational webinars for the trade community and feedback on CBP's Draft 5-year Anti-Dumping/Countervailing Duties Enforcement Strategy.

Dated: May 1, 2012.

Maria Luisa O'Connell,

Senior Advisor for Trade, Office of Trade Relations.

[FR Doc. 2012–10837 Filed 5–3–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–32]

Notice of Submission of Proposed Information Collection to OMB Housing for Youth Aging Out of Foster Care

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection will support research on the role of Family Unification Program vouchers in providing housing for youth aging out of foster care. A survey will be administered to all public housing agencies (PHA) that have an allotment of Family Unification program vouchers (n=300) to determine whether or not their program is currently serving youth aging out of foster care, and why or why not; and for those PHAs that are serving youth, to explore and document key aspects of the program, including the role of the public child welfare agency (PCWA) in the provision of services, the challenges in implementing the program and any strategies employed to overcome challenges; and any outcome data that might be available related to vouchers and their partnering Public Child Welfare Agencies (PCWA).

DATES: *Comments Due Date:* June 4, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing for Youth Aging Out of Foster Care.

OMB Approval Number: 2528–New.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information collection will support research on the role of Family Unification Program vouchers in providing housing for youth aging out of foster care. A survey will be administered to all public housing agencies (PHA) that have an allotment of Family Unification program vouchers (n=300) to determine whether or not their program is currently serving youth aging out of foster care, and why or why not; and for those PHAs that are serving youth, to explore and document key aspects of the program, including the role of the public child welfare agency (PCWA) in the provision of services, the challenges in implementing the program and any strategies employed to overcome challenges; and any outcome data that might be available related to vouchers and their partnering Public Child Welfare Agencies (PCWA).

Frequency of Submission: Once.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	240	1.75		0.5	210

Total Estimated Burden Hours: 210.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 30, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–10822 Filed 5–3–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–17]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (These are not toll-free numbers).

Dated: April 26, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/04/2012

Suitable/Available Properties

Buildings

Alabama

C1301
Ft. McClellan
Ft. McClellan AL 36205
Landholding Agency: Army
Property Number: 21201220017
Status: Excess
Comments: off-site removal only; 2,232 sf.; barracks; extensive repairs needed; secured area; need prior approval to access property

19 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201220032
Status: Unutilized
Directions: 5450, 5655, 5658, 5671, 5672, 5673, 7289, 7355, 7368B, 7371A, 7371B, 7371C, 7661, 4180, 4823, 5689, 5690, 5695, 5697
Comments: off-site removal only; sf varies; usage varies; very poor conditions; contamination possible; extensive repairs needed; secured area; prior approval required to access property

21 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201220034
Status: Unutilized
Directions: 1416, 1416A, 2575, 2576, 2592, 3203, 3211, 3212, 3213, 3214, 3215, 3411A, 3453, 3453A, 3476, 3554, 3641, 3789, 5445, 5446, 5449
Comments: off-site removal only; sf varies; usage varies; very poor conditions; contamination possible; extensive repairs needed; secured area; prior approval required to access property

Alaska

11 Bldgs.
Ft. Greely
Ft. Greely AK 99731
Landholding Agency: Army
Property Number: 21201220029

Status: Unutilized
Directions: 713, 714, 875, 876, 887, 888, 910, 911, 912, 913
Comments: off-site removal only; sf varies; housing; fair to poor conditions; asbestos and lead indentified; need repairs; need prior approval to access property

California

T4243
Ord Military Community
Seaside CA 93955
Landholding Agency: Army
Property Number: 21201220013
Status: Unutilized
Comments: 2,080 sf.; office space; extremely poor conditions; extensive repairs needed; asbestos & lead identified; remediation needed

19 Bldgs.
Ft. Irwin
Ft. Irwin CA 92310
Landholding Agency: Army
Property Number: 21201220027
Status: Unutilized
Directions: 243, 383, 548, 550, 565, 566, 569, 571, 575, 577, 582, 595, 596, 859, 867, 868, 931, 940, 6201
Comments: off-site removal only; sf varies; office space; fair to poor conditions; secured area; prior approval to access property

Hawaii

12 Bldgs.
Schofield Barracks
Wahiawa HI
Landholding Agency: Army
Property Number: 21201220009
Status: Unutilized
Directions: 2509, 2510, 2511, 2512, 2513, 2514, 2516, 2517, 3030, 3031, 3032, 3035
Comments: off-site removal only; sf. varies; usage varies; storage; good conditions

Kansas

Bldg. 431
Ft. Leavenworth
Ft. Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21201220044
Status: Unutilized
Comments: off-site removal only; 2,294 sf.; vacant; poor conditions; need repairs; asbestos & lead; remediation needed; secured area; contact Army re: removal procedures

Kentucky

22 Bldgs.
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201220020
Status: Unutilized
Directions: 79, 204, 1610, 1996, 2955, 2959, 2965, 2980, 2991, 6531, 6533, 6560, 6561, 6563, 6564, 6565, 6566, 6592, 6594, 9183, 9319, 9320
Comments: off-site removal only; sf varies; usage varies; need repairs; lead and asbestos identified; need remediation

Maryland

Bldg. 724B
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21201220003
Status: Unutilized
Comments: off-site removal only; 1 sf.; current use: safety shelter; moderate conditions; lead & asbestos identified; need remediation

New Jersey

4 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201220011
Status: Unutilized
Directions: 1179, 1179A, 1179C, 1179D
Comments: off-site removal only; sf varies; usage varies; need repairs; contamination; remediation required; secured area; need prior approval to access property; contact Army for more details

New York

Bldg. 1345
Ft. Drum
Ft. Drum NY
Landholding Agency: Army
Property Number: 21201220030
Status: Underutilized
Comments: off-site removal only; 7,219 sf.; vehicle maint. shop.; extensive repairs needed; secured area; need prior approval to access property

5 Properties
Ft. Drum
Ft. Drum NY 13602
Landholding Agency: Army
Property Number: 21201220031
Status: Unutilized
Directions: BRG02, BRG19, BRG38, BRG62, BRG63
Comments: off-site removal only; sf varies; bridge; poor conditions; needs repairs; secured area; prior approval needed to access properties

North Carolina

4 Bldgs.
Ft. Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21201220036
Status: Unutilized
Directions: A3938, A3940, A3942, A4338
Comments: off-site removal only; sf varies; usage varies; extensive repairs needed; public will have to go through security check each time to access property; approval needed to access and relocate bldgs.

Oklahoma

2 Bldgs.
McAlester Army Ammo Plant
McAlester OK
Landholding Agency: Army
Property Number: 21201220018
Status: Unutilized
Directions: 662,749
Comments: off-site removal only; sf varies; usage varies; poor conditions; need repairs; secured area; need prior approval to access property

Pennsylvania

19 Bldgs.
DLA Distribution
New Cumberland PA
Landholding Agency: Army
Property Number: 21201220006
Status: Underutilized
Directions: 12, 14, 17, 65, 69, 72, 73, 75, 77, 81, 293, 401, 403, 404, 900, 2007, 2009, 2013, 2020
Comments: off-site removal only; sf. varies; usage varies; fair conditions; asbestos possible; need remediation; secured area; transferee needs prior approval to gain access; contact Army for more details

Tennessee

Bldg. 530
VTS SMYRNA
Smyrna TN 37167
Landholding Agency: Army
Property Number: 21201220033
Status: Excess
Comments: off-site removal only; 1,200 sf.; storage; need repairs; need prior approval to access property

Texas

B–1301
Ft. Bliss
Ft. Bliss TX 79916
Landholding Agency: Army
Property Number: 21201220001
Status: Underutilized
Comments: off-site removal only; 18,739 sf.; current use: thrift shop; poor conditions; need repairs

Bldg. 7194
Ft. Bliss
Ft. Bliss TX 79916
Landholding Agency: Army
Property Number: 21201220002
Status: Unutilized
Comments: off-site removal only; 2,125 sf.; current use: housing; poor conditions—need repairs; asbestos & lead identified; need remediation

Utah

4 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21201220007
Status: Unutilized
Directions: 524, 1255, 1420, 1450
Comments: off-site removal only; sf. varies; usage varies; storage; needs major repairs; secured area; prior approval to gain access to property; contact Army for more details

Vermont

Bldg. 126
Ethan Allen Firing Range
Jericho VT 05465
Landholding Agency: Army
Property Number: 21201220035
Status: Unutilized
Comments: off-site removal only; 1,680 sf.; Admin.; extremely poor conditions; need repairs

Virginia

8 Bldgs.
Ft. Belvoir
Ft. Belvoir VA 22060
Landholding Agency: Army
Property Number: 21201220004
Status: Excess

Directions: 808, 1150, 1197, 2303, 2903, 2905, 2907, 3137
Comments: off-site removal only; sf. varies; usage varies; good to poor conditions; may require repairs; contact Army for more details on specific properties

Wisconsin

MSH6A
Ft. McCoy
Ft. McCoy WI 54656
Landholding Agency: Army
Property Number: 21201220016
Status: Unutilized
Comments: off-site removal only; 240 sf.; storage; poor conditions; repairs needed; lead identified; remediation required; secured area; prior approval to access the property is required

Unsuitable Properties

Buildings

District of Columbia

Bldg. 55
Ft. McNair
Ft. McNair DC 20022
Landholding Agency: Army
Property Number: 21201220014
Status: Underutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 53
Ft. McNair
Ft. McNair DC 20024
Landholding Agency: Army
Property Number: 21201220015
Status: Unutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Kentucky

Bldg. 2435A
Ft. Campbell
Ft. Campbell KY 42223
Landholding Agency: Army
Property Number: 21201220005
Status: Underutilized
Comments: nat'l security concerns; public access is denied; only authorized military personnel; no alternative method for public to gain access w/out compromising nat'l security
Reasons: Secured Area

Missouri

11 Bldgs.
Ft. Leonard Wood
Ft. Leonard Wood MO 65473
Landholding Agency: Army
Property Number: 21201220019
Status: Excess
Directions: 499, 720, 745, 2555, 2556, 2557, 2558, 5076, 8208, 8370, 30
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Oklahoma

MA040
Regional Training Institute
Oklahoma City OK
Landholding Agency: Army
Property Number: 21201220010
Status: Unutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 137CO
Camp Gruber
Braggs OK 74423
Landholding Agency: Army
Property Number: 21201220028
Status: Unutilized
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Pennsylvania

Bldg. 71
Tobyhanna Army Depot
Tobyhanna PA 18466
Landholding Agency: Army
Property Number: 21201220008
Status: Underutilized
Comments: nat'l security concerns; public access is denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

South Carolina

Bldg. 4407
Ft. Jackson
Ft. Jackson SC
Landholding Agency: Army
Property Number: 21201220023
Status: Excess
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 1727
Ft. Jackson
Ft. Jackson SC
Landholding Agency: Army
Property Number: 21201220024
Status: Unutilized
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Bldgs.
Ft. Jackson
Ft. Jackson SC 29207
Landholding Agency: Army
Property Number: 21201220026
Status: Excess
Directions: 2441,4461,2451
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Virginia

15 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201220037
Status: Excess
Directions: T2864, T2565, R0065, R0066, R0067, R0068, R0078, R0108, R0109, R0110, R0112, R0113, R0114, R0215, R0233
Comments: nat'l security concerns; public access and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

16 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201220038
Status: Excess
Directions: T2814, T2815, T2816, T2817, T2823, T2826, T2827, T2828, T2829, T2838, T2841, T2856, T2860, T2861, T2863, T2862
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

14 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201220039
Status: Excess
Directions: T2632, T2633, T2635, T2636, T2638, T2639, T2646, T2647, T2639, T2642, T2643, T2644, T2646, T2647, T2648, T2649, T26811
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

15 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201220040
Status: Excess
Directions: T2616, T2617, T2818, T2620, T2621, T2622, T2623, T2624, T2625, T2626, T2627, T2628, T2629, T2630, T2631
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

15 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201220041
Status: Excess
Directions: R0234, R0235, T1650, T1651, T1653, T2022, T2023, T2024, T2238, T2376, T2604, T2612, T2613, T2614, T2615
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

12 Bldgs.
Ft. Pickett Trng Ctr
Blackstone VA 23824

Landholding Agency: Army
Property Number: 21201220042
Status: Excess
Directions: A1811, AT306, AT307, R0013, R0014, R0021, R0026, R0027, R0040, R0055, R0063, R0064
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Washington

Bldg. 28
JBLM
JBLM WA
Landholding Agency: Army
Property Number: 21201220021
Status: Underutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Land

South Carolina

Skate Park
Ft. Jackson
Ft. Jackson SC
Landholding Agency: Army
Property Number: 21201220022
Status: Underutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Basketball Court
Ft. Jackson
Ft. Jackson SC
Landholding Agency: Army
Property Number: 21201220025
Status: Unutilized
Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2012–10454 Filed 5–3–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2012–N023; FXRS12610800000V2–123–FF08RSRC00]

Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, CA; Draft Environmental Impact Statement and Environmental Impact Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental impact statement and environmental impact report (EIS/EIR) for the Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project in Glenn and Butte Counties, California. The proposed project includes riparian restoration and protection of the Princeton-Cordora-Glenn and Provident Irrigation Districts (PCGID–PID) pumping plant and fish screen facility. The draft EIS/EIR, which we prepared in cooperation with the California Department of Fish and Game (CDFG) and now announce in accordance with the National Environmental Policy Act of 1969 (NEPA), describes the alternatives identified to protect the pumping plant and fish screen facility located at river mile 178.5 on the Sacramento River, and to restore the Riparian Sanctuary Unit of the Sacramento River National Wildlife Refuge.

DATES: We must receive written comments at the address below on or before June 25, 2012.

ADDRESSES: The draft EIS/EIR is available at:

- Sacramento National Wildlife Refuge Complex, 752 County Road 99 W, Willows, CA 95988, (530) 934–7814.
- River Partners Office, 580 Vallombrosa Avenue, Chico, CA 95926, (530) 894–5401.
- Orland Free Library, 333 Mill Street, Orland, CA 95963.
- Chico Branch Library, 1108 Sherman Avenue, Chico, CA 95926.
- CDFG Office, 629 Entler Ave, Suite 12, Chico, CA 95928.
- PCGID–PID Office, 258 South Butte Street, Willows, CA 95988, (530) 934–4801.
- Internet: www. *www.fws.gov/sacramentovalleyrefuges/* and *http://www.riverpartners.org/where-we-work/sanctuary/documents.html.*

Written comments and requests for information may be sent to: Daniel W. Frisk, Project Leader, Sacramento National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, 752 County Road 99 W, Willows, CA 95988. Alternatively you may send written comments or requests by fax to (530) 934–7814, or by email to *dan_frisk@fws.gov.* Please indicate that your comments refer to the Riparian Sanctuary Restoration and Pumping Plan/Fish Screen Facility Protection Project.

FOR FURTHER INFORMATION CONTACT: Kelly Moroney, Refuge Manager, Sacramento River National Wildlife Refuge, (530) 934–2801 (phone); *kelly_moroneyr@fws.gov* (email), or; Helen Swagerty, River Partners, (530) 894–5401 (phone); *hswagerty@riverpartners.org* (email).

SUPPLEMENTARY INFORMATION:

Background

The Llano Seco Riparian Sanctuary Unit was acquired by the Service in 1991 and added to the Sacramento River National Wildlife Refuge. The Service acquired the Llano Seco Riparian Sanctuary Unit as part of the Joint Management Agreement between Parrot Investment Co., The Nature Conservancy, California Department of Fish and Game, and the Service to cooperatively manage lands on the Llano Seco Ranch. The Llano Seco Riparian Sanctuary Unit is one piece of the larger Llano Seco Ranch, and was cleared of riparian vegetation for agricultural production by the previous landowner during the 1970s. Although the property has been out of agricultural production for close to 15 years, the habitat remains dominated by nonnative and invasive noxious weeds. Currently, just over 200 acres is farmed to dryland row crops to help control nonnative weeds.

Prior to acquisition by the Service, rock revetment was placed on the north end of the Llano Seco Riparian Sanctuary Unit by the Department of Water Resources in 1985 and 1986. The rock was placed in order to lock the Sacramento River in place ensuring that flood flows would continue to be diverted from the Sacramento River through the Goose Lake overflow structure and into the Butte Basin. When the Service acquired the ranch property in 1991, we did so with the understanding that our management activities would not impact the Goose Lake overflow structure that diverts flood water into the Butte Basin.

Since the placement of rock revetment in 1986, the natural riverbank that is south of the revetment has eroded approximately 600 feet. The erosion on refuge property is directly across from the PCGID–PID pumping plant and fish screening facility. In 1999, the PCGID–PID consolidated three pumping plants into one new facility equipped with state-of-the-art fish screens. The fish-screening efficiency of the new PCGID–PID pumping plant is now endangered by the bank erosion on the refuge property and the migration of the Sacramento River. Although the rock revetment on the north edge of refuge property is decades old and eroding, it plays a key role in protecting the PCGID–PID pumping plant. As the bank erodes, the angle of flow and velocity of the water passing the screens will change, trapping fish against the screen rather than sweeping them past.

Without some type of protection, it is likely the bank will continue to erode and the pumping plant facility will fail to meet guidelines for operation of the pumping-plant fish screens that were published by the National Marine Fisheries Service of National Oceanic and Atmospheric Administration (Department of Commerce).

Alternatives

To address these issues, we identified and analyzed four alternatives in the draft EIS/EIR:

Alternative 1: No-Action Alternative

Under the No-Action Alternative, only the ongoing removal and management of invasive plant species would occur at the Riparian Sanctuary. No active restoration of native plants would occur. Maintenance activities for the PCGID–PID pumping plant and fish screens would continue, but no new actions would be taken to prevent river meander.

Alternative 2: Spur Dikes and Site-Specific Plantings

Under Alternative 2, bank protection measures would consist of installing eight rock spur dikes along the Sacramento River on the northern side of the Riparian Sanctuary. The dike field would extend about 2,000 feet in length. The dikes would be spaced 225 feet apart and each dike would extend 75 feet into the river. Restoration activities on the Riparian Sanctuary would consist of site-specific plantings across 400 acres of the site. Restoration activities would include preparing the site, planting native plants, irrigating plants for the first 3 years, and monitoring and managing the restored area.

Alternative 3: Traditional Riprap and Site-Specific Plantings

Under Alternative 3, bank protection measures would consist of installing riprap with or without a low berm along the Sacramento River on the northern side of the Riparian Sanctuary. Riprap revetment would be installed from the end of the existing riprap upstream for 2,500 to 2,700 feet to a point almost directly across from the pumping plant and fish screen facility, to protect the riverbank from further erosion. In addition to the site-specific plantings described under Alternative 2, revegetation is proposed on both the bank and low berm areas under this alternative.

Alternative 4: Traditional Riprap With Upstream Rock Removal and Site-Specific Plantings

Under Alternative 4, bank protection measures would consist of installing riprap with or without a low berm along the Sacramento River on the north side of the Riparian Sanctuary as described in Alternative 3, including revegetation on both the bank and low berm. Riparian restoration would take place as described in Alternative 2. In addition, under Alternative 4, we proposed to remove approximately 2,300 linear feet of upstream bank revetment on State- and Service-managed lands along the north side of the peninsula upstream of the Riparian Sanctuary. Removal of the revetment would encourage a natural progression of streambank erosion, and the eventual cutoff of an oxbow. This cut off would allow the river to flow parallel to the pumping plant and fish screen facility, which is the desired alignment for the fish screen to properly function. Installing traditional riprap on the northern side of the Riparian Sanctuary would hold the river in place to prevent it from migrating further east, away from the facility.

NEPA Compliance

The EIS/EIR discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, land use, air quality, water quality, water resources, and other environmental resources. It also identifies appropriate mitigation measures for adverse environmental effects.

Public Review

We are conducting public review of the EIS/EIR in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 et seq.), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The EIS/EIR meets the requirements of both NEPA and the California Environmental Quality Act (CEQA). The California Department of Fish and Game is the CEQA lead agency. We provide this notice under regulations implementing NEPA (40 CFR 1506.6).

Public Meeting

We will hold one public meeting to solicit comments on the draft EIS/EIR. We will send a separate notice to the public that identifies the time, date, and location of the meeting.

Public Comments

We invite the public to comment on the EIS/EIR during the comment period. 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. We will use the comments to prepare a final EIS/EIR. A decision will be made no sooner than 30 days after the publication of the final environmental impact statement.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2012–10777 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.FR0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from individuals who want to make a desert land entry to reclaim, irrigate, and cultivate arid and semiarid public lands administered by the BLM in the western States. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0004.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before June 4, 2012.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0004), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: *Jean_Sonneman@blm.gov*.

Please indicate ''Attn: 1004–0004'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren at 202–912–7335. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Holdren. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities.

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on February 22, 2012 (77 FR 10554), and the comment period ended April 23, 2012. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0004 in your correspondence. 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.

The following information is provided for the information collection:

Title: Desert Land Entry Application (43 CFR Part 2520).

Form: Form 2520–1, Desert Land Entry Application.

OMB Control Number: 1004–0004.

Abstract: The BLM needs to collect the information in order to determine if an applicant is eligible to make a desert land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 3 applicants for desert land entries annually.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 6 hours annually.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $45 annually.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–10733 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000.FR0000.24–1A]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from owners of surface estates who apply for underlying Federally-owned mineral estates. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0153.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before June 4, 2012.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0153), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: *Jean_Sonneman@blm.gov*.

Please indicate ''Attn: 1004–0153'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Marilyn A. Roth, at 202–912–7345. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Roth.

You may also review the information collection request online at: *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities.

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on February 6, 2012 (77 FR 5832), and the comment period ended April 6, 2012. The BLM received no comments.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0153 in your correspondence. 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.

The following information is provided for the information collection:

Title: Conveyance of Federally-Owned Mineral Interests (43 CFR part 2720).

Form: None.

OMB Control Number: 1004–0153.

Abstract: The respondents in this information collection are owners of surface estates who apply for underlying Federally-owned mineral estates. The Bureau of Land Management (BLM) needs to conduct the information collection to determine if the applicants are eligible to receive title to the Federally-owned minerals lying beneath their lands. When certain specific conditions have been met, the United States will convey legal title to the Federally-owned minerals to the owner of the surface estate.

Frequency: On occasion.

Estimated Number of Respondents: 24 annually.

Description of Respondents: Owners of surface estates who apply for underlying Federally-owned mineral estates.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 240 hours annually.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $1,200 annually.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–10794 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC01000.L51010000.FX0000.LVRWA09A2310; AZA 32315]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Mohave County Wind Farm Project, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the proposed Mohave County Wind Farm Project and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the proposed Mohave County Wind Farm Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce dates and locations of future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, mailings, and the BLM Web site at *http://www.blm.gov/az/st/en/prog/energy/wind/mohave.html*.

ADDRESSES: You may submit comments related to the following Mohave County Wind Farm Project by any of the following methods:

- *Web site: http://www.blm.gov/az/st/en/prog/energy/wind/mohave.html*.
- *Email: KFO_WindEnergy@blm.gov*.
- *Fax:* 602–417–9490.
- *Mail:* Bureau of Land Management, Renewable Energy Coordination Office, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427.

Copies of the Mohave County Wind Farm Project Draft EIS are available in the Arizona State Office at the above address; in the Kingman Field Office located at 2755 Mission Boulevard, Kingman, Arizona 86401; and on the above Web site.

FOR FURTHER INFORMATION CONTACT: Or to have your name added to our mailing list, contact Jerry Crockford, BLM-contracted project manager, telephone 505–360–0473; email *KFO_Wind Energy@blm.gov;* or contact Jackie Neckels, Environmental Coordination, telephone 602–417–9262; address Bureau of Land Management, Arizona State Office, Renewable Energy Coordination Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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 individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lead Federal agency for the Mohave County Wind Farm Project is the BLM Kingman Field Office. Cooperating agencies are the Western Area Power Administration (Western); Bureau of Reclamation—Lower Colorado Region (Reclamation); National Park Service—Lake Mead National Recreation Area; Mohave County, Arizona; Arizona Game and Fish Department; and the Hualapai Tribe Department of Cultural Resources.

The applicant, BP Wind Energy North America (BPWE), applied for a right-of-way to construct, operate, maintain, and decommission a 500-megawatt (MW) wind farm, including turbine generators and associated infrastructure, on approximately 38,099 acres of land managed by the BLM and approximately 8,960 acres of land managed by Reclamation, totaling approximately 47,059 acres of Federal land. The project area is located in the White Hills area approximately 40 miles northwest of Kingman, Arizona, approximately 9 miles south of the Colorado River, and approximately 20 miles southeast of Hoover Dam. A map of the proposed project area and a legal description are available on the BLM Web site at *http://www.blm.gov/az/st/en/prog/energy/wind/mohave.html*. The project is anticipated to generate up to 500 MW of electricity. It is proposed to consist of up to 283 turbines, access roads, and ancillary facilities. The turbine generators would be selected from those with a power output ranging from 1.5 to 3.0 MW each. To the extent possible, existing roads would be used to reduce potential impacts associated with the construction of new roads. Roads would be improved as needed, and the road network would be supplemented with internal access/service roads to each wind turbine.

Proposed ancillary facilities include pad-mounted transformers, an underground 34.5-kilovolt (kV) electrical collection system between the turbines, distribution connector lines (either underground or above-ground) tying the turbine strings to either a 345-

kV or a 500-kV electrical substation. This would provide interconnection with the regional power grid through the substation to a new switchyard at one of two major electric transmission lines transecting the project area. The lines, which are administered by Western, are the 345-kV Liberty-Mead line and the 500-kV Mead-Phoenix line.

Scoping was initiated with the publication of a notice of intent in the **Federal Register** on November 20, 2009, and conducted from November 20 through January 8, 2010. Three public meetings and an agency meeting were held in Kingman, Dolan Springs, and White Hills, Arizona. A supplemental scoping period was initiated with publication of a second notice of intent on July 26, 2010, and concluded on September 9, 2010. Four public scoping meetings were held during the supplemental scoping period; one at each of the three original scoping meeting communities and an additional meeting in Peach Springs, Arizona, at the Hualapai Tribe Cultural Center. The BLM considered all input received from the start of the first scoping period (November 20, 2009) to the end of the second scoping period (September 9, 2010).

Public and cooperating agency concerns/comments identified the following issues. The percentage of comments for each issue is included in parentheses: Biological resources (23 percent), project description (17 percent), socioeconomics (9 percent), land use, recreation, and transportation (8 percent), NEPA process (7 percent), visual resources (6 percent), project alternatives (5 percent), cumulative effects (4 percent), noise (4 percent), project need (3 percent), air quality (3 percent), geology and minerals (3 percent), water resources (3 percent), cultural resources (2 percent), and hazardous materials and safety (1 percent).

The Draft EIS considers the impacts of the proposed action, two action alternatives, and a no action alternative. An updated wilderness characteristics inventory determined that none of the public lands in the project area have wilderness characteristics. The Alternative A (proposed action) wind-farm site would encompass approximately 38,099 acres of land managed by the BLM and 8,960 acres of land managed by Reclamation. As with all action alternatives, project features within the wind-farm site would include turbines aligned within corridors, access roads, electrical collection system, an operations and maintenance building, two temporary laydown/staging areas (with temporary batch plant operations), two substations, and a switchyard. The number of turbines constructed would vary depending on the turbine type that is installed, but Alternative A proposes more turbines than the other alternatives. Alternative A could support development of a maximum of 283 turbines.

The Alternative B wind-farm site would encompass approximately 30,872 acres of land managed by the BLM and 3,848 acres of land managed by Reclamation. Alternative B reduces the wind-farm site footprint and has fewer turbines than Alternative A, with the intent of reducing visual and noise impacts on the Lake Mead National Recreation Area primarily and secondarily on private property. The number of turbines constructed would vary depending on the turbine type that is installed, but Alternative B could support development of a maximum of 208 turbines. Alternative B provides a greater distance between the Lake Mead National Recreation Area and the proposed wind-farm project boundary. The Alternative C wind-farm site would encompass approximately 30,178 acres of land managed by the BLM and 5,124 acres of land managed by Reclamation. Alternative C also reduces the wind-farm site footprint and has fewer turbines than Alternative A, with the intent of reducing visual and noise impacts primarily on private property and secondarily on the Lake Mead National Recreation Area. The number of turbines constructed would vary depending on the turbine type that is installed, but Alternative C could support development of a maximum of 208 turbines. Alternative C provides a greater distance from private land and the proposed wind-farm project boundary.

Alternative D is the no action alternative, which provides a baseline against which action alternatives can be compared. Alternative D includes an analysis of effects from not developing the project. Alternative D assumes that no actions associated with the project would occur, and no rights-of-way or interconnections would be granted. The BLM-administered lands would continue to be managed in accordance with the Kingman Field Office Resource Management Plan, and the Reclamation-administered lands would continue to be managed by Reclamation. Capacity on Western's transmission lines would remain available for other projects.

The BLM's purpose and need for the Mohave County Wind Farm Project is to respond to BPWE's application under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1761) for a right-of-way (ROW) grant to construct, operate, and decommission a wind-farm site in compliance with FLPMA, BLM ROW regulations and other applicable Federal laws. The BLM will decide whether to approve, approve with modification or deny a ROW grant to BPWE for the proposed wind project.

Reclamation's responsibility under the Act of Congress of June 17, 1902 (32 Stat. 388), Section 10 of the Reclamation Project Act, 1939 (53 Stat. 1187), and 43 CFR part 429 is to respond to a request for a ROW on Reclamation-administered Federal land. Reclamation will decide whether to grant the ROW for the construction, operation, and decommissioning of the wind-farm site on Reclamation-administered lands.

Western's Federal action would be to execute an interconnection agreement and design, construct, own, operate, and maintain the project switchyard and physical interconnection to the existing transmission line under all alternatives.

The BLM will continue to use and coordinate the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) pursuant to 36 CFR 800.2(d)(3).

The BLM will continue to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the decision on this proposed project, are encouraged to review and comment on the Draft EIS.

The BLM will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change.

Before including your 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.

Authority: 40 CFR 1506.6 and 1506.10.

Joan B. Losacco,

Acting Associate State Director.

[FR Doc. 2012–10749 Filed 5–1–12; 11:15 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65891, LLORB00000–L51010000–GN0000–LVRWH09H0560; HAG–11–0331]

Notice of Availability of the Final Environmental Impact Statement for the Celatom Mine Expansion Project in Harney and Malheur Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Celatom Mine Expansion Project and by this notice is announcing its availability.

DATES: The Final EIS will be available for public review for 30 days, beginning on the date that the Environmental Protection Agency's Notice of Availability of the Final EIS publishes in the **Federal Register**.

ADDRESSES: Notices of Availability of the Final EIS for the Celatom Mine Expansion Project will be mailed to individuals, agencies, organizations, or companies who responded to the BLM on the Draft EIS. Compact discs of the Final EIS are available on request from the BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, phone (541) 573–4400, or email at *BLM_OR_BU_Celatom_EIS@blm.gov*. Interested persons may also review the Final EIS at the following Web site: *www.blm.gov/or/districts/burns/plans/index.php*.

Printed copies of the Final EIS are available for public inspection at:

- Harney County Library, 80 West ''D'' Street, Burns, Oregon 97720.
- BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918.
- BLM Burns District Office at the address listed above.

FOR FURTHER INFORMATION CONTACT: William Dragt, Celatom Mine Expansion Project, telephone (541) 573–4400; address 28910 Highway 20 West, Hines, Oregon 97738; or email *BLM_OR_BU_Celatom_EIS@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1 (800) 877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The mining company, EP Minerals (EPM), formally known as EaglePicher Minerals, operates a diatomaceous earth mining complex (Celatom Mine Complex), approximately 50 miles east of Burns and 60 miles west of Vale, Oregon. The Celatom Mine Complex currently consists of three open-pit mines: Kelley Field (on BLM-administered land), Section 36 (on State land), and Beede Desert (on private land) in Harney and Malheur Counties, Oregon.

Existing EPM mining operations on BLM-administered land in the Celatom Mine Complex were first described in a Mine Plan of Operations (MPO) submitted by EPM to the BLM in 1984. The proposed total Celatom Mine Complex MPO area at that time was 1,634 acres. The BLM approved the MPO after completion of an Environmental Assessment in 1985.

EPM stockpiles ore from the Celatom Mine Complex on 35 acres of BLM-administered land at the Vines Hill Stockpile Area (VHSA) approximately 14 miles west of Vale, Oregon. VHSA is operated under a separate MPO that was approved by the Vale District BLM in 1986. VHSA is not part of the proposed Celatom Mine expansion being analyzed in the current EIS.

Existing EPM mining operations on private and State land in the Project Area, VHSA, and EPM's mill on private land approximately 7 miles west of Vale operate under current county and State permits. During preparation of this EIS, EPM is authorized to continue operations within the Project Area on BLM-administered land as approved by BLM in 1985, at the VHSA as approved by the BLM in 1986, and on private and State lands permitted by county and State agencies.

In 2008, EPM submitted a new MPO to the BLM for operations on 12,640 acres consisting of 1,280 acres of State of Oregon land, 1,680 acres of private land, 8,080 acres of BLM land, and 1,600 acres of split estate land patented under the Stock Raising Homestead Act with 320 acres owned by EPM.

The proposed MPO area includes mining operations on 1,131 acres of BLM-administered lands. The 1,131 acres of BLM-administered land would be disturbed through portions of the 50-year lifespan of the mine. Exploration, sampling and monitoring will occur on 250 acres of public lands. The exploration and sampling disturbances would last for 1–3 years and then be reclaimed. Monitoring sites will remain active for the 50-year lifespan of the mine.

The remaining 11,259 acres in the MPO area lies between and south of the active and proposed mines. Under the MPO this area will be largely undisturbed by mining activities except some of the 250 acres of exploration, sampling, and monitoring may occur in this area. Exact locations will be determined at a later date. Except as needed to provide for safety, this area also remains open to most other multiple use activities.

Due to the size of the proposed operations, the BLM determined preparation of an EIS is necessary to comply with the requirements of NEPA. The EIS analyzes proposed activities on BLM-administered land and cumulative effects from proposed activities on State-administered and private land, within the project boundary. This Final EIS analyzes EPM's proposed MPO as well as mitigation measures necessary to prevent unnecessary or undue degradation under 43 CFR part 3809. The proposed operations associated with the project include:

(1) Expanding operations: At the Kelly Field area, expand mining operations to 72.5 acres on BLM-administered land; in Section 36 expand mining operations on State-administered land; and, at Puma claims, expand operations on private land to 5 acres;

(2) Developing new mining operations on BLM-administered land on 225 acres at Hidden Valley, 462.5 acres in North Kelly Field, 50 acres in Section 25, and 286 acres in Eagle; and, at Beede Desert, constructing two new roads to connect Hidden Valley and Section 36 and Hidden Valley north to Eagle; and

(3) Drilling water quality monitoring wells and conducting exploratory drilling on 200 acres of BLM-administered land, development drilling, sampling, trenching, and bulk sampling on 50 acres of BLM-administered land within the project boundary. Exploration and subsequent trenching and bulk sampling would be conducted to delineate boundaries of known ore reserves and to explore for new deposits. These activities could occur on BLM-administered lands anywhere within the Project Area.

Activities under the Proposed Action, including final reclamation, would be conducted over the course of approximately 50 years. The proposed expansion of mining operations and development of new mining operations

in the Project Area include open pit mines, roads within the mine operations areas, and other operations such as stock piling and ancillary features including service areas.

A Notice of Intent to Prepare an EIS for the Celatom Mine Expansion Project was published in the **Federal Register** on September 15, 2008 (73 FR 53268). Public participation was solicited through the media, mailings, and the BLM Web site. Public meetings were held in Burns and Vale, Oregon, in October 2008. The Notice of Availability for the Draft EIS was published in the **Federal Register** on April 8, 2011 (76 FR 19786). Public participation was solicited through the media, mailings, and the BLM Web site. A public meeting was held in Juntura, Oregon, on April 26, 2011. Major issues brought forward and addressed in the EIS include: Air quality; forestry and woodlands; geology and minerals; grazing management; land use and realty; migratory birds; noise; recreation; social and economic values; soils; special status species; transportation and roads; vegetation; visual resources; water quality; wetlands and riparian zones; wilderness characteristics; and wildlife and fisheries.

Please note that public comments and information submitted including names, street addresses and email addresses of respondents are available for public review and disclosure at the above BLM address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Comments on the Draft EIS were considered for the Final EIS. Substantive comments were incorporated into the analysis presented in the Final EIS.

Authority: 40 CFR 1506.6 and 1506.10.

Jeff Rose,

Associate District Manager, Burns.

[FR Doc. 2012–10679 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT920–12–L13300000–EN000, UTU–87494]

Notice of the Establishment of the Ten Mile (Utah) Known Potash Leasing Area (KPLA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action establishes the Ten Mile KPLA so the potash resources on these lands will no longer be available for non-competitive leasing and may instead be available through a competitive leasing process. This action does not commit any on-the-ground resources nor does it commit BLM to any future actions except the denial of the prospecting permit applications that now lie within the boundaries of the Ten Mile KPLA.

DATES: This mineral land classification will become effective upon date of publication in the **Federal Register**.

ADDRESSES: Inquiries should be sent to the State Director (UT–923), Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

SUPPLEMENTARY INFORMATION: Additional information regarding this KPLA, including maps and the Potash Master Title Plats, are available in the Public Room of the Bureau of Land Management (BLM) Utah State Office and at: *http://www.blm.gov/ut/st/en/prog/more/Land_Records.html.* The lands included in the Ten Mile KPLA, located in Grand County, Utah, are described as follows:

Salt Lake Base Meridian, Utah

T. 23 S., R. 19 E.,
Sec. 31, NE¼, SE¼;
Sec. 32;
T. 24 S., R, 18 E.,
Sec. 1, E½;
Sec. 10, E½;
Secs. 11 to 14, inclusive;
Sec. 15, E½;
Sec. 22, NE¼;
Secs. 23 to 26; inclusive;
Sec. 33, SE¼;
Sec. 34, S½;
Sec. 35 and 36;
T. 24 S., R. 19 E.,
Sec. 3, W½;
Secs. 4 to 9, inclusive;
Sec. 10, W½;
Secs. 14 to 23, inclusive;
Sec. 24, S½;
Secs. 25 to 36, inclusive;
T. 24 S., R. 20 E.,
Sec. 19, lot 4;
Sec. 28, NW¼, S½;
Secs. 29 to 33, inclusive;
Sec. 34, SW¼NW¼, W½SW¼;
T. 25 S., R. 18 E.,
Sec. 1 to 4, inclusive, partly unsurveyed;
Sec. 5, SE¼, unsurveyed;
Sec. 7, NE¼, S½, unsurveyed;
Secs. 8 to 18, inclusive, partly unsurveyed;
Sec. 19, NE¼, unsurveyed;
Secs. 20 to 22, inclusive, unsurveyed;
Sec. 23, N½, SW¼, unsurveyed;
Sec. 24, N½, unsurveyed;
Sec. 27, NW¼, unsurveyed;
Sec. 28, N½, unsurveyed;
Sec. 29, NE¼, unsurveyed;
T. 25 S., R. 19 E.,
Secs. 1 to 18, inclusive;
Sec. 19, N½;
Sec. 20, N½;
Sec. 21, N½, SE¼;
Secs. 22 to 27, inclusive;
Sec. 28, E½;
Sec. 33, NE¼;
Secs. 34 to 36, inclusive;
T. 25 S., R. 20 E.,
Sec. 3, lots 3, 4, and 5, SW¼SW¼;
Secs. 4 to 9, inclusive;
Sec. 10, NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 13, S½SW¼, SW¼SE¼;
Sec. 14, NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec.15 to 23, inclusive;
Sec. 24, NE¼NW¼, W½W½;
Secs. 26 to 35, inclusive
T. 26 S., R. 20 E.,
Sec. 2 to 4, inclusive;
Sec. 5, lots 1 to 4, inclusive, and lots 6 to 8, inclusive, S½NE¼, NE¼SE¼;
Sec. 9, NE¼, NE¼NW¼;
Sec. 10, N½;
Sec. 11, N½, N½S½, SE¼SE¼;
Sec. 12;
Sec. 13, N½, N½S½.

The areas described, including both public and nonpublic lands, aggregate 90,240 acres.

Potash is a trade name for potassium-bearing minerals used mainly for fertilizer. Potash and certain other non-energy solid minerals found on Federal lands may be leased for development in either of two ways:

(1) If it is unknown whether an area contains valuable potash deposits, an interested party may obtain a prospecting permit, which grants the party an exclusive right to explore for potash, and, if a valuable deposit is found, that party may qualify for a noncompetitive lease, or

(2) If the BLM has access to information which shows that valuable deposits of potash exist in an area, the area may be designated a KPLA, where prospecting permits may not be issued, and any leasing must be done on a competitive basis.

In 1983, under Secretarial Order 3087, the authority to designate KPLAs was transferred to the BLM. In 1984, the BLM issued four preference right leases for potash resources found in this area.

Recent advances in drilling technology have provided the capability to extract deep potash deposits using dissolution. Based on this new technology, the BLM Assistant Director, in 2009, approved new mineral land classification standards for the Utah portion of the Paradox Basin geologic province, which includes the Ten Mile KPLA. The BLM Utah State Office used the new standards and the analysis of available drilling information to determine that the Ten Mile KPLA should be established to include deep solution-mineable potash deposits. Competitive leasing within the KPLA will be initiated based on expressions of interest. Any competitive leases issued

will be subject to the oil and gas leasing stipulations contained in the 2008 Moab Resource Management Plan (Moab RMP, Appendix A), any amendments to the leasing stipulations that result from the Moab Master Leasing Plan process, which was initiated on March 5, 2012. Competitive potash leases will also be subject to additional conditions of approval developed as part of site-specific National Environmental Policy Act of 1969 (NEPA) compliance.

In accordance with Departmental Manual (DM) 516, Chapter 11.9 J(12), the classification of a KPLA is an action that is categorically excluded from NEPA analysis, provided that there are no ''extraordinary circumstances'' as described in 43 CFR 46.215. The proposed Ten Mile KPLA was reviewed and was determined to have no ''extraordinary circumstances'' as stated in DOI–BLM–UT–9230–2012–0001–CX (number to be assigned as of date of publication). Further NEPA review will be done for site specific proposals within the KPLA.

This notice will be published in the *Moab Times Independent* for 2 consecutive weeks after publication in the **Federal Register**.

Pursuant to the authority in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), the Departmental Manual 235 DM 1.1L, and the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), the Ten Mile KPLA includes the lands listed above effective May 4, 2012.

Authority: Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note) and 235 Interior Department Manual 1.1L.; Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

Shelley J. Smith,

Acting Associate State Director.

[FR Doc. 2012–10768 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000 L10100000.XZ0000 LXSIOVHD0000]

Notice of Public Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: A business meeting will be held Friday, May 18, 2012, at the Mono Memorial Hall, 100 Sinclair St., Bridgeport, beginning at 8 a.m., followed by a field trip that afternoon to BLM lands in the Bodie Hills area. Members of the public are welcome to attend the field trip and meeting. Field trip participants must provide their own transportation and lunch.

On May 19, the meeting will resume at 8 a.m. at Bridgeport Ranch Barns and Terrace, 68 Twin Lakes Road, Bridgeport (behind the Shell station). Time for public comment is reserved from 9 a.m. to 10 a.m.

FOR FURTHER INFORMATION CONTACT: BLM Central California District Manager Este Stifel, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include an update on Resource Management Plans and other resource management issues. Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The meeting and tour are open to the public, but individuals who wish to attend the tour must provide their own vehicles, food and water. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 26, 2012.

David Christy,

Public Affairs Officer.

[FR Doc. 2012–10775 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0412–101117; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 14, 2012. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 25, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Moeur, Gov. Benjamin B., House, 34 E. 7th St., Tempe, 12000295

Pima County

Ghost Ranch Lodge, 801 W. Miracle Mile Rd., Tucson, 12000296

DISTRICT OF COLUMBIA

District of Columbia

Main Sewerage Pumping Station, District of Columbia, 125 O St. SE., Washington, 12000297

FLORIDA

Bay County

Camp Helen Historic District, 23937 Panama City Beach Pkwy., Panama City Beach, 12000298

Escambia County

Hver—Knowles Planing Mill Chimney, Jct. of Scenic Bluffs Hwy. & Langley Ave., Pensacola, 12000299

Monroe County

Veterans of Foreign Wars Walter R. Mickens Post 6021 and William Weech American Legion Post 168, 803 Emma St., Key West, 12000300

KANSAS

Riley County

Bethel A.M.E. Church, (African American Resources in Manhattan, Kansas MPS) 401 Yuma St., Manhattan, 12000301

Second Baptist Church, (African American Resources in Manhattan, Kansas MPS) 831 Yuma St., Manhattan, 12000302

Sedgwick County

Wichita Veterans Administration Hospital, (United States Second Generation Veterans Hospitals MPS) 5500 E. Kellogg Ave., Wichita, 12000303

MASSACHUSETTS

Bristol County

Manomet Mills, 194–194R, 200 Riverside Ave., New Bedford, 12000304

MICHIGAN

Keweenaw County

Copper Harbor Light Station, 9879 Woodland Rd. (Grant Township), Copper Harbor, 12000305

Eagle Harbor Coast Guard Station Boathouse, 9282 Marina Rd., Eagle Harbor Rd., 12000306

Macomb County

Warren Township District No. 4 School, 27900 Bunert Rd., Warren, 12000308

Marquette County

St. Peter Cathedral, 311 W. Baraga Ave., Marquette, 12000307

NEW JERSEY

Mercer County

U.S. Post Office and Courthouse, 402 E. State St., Trenton, 12000309

NEW YORK

Livingston County

Caledonia Fish Hatchery, 16 North St., Caledonia, 12000310

Rockland County

Seaman—Knapp House, 35 Ladentown Rd., Pomona, 12000311

Suffolk County

Northport Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS) 79 Middleville Rd., Northport, 12000312

NORTH CAROLINA

Davidson County

Lexington Memorial Hospital, 111 North Carolina Ave., Lexington, 12000313

VERMONT

Chittenden County

Duplex at 22—26 Johnson St., (Burlington, Vermont MPS) 22—26 Johnson St., Burlington, 12000292

Fitzgerald, William, Block, (Burlington, Vermont MPS) 57–63 N. Champlain St., Burlington, 12000293

WISCONSIN

Door County

Murphy Farms Number 1, 7195, 7199, 7203, 7207, 7212, & 7213 Horseshoe Bay Rd., Egg Harbor, 12000314

Marathon County

United States Post Office and Court House, 317 1st St., Wausau, 12000294

WYOMING

Johnson County

Buffalo Downtown Historic District, Main St., Buffalo, 12000315

[FR Doc. 2012–10739 Filed 5–3–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Lower Colorado River Well Inventory, OMB Control Number: 1006–0014. The Information Collection Request describes the nature of the information collection and its expected cost burden.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment must be received on or before *June 4, 2012.*

ADDRESSES: Please send your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: LC–4200, P.O. Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: Paul Matuska, Water Accounting and Verification Group Manager, Bureau of Reclamation, Lower Colorado Regional Office, 702–293–8164. You may also view the Information Collection Request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to the Boulder Canyon Project Act (Pub. L. 70–642, 45 Stat. 1057), all diversions of mainstream Colorado River water must be in accordance with a Colorado River water entitlement. The Consolidated Decree of the United States Supreme Court in *Arizona* v. *California,* 547 U.S. 150 (2006) requires the Secretary of the Interior to account for all diversions of mainstream Colorado River water along the lower Colorado River, including water drawn from the mainstream by underground pumping. To meet the water entitlement and accounting obligations, an inventory of wells and river pumps is required along the lower Colorado River, and the gathering of specific information concerning these wells.

II. Data

OMB Control Number: 1006–0014.

Title: Lower Colorado River Well Inventory.

Form Number: Form LC–25.

Frequency: These data are collected only once for each well or river-pump owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made. A respondent may request that the data for their well or river pump be updated after the initial inventory.

Respondents: Well and river-pump owners and operators along the lower Colorado River in Arizona, California, and Nevada. Each well and river pump owner or operator must be identified, as well as the location of their diversion and type of water use determined.

Estimated completion time: An average of 20 minutes is required to interview individual well and river-pump owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Estimated total number of annual responses: 1,500.

Estimated total annual burden hours: 500 hours.

III. Request for Comments

Reclamation invites your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the Lower Colorado River Well Inventory, OMB Control Number: 1006–0014.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (77 FR 9264) on February 16, 2012. No public comments were received.

IV. Public Disclosure

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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 27, 2012.

Michael R. Gabaldon,

Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.

[FR Doc. 2012–10772 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement/ Environmental Impact Report and Notice of Public Meeting for the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014–2038, San Joaquin Valley, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and public meeting.

SUMMARY: The Bureau of Reclamation and the San Joaquin River Exchange Contractors Water Authority have made available for public review and comment the joint draft environmental impact statement/environmental impact report (Draft EIS/EIR) for the Water Transfer Program, 2014–2038.

The proposed new transfer program would provide for the transfer and/or exchange of up to 150,000 acre-feet of substitute water from the San Joaquin River Exchange Contractors Water Authority to several potential users over a 25-year timeframe (water service years 2014–2038).

DATES: Submit written comments on the Draft EIS/EIR on or before July 3, 2012.

One public meeting is scheduled with the Bureau of Reclamation and San Joaquin River Exchange Contractors Water Authority's staff. Oral or written comments will be received at this meeting regarding the project's environmental effects. The meeting will be held on Wednesday, June 13, 2012 from 5:00 p.m. to 7:00 p.m. in Los Banos, California.

ADDRESSES: Submit written comments on the Draft EIS/EIR to Mr. Brad Hubbard, Bureau of Reclamation, 2800 Cottage Way, Room 2905, Sacramento, California 95825. Email electronic comments to *bhubbard@usbr.gov*.

The public meeting will be held at the Miller & Lux Building, Floor 1, 830 Sixth Street, Los Banos, California 93635.

To request a compact disc of the Draft EIS/EIR, please contact Mr. Brad Hubbard as indicated above, or call 916–978–5034. The Draft EIS/EIR may be viewed at Reclamation's Web site at *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=9086*. See Supplementary Information section for locations where copies of the Draft EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hubbard, Natural Resources Specialist, at 916–978–5204, or email at *bhubbard@usbr.gov;* or Ms. Joann White, San Joaquin River Exchange Contractors Water Authority, at 209–827–8616, or email at *jwhite@sjrecwa.net.*

SUPPLEMENTARY INFORMATION: The San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) propose to make water available via tailwater recovery, water conservation, and temporary land fallowing for transfer and/or exchange of substitute water to either the state and Federal wildlife refuges, Central Valley Project (CVP) contractors for existing municipal and industrial (M&I) and/or agricultural areas, and other potential State Water Project (SWP) contractors for agricultural and/or municipal and industrial (M&I) uses, or to some combination of these users. The action would be to execute agreements for water transfers among the Bureau of Reclamation (Reclamation), Mid-Pacific Region; Central Valley Project (CVP) and State Water Project (SWP) contractors; and the Exchange Contractors for water service years 2014 to 2038.

The program would consist of the annual development and transfer of up to 150,000 acre-feet of substitute CVP water (maximum of 80,000 acre-feet of tailwater and a maximum of 20,000 acre-feet of conserved water, and a maximum of 50,000 acre-feet from land fallowing) from the Exchange Contractors to other CVP contractors, to Reclamation's Refuge Water Supply Program (RWSP) for delivery to the San Joaquin Valley wetland habitat areas (wildlife refuges), and/or SWP contractors. The purposes of the proposed twenty-five year transfer program are the transfer and/or exchange of CVP water from the Exchange Contractors to:

- The RWSP to meet water supply needs (Incremental Level 4) for San Joaquin River Basin wildlife refuges and Tulare Lake Basin wildlife areas.
- Other CVP contractors and SWP contractors to meet demands of agriculture, municipal, and industrial uses, and/or

The continuation of a program of temporary annual water transfers and/or exchanges is needed to maximize the use of limited water resources for agriculture, fish and wildlife resources, and M&I purposes with the following objectives:

- Develop supplemental water supplies from willing seller agencies within the Exchange Contractors' service area through water conservation measures/tailwater recovery and crop idling/fallowing activities consistent with agency policies.
- Assist in providing water supplies to meet the Incremental Level 4 requirements for the San Joaquin River Basin and Tulare Lake Basin wildlife refuges.
- Assist Friant Division CVP repayment contractors or water service contractors to obtain additional CVP water for the production of agricultural crops or livestock and/or M&I uses because of water supply shortages or when full contract deliveries cannot otherwise be made.
- Assist SWP (Kern County Water Agency and Santa Clara Valley Water District (SCVWD)) and other CVP agricultural service and M&I contractors (San Luis Unit, SCVWD, East Bay Municipal Utility District, Contra Costa Water District, and Pajaro Valley Water

Management Agency) to obtain additional supplemental water supplies.

• Promote seasonal flexibility of deliveries to the Exchange Contractors through exchange with CVP and SWP agricultural service and M&I contractors wherein water would be delivered and then returned at a later date within the year.

Reclamation's RWSP needs additional water to provide the refuges with the increment between Level 2 and Level 4 water quantities for fish and wildlife habitat development. The Exchange Contractors propose to transfer CVP water for the production of agricultural crops or livestock and/or municipal and industrial uses because of water supply shortages or when full contract deliveries cannot otherwise be made.

The water transfers would occur largely within the San Joaquin Valley of central California but could extend to districts taking water deliveries in the North Delta. The Exchange Contractors' service area covers parts of Fresno, Madera, Merced, and Stanislaus counties. The agricultural water users that would benefit from the potential transfers are located in the counties of Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Tulare, Kern, Kings, Contra Costa, Alameda, Monterey, and Santa Cruz counties. The wetland habitat areas that may receive the water are located in Merced, Fresno, Kings, Tulare, and Kern counties.

Some of the resources potentially affected by transfers under the proposed twenty-five year transfer program that are evaluated in the Draft EIS/EIR include: surface water including the San Joaquin River, groundwater, biological resources, land uses including agricultural lands, air quality/climate change, socioeconomics including impacts to agricultural production, and environmental justice.

Copies of the Draft EIS/EIR are available for public review at the following locations:

• Bureau of Reclamation, Regional Library, 2800 Cottage Way, Sacramento, CA 95825–1898

• Bureau of Reclamation, Denver Office Library, P.O. Box 25007, Mail Code 84–21320, Denver, CO 80225–0007

• California State Library, 914 Capitol Mall, Suite E–29, Sacramento, CA 95814–4802

• University of California, Berkeley, Water Resources Center Archives, 410 O'Brien Hall, Berkeley, CA 94720–1718

• University of California, Davis, Peter J. Shields Library, Documents Department, 100 Northwest Quad, Davis, CA 95616–5292

• California Research Bureau, California State Library, PO Box 942837, Sacramento, CA 94237–0001

• Fresno County Public Library, Government Publications, 2420 Mariposa Street Fresno, CA 93721–2204

• Merced County Library, 2100 O Street, Merced, CA 95340–3637

• Merced County Public Library, 1312 South 7th Street, Los Banos, CA 93635–4757

• Stanislaus County Library, 1500 I Street, Modesto, CA 95354

• San Francisco Public Library, Government Documents Department, 100 Larkin Street, San Francisco, CA 94102

Special Assistance for Public Meetings

If special assistance is required to participate in the public meetings, please contact Mr. Brad Hubbard at 916–978–5204, TDD 916–978–5608, or via email at *bhubbard@usbr.gov*. Please notify Mr. Hubbard as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Public Disclosure

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 5, 2012.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2012–10766 Filed 5–3–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Third Review)]

Fresh Garlic From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 1, 2011 (76 FR 54487) and determined on December 5, 2011 that it would conduct an expedited review (76 FR 78694, December 19, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on April 27, 2012. The views of the Commission are contained in USITC Publication 4316 (April 2012), entitled *Fresh Garlic from China: Investigation No. 731–TA–683 (Third Review).*

By order of the Commission.

Issued: April 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10743 Filed 5–3–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–739]

Certain Ground Fault Circuit Interrupters and Products Containing Same; Notice of Final Determination; Issuance of General Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) has been shown to exist in the above-captioned investigation and has issued a general exclusion order and cease and desist orders. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 8, 2010, based on a complaint and an amended complaint filed by Leviton Manufacturing Co., of Melville, New York (''Leviton''). 75 FR 62420 (Oct. 8, 2010). The complaint and amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault circuit interrupters and products containing the same by reason of infringement of claims 1–7, 9–11, 13–17, 23–26, and 32–36 of U.S. Patent No. 7,463,124 (''the '124 patent''); claims 1–11, 13–28, 30–59, 61–64, and 74–83 of U.S. Patent No. 7,737,809 (''the '809 patent''); and claims 1–4 and 8 of U.S. Patent No. 7,764,151 (''the '151 patent''). The notice of investigation named numerous respondents, and during the course of the investigation several of the respondents were found to be in default or were terminated on the basis of settlement agreements, consent orders, or withdrawn allegations. At the time of the evidentiary hearing, seven respondents remained in the investigation, consisting of Zhejiang Trimone Electric Science & Technology Co. Ltd., of Zhejiang, China (''Trimone''); Fujian Hongan Electric Co, Ltd., of Fujian, China (''Hongan''); TDE, Inc., of Bellevue, Washington (''TDE''); Shanghai ELE Manufacturing Corp., of Shanghai, China (''ELE''); Orbit Industries, Inc., of Los Angeles, California (''Orbit''); American Electric Depot Inc., of Fresh Meadows, New York (''AED''); and Shanghai Jia AO Electrical Co. (''Shanghai Jia'').

On December 20, 2011, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') in this investigation finding that Leviton had not sufficiently shown that a domestic industry exists with respect to articles protected by the asserted patents. Accordingly, the ALJ found no violation of section 337.

On February 21, 2012, the Commission issued a notice that it had determined to review the ID in its entirety and requested submissions from the parties on certain issues under review and from the parties and the public on the issues of remedy, the public interest, and bonding.

In response to the Commission's notice of review, Leviton, Trimone, Hongan, TDE, the Commission investigative attorney, and non-party Pass & Seymour, Inc. filed submissions and replies. Pass & Seymour, Inc. also submitted a motion for leave to file a sur-reply, which the Commission has denied.

Upon review of the final ID, the submissions received in response to the Commission's notice of review, and the record of the investigation, the Commission has determined that a violation of section 337 has been shown based on infringement of claims 1–4, 6, 8–11, 13, 15–16, 35–37, 39, and 41–46 of the '809 patent. The Commission has determined that certain claims of the '124 and '151 patents are invalid and no violation based on those patents has been shown.

The Commission has determined that the appropriate form of relief is as follows: (1) a general exclusion order prohibiting the unlicensed entry of ground fault circuit interrupters and products containing the same that infringe one or more of claims 1–4, 6, 8–11, 13, 15–16, 35–37, 39, and 41–46 of the '809 patent, and (2) cease and desist orders prohibiting defaulting respondents Menard, Inc., of Eau Claire, Wisconsin; Garvin Industries, Inc., of Franklin Park, Illinois; Aubuchon Co., Inc., of Westminster, Massachusetts; Westside Wholesale Electric & Lighting, Inc., of Los Angeles, California; New Aspen Devices Corporation, of Brooklyn, New York; American Ace Supply Inc., of San Francisco, California; Contractor Lighting & Supply, Inc., of Columbus, Ohio; Littman Bros. Energy Supplies, Inc., of Schaumburg, Illinois; Safety Plus, Inc., of McFarland, Wisconsin; Norcross Electric Supply Co. of Suwanee, Georgia; Royal Pacific Ltd. of Albuquerque, New Mexico; and Zhejiang Easting House Electric Co. of Zhejiang, China, from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for ground fault circuit interrupters and products containing the same that infringe one or more of claims 1–4, 6, 8–11, 13, 15–16, 35–37, 39, and 41–46 of the '809 patent.

The Commission has further determined that the public interest factors enumerated in subsections (d)(1) and (f) (19 U.S.C. 1337(d)(1), (f)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission has determined that a bond of $0.25 per unit is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the orders.

The Commission has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10742 Filed 5–3–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 010–2012]

Privacy Act of 1974; System of Records

AGENCY: United States Department of Justice.

ACTION: Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States Department of Justice (''Department'' or ''DOJ'') proposes to modify the system of records entitled ''Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Records (DOJ–004),'' last published at 77 FR 16066 (Mar. 19, 2012). DOJ is modifying this notice by removing all references to ''Ombudsman,'' a term used internally within the Office of Information Policy (OIP) for decades, and instead more clearly describing OIP's role as responding to inquiries regarding federal agency compliance with the Freedom of Information Act (FOIA); by revising routine use (f) in order to clarify that records may be provided to the National Archives and Records Administration, Office of Government Information Services (OGIS), for all purposes set forth in 5 U.S.C. 552(h)(2)(A–B) and (3); and by

revising one item in the Record Source Categories section to clearly indicate that agencies as well as individuals may be the source of compliance inquiries. The entire notice is being republished for ease of reference.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by June 4, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress are invited to submit any comments to the Department of Justice, Attn: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, or by facsimile to (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: Carmen L. Mallon, Chief of Staff, Office of Information Policy, Department of Justice, Suite 11050, 1425 New York Avenue NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the modifications to this system of records.

Dated: April 30, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/DOJ–004

SYSTEM NAME:

Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Records.

SECURITY CLASSIFICATION:

Unclassified and classified information.

SYSTEM LOCATION:

United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530–0001, and other Department of Justice offices throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit Freedom of Information Act (FOIA), Privacy Act, and Mandatory Declassification Review Requests and administrative appeals to the Department of Justice; individuals whose requests and/or records have been referred to the Department of Justice by other agencies; individuals who submit inquiries to the Department of Justice Office of Information Policy (OIP) regarding federal agency compliance with the FOIA; and, in some instances, attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the Department of Justice personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of records created or compiled in response to FOIA, Privacy Act, and Mandatory Declassification Review requests and administrative appeals, including: The original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal. This system also consists of records related to inquiries submitted to OIP regarding federal agency compliance with the FOIA, and all records related to the resolution of such inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system was established and is maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a, and the applicable executive order(s) governing classified national security information.

PURPOSE(S):

This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act, and requests and administrative appeals for mandatory declassification review under the applicable executive order(s) governing classified national security information; for the purpose of participating in litigation regarding agency action on such requests and appeals; for the purpose of responding to inquiries submitted to OIP regarding federal agency compliance with the FOIA; and for the purpose of assisting the Department of Justice in carrying out any other responsibilities under the FOIA, the Privacy Act, and applicable executive orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To a federal, state, local, or foreign agency or entity for the purpose of consulting with that agency or entity to enable the Department of Justice to make a determination as to the propriety of access to or correction of information, or for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

(b) To a federal agency or entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision as to access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

(c) To a submitter or subject of a record or information in order to obtain assistance to the Department in making a determination as to access or amendment.

(d) To the National Archives and Records Administration, Information Security Oversight Office, Interagency Security Classification Appeals Panel, for the purpose of adjudicating an appeal from a Department of Justice denial of a request for mandatory declassification review of records, made under the applicable executive order(s) governing classification.

(e) To appropriate agencies, for the purpose of resolving an inquiry regarding federal agency compliance with the Freedom of Information Act.

(f) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(g) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(i) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(j) Where a record, either alone or in conjunction with other information,

indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(k) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(l) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(m) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(n) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(o) To federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(p) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(q) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper and/or in electronic form. Records that contain national security information and are classified are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

RETRIEVABILITY:

Records are retrieved by the name of the requester or appellant; the number assigned to the request or appeal; and in some instances the name of the attorney representing the requester or appellant, the name of an individual who is the subject of such a request or appeal, and/or the name or other identifier of Department of Justice personnel assigned to handle such requests or appeals.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Classified information is appropriately stored in safes and in accordance with other applicable requirements. In general, records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Staff, Office of Information Policy, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

Records concerning initial requests under the FOIA, the Privacy Act, and the applicable executive order(s) governing classified national security information are maintained by the individual Department of Justice component to which the initial request was addressed or directed. Inquiries regarding these records should be addressed to the particular Department of Justice component maintaining the records.

Records concerning administrative appeals for access requests under the FOIA; records concerning administrative appeals for access requests and accountings of disclosure requests under the Privacy Act; records concerning administrative appeals for access requests under the applicable executive order(s) governing classified national security information, with the exception of those made to the United States Parole Commission; and records concerning inquiries submitted to OIP regarding federal agency compliance with the FOIA, are maintained by OIP. Inquiries regarding these records should be addressed to the Office of Information Policy, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001. Inquiries regarding administrative appeals made to the United States Parole Commission should be addressed to the United States Parole Commission, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

Records concerning administrative appeals for amendment requests under the Privacy Act should be addressed to the Office of Privacy and Civil Liberties, United States Department of Justice, 1331 Pennsylvania Ave. NW., Suite 1000, National Place Building, Washington, DC 20350–0001.

All requests for access must be in writing and should be addressed to the System Manager named above. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information

may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, or on the Department of Justice Web site at *www.usdoj.gov/04foia/att_d.htm*.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the appropriate office indicated in the ''Record Access Procedures'' section, above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination of whether a record is exempt from amendment will be made after a request is received.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA, the Privacy Act, or the applicable executive order(s) governing classified national security information; the agency records searched in the process of responding to such requests and appeals; Department of Justice personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Justice requests concerning Department of Justice records, or that have consulted with the Department of Justice regarding the handling of particular requests; agencies or individuals who have submitted an inquiry to OIP regarding federal agency compliance with the FOIA and agencies that are the subjects of such inquiries; and submitters or subjects of records or information that have provided assistance to the Department of Justice in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), and have been published in the **Federal Register**.

[FR Doc. 2012–10740 Filed 5–3–12; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Evaluation of Distributed Leak Detection Systems—Performance Testing

Notice is hereby given that, on April 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Evaluation of Distributed Leak Detection Systems—Performance Testing (''LDS–PT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Upstream Research Co., Houston, TX; and Shell Exploration & Production Co., Houston, TX. The general area of LDS–PT's planned activity is to determine the applicability of using various fiber-optic-based leak detection systems for offshore pipelines. Laboratory testing of distributed temperature and distributed acoustic systems will be performed to establish their sensitivity over a range of conditions.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–10802 Filed 5–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2011–01, Ultra Low Nutrient Control in Wastewater Effluents

Notice is hereby given that, on April 9, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (PERF) Project No. 2011–01, Ultra Low Nutrient Control in Wastewater Effluents (''PERF Project No. 2011–01'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Research and Engineering Company, Fairfax, VA; BP Products North America Inc., Naperville, IL; Chevron U.S.A. Inc., acting through its Chevron Energy Technology Company Division, San Ramon, CA; ConocoPhillips Company, Bartlesville, OK; Shell Global Solutions (US) Inc., Houston, TX; and Total S.A., Paris, FRANCE. The general area of PERF Project No. 2011–01's planned activity is, through cooperative research efforts, to explore technical options to achieve ultra-low nutrient discharge requirements that are developing in some areas by sharing company experience on existing methodologies for controlling/removing nutrients from wastewater, and engaging a third party consultant to summarize current state of the technologies and understand their feasibility and limitations.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–10803 Filed 5–3–12; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–21; Order No. 1325]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional Global Reseller Expedited Package contract. This document invites public comments on the request and addresses several related procedural steps.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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I. Introduction

On April 27, 2012, the Postal Service filed a notice announcing that it has entered into an additional Global Reseller Expedited Package (GREP) contract.[1] The Postal Service states that the instant contract is functionally equivalent to the contract filed in Docket No. CP2010–36 (GREP baseline agreement) and is supported by the Governors' Decision No. 10–1 attached to the Notice and originally filed in Docket No. CP2010–36. *Id.* at 1–2, Attachment 3. The Notice explains that Order No. 445, which established GREP Contracts 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1–2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 445. *Id.* at 1. The Postal Service will notify the mailer of the effective date within 30 days after all necessary regulatory approvals have been received. The instant contract will remain in effect until either party terminates the agreement. It may be terminated, among other instances, upon 30 days written notification by either party. *Id.,* Attachment 1 at 5.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the instant contract;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decisions No. 10–1, which establishes prices and classifications for GREP contracts, a description of applicable GREP contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice sets forth reasons why the instant contract is functionally equivalent to the GREP baseline agreement. It states that the instant contract differs from the GREP baseline agreement in several ways pertaining to the revisions or clarifications of terms, *e.g.,* additions of definitions for Express Mail International and Priority Mail International, minimum revenue commitment, revisions of prices, effective date, customs and export requirements, and periodic review of minimum commitment. *Id.* at 4–6. The Postal Service states that the differences affect neither the fundamental service that it is offering nor the fundamental structure of the contract. *Id.* at 6–7. It asserts that ''[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GREP contract are similar, if not the same, as the relevant characteristics of the contract filed in Docket No. CP2010–36. *Id.* at 4.

The Postal Service concludes that its filing demonstrates that the instant contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GREP contract. Therefore, it requests that the instant contract be included within the GREP Contracts 1 product. *Id.* at 3–7.

II. Notice of Filing

The Commission establishes Docket No. CP2012–21 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than May 8, 2012. The public portions of this filing can be accessed via the Commission's Web site, *http://www.prc.gov.*

The Commission appoints Natalie Rea Ward to serve as Public Representative in the captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–21 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than May 8, 2012.

3. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–10765 Filed 5–3–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, April 27, 2012 (Notice).

POSTAL SERVICE

Transfer of Parcel Post to the Competitive Product List

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to transfer Parcel Post from the Mail Classification Schedule's Market-Dominant Product List to its Competitive Product List.

DATES: May 4, 2012.

FOR FURTHER INFORMATION CONTACT: John F. Rosato, 202–268–8597.

SUPPLEMENTARY INFORMATION: On April 26, 2012, the United States Postal Service® filed with the Postal Regulatory Commission a request to transfer Parcel Post from the Mail Classification Schedule's Market-Dominant Product List to its Competitive Product List, pursuant to 39 U.S.C. 3642. The transfer would: (1) Remove Parcel Post from the Market-Dominant Product List; (2) add a nearly identical product called ''Parcel Post'' to the Competitive Product List, and (3) leave Alaska Bypass Service, which is currently part of Parcel Post, on the Market-Dominant Product List. Documents pertinent to this request are

available at *http://www.prc.gov*, Docket No. MC2012–13.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–10741 Filed 5–3–12; 8:45 am]

BILLING CODE 7710–12–P

REAGAN-UDALL FOUNDATION FOR THE FOOD AND DRUG ADMINISTRATION

[BAC 416404]

Annual Public Meeting

ACTION: Notice of annual meeting.

SUMMARY: The Reagan-Udall Foundation for the Food and Drug Administration (FDA), which was created by Title VI of the Food and Drug Amendments of 2007, is announcing an annual open public meeting. The Foundation will provide an overview of its history, project updates, as well as projected activities going forward.

DATES: The open public meeting will be held on May 23, 2012, from 10 a.m. until 12 noon. Interested persons may sign up to attend in person and/or make comments at the meeting or submit written comments by visiting *http://www.ReaganUdall.org* on or before May 17, 2012. Oral comments from the public will be scheduled between approximately 11 a.m. and 12 p.m. Time allotted for each registrant will be 3 minutes. The contact person will notify interested persons regarding their request to speak by May 23, 2012. Written comments are encouraged. Those individuals interested in making formal comments should notify the contact person and submit a brief statement of the general nature of the comments they wish to present. Written comments are encouraged through May 25, 2012.

Location: West Policy Center, 1909 K St. NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jane Reese-Coulbourne, Reagan-Udall Foundation for the FDA, 202 828–1205, *Comments@ReaganUdall.org.*

SUPPLEMENTARY INFORMATION:

I. Background

The Reagan-Udall Foundation for the FDA (the Foundation) is an independent 501(c)(3) not-for-profit, organization created by Congress to advance the mission of FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development; accelerate innovation, and enhance product safety. With the ultimate goal of improving public health, the Foundation provides a unique opportunity for different sectors (FDA, patient groups, academia, other government entities, and industry) to work together in a transparent way to create exciting new research projects to advance regulatory science.

The Foundation acts as a neutral third party to establish novel, scientific collaborations. Much like any other independently developed information, FDA evaluates the scientific information from these collaborations to determine how Reagan-Udall Foundation projects can help the agency to fulfill its mission.

The Foundation has announced initial projects including: An evaluation of a systems biology approach to preclinical safety testing; new ways to develop tuberculosis (TB) multi-drug regimens; and pilot fellowship programs in the areas of safety surveillance, large scale data analysis, and toxicology. The Foundation seeks comments on these and other potential topics for future activities.

II. Agenda

The Foundation will be providing an overview of its history, project updates, as well as projected activities going forward. Find the Meeting Agenda at *http://www.ReaganUdall.org.*

Dated: April 30, 2012.

Jane Reese-Coulbourne,

Executive Director, Reagan-Udall Foundation for the FDA.

[FR Doc. 2012–10767 Filed 5–3–12; 8:45 am]

BILLING CODE 4164–04–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30056; 812–13793]

Steel Partners Holdings L.P.; Notice of Application

April 27, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 45(a) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Steel Partners Holdings L.P. (''SPH'') requests an order under section 6(c) of the Act exempting it from all provisions of the Act until the earlier of one year from the date that the requested order is issued or the date that it no longer may be deemed to be an investment company. SPH also seeks an order under section 45(a) of the Act granting confidential treatment with respect to certain supplemental material submitted to the Commission (''Supplemental Material'').

Applicant: SPH.

Filing Dates: The application was filed on July 8, 2010, and amended on October 12, 2010, and March 14, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2012, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicant: 590 Madison Avenue, 32nd Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or the applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations:

1. SPH, a Delaware limited partnership whose principal executive offices are in New York, is a global diversified holding company engaged in multiple businesses through various subsidiaries and controlled companies. SPH seeks to actively improve the business operations of its companies and foster growth and increase long-term corporate value for shareholders and stakeholders. SPH's companies are generally viewed by SPH as long-term holdings and SPH expects to realize value through its operation of the companies rather than through the sale of its holdings in the companies. SPH's predecessor, WebFinancial Corporation (formerly Rose's Holdings, Inc.)

(''WebFinancial''), was a Delaware Corporation formed in 1997 as a holding company for Rose's Stores, Inc. In 1997, WebFinancial sold Rose's Stores, Inc. and, in 1998, WebFinancial became the owner of a 100% interest in WebBank, a Utah industrial loan bank. SPH became the successor of WebFinancial by a merger on December 31, 2008. SPH was a narrow financial holding company engaged in the business of banking from the time of its acquisition of WebBank in 1998 until July 14, 2009.

2. Prior to December 2008, Steel Partners II was a private investment partnership, which indirectly owned 85% of SPH. During the market disruptions in 2008 and early 2009, Steel Partners II received a substantial number of redemption requests from investors. Because many of its holdings represented interests in operating businesses which were either privately held or publicly traded but with very low trading volume, applicant states that Steel Partners II temporarily suspended redemptions and sought a solution that assured that all investors would be treated fairly and equally. A plan was implemented on July 14, 2009, and July 15, 2009, that (i) effectively, entitled each Steel Partners II investor to a pro rata distribution of Steel Partners II's assets and (ii) the option to either: (A) exchange their distribution for SPH common units; or (B) receive their distribution in-kind (the ''Implementing Transactions''). While a majority of the number of investors in Steel Partners II opted to receive SPH common units, investors representing a majority of the capital of Steel Partners II opted to receive their distribution of Steel Partners II's assets in-kind; therefore, SPH did not retain majority or controlling interests in several of Steel Partners II's former holdings.

3. Since July 15, 2009, SPH's management has worked diligently to restructure its holdings to fall outside of the definition of an investment company by: (i) Acquiring, maintaining or increasing holdings in majority owned or primarily controlled companies engaged in non-investment company or excepted businesses; and (ii) decreasing or eliminating holdings in non-controlled companies and companies engaged in an investment company business. As a result of these efforts, SPH has significantly decreased its holdings in companies of which it held less than 25% interests, while increasing holdings in wholly-owned, majority owned and primarily-controlled companies such that, as noted below, SPH meets the asset test of rule 3a–1 as of December 31, 2011. However, SPH was unable to fully implement necessary changes to its asset mix during the rule 3a–2 period due to, among other things, restrictions imposed by state corporate and federal securities laws, certain tax ramifications and a lack of willing buyers or sellers of securities due, in part, to recent, unusual market conditions, all of which were beyond SPH's reasonable control.

4. Applicant states that the total value of SPH's interests in majority-owned subsidiaries, on an unconsolidated basis, has increased sixteen-fold from approximately $11.0 million (or 2.5% of SPH's total assets, excluding government securities and cash items) on July 15, 2009, to approximately $176.7 million (or 36.5% of SPH's total assets, excluding government securities and cash items) on December 31, 2011. Consolidated with its wholly-owned subsidiaries, SPH's interests in primarily-controlled companies, excluding its interest in a subsidiary that has become a majority-owned subsidiary, have increased seven-fold from approximately $21.7 million (4.7% of SPH's total assets, excluding government securities and cash items) on July 15, 2009, to approximately $167.6 million (33.2% of SPH's total assets, excluding government securities and cash items) as of December 31, 2011.

Applicant's Legal Analysis:

Section 6(c) of the Act

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner that are not investment companies and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Rule 3a–1 under the Act provides an exemption from the definition of investment company if, on a consolidated basis with wholly-owned subsidiaries, no more than 45% of an issuer's total assets (exclusive of government securities and cash items) consist of, and no more than 45% of its net income after taxes over the last four fiscal quarters combined is derived from, securities other than: government securities, securities issued by employees' securities companies, and securities of certain majority-owned subsidiaries and companies controlled primarily by the issuer.

3. SPH states that, as a result of the Implementing Transactions, investment securities represented more than 40% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. SPH further states that it is not currently able to rely on rule 3a–1 under the Act because the asset sales necessary to bring SPH in compliance with the rule's asset test produced bad income for purposes of the rule's income test.

4. Rule 3a–2 under the Act generally provides that, for purposes of sections 3(a)(1)(A) and 3(a)(1)(C), an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding or trading in securities for a period not to exceed one year if the issuer has a bona fide intent to be engaged in a non-investment company business. This enables the issuer to make an orderly transition to a non-investment company business. SPH began relying on rule 3a–2 under the Act on July 14, 2009.

5. Section 6(c) of the Act permits the Commission to exempt any person from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. SPH requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date that the requested order is issued or such time as SPH is no longer deemed to be an investment company. SPH believes that within the period covered by the requested order, it will be able to complete its transition and establish itself as a non-investment business.

7. SPH asserts that as a result of the plan implemented to address Steel Partners II's investor redemption requests, SPH arguably fell within the statutory definition of an investment company, even though that definition is not an accurate depiction of SPH's business. SPH states that since invoking the non-exclusive safe harbor provided by rule 3a–2, SPH's officers have worked diligently to return to a non-investment, diversified holding company business, but have found the process taking longer than expected due to factors beyond SPH's reasonable control. SPH asserts that SPH's transactions in securities have not been

for speculative purposes, but have been in the furtherance of its business as a diversified holding company. SPH contends that registration under the Act would involve unnecessary burden and expense for SPH and its unitholders and would serve no regulatory purpose. For the reasons discussed above, SPH asserts that the requested relief under section 6(c) of the Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 45(a) of the Act

1. Section 45(a) provides that information contained in any application filed with the Commission under the Act shall be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. SPH requests an order under section 45(a) of the Act granting confidential treatment to the information in the Supplemental Material.

2. SPH submits that the information disclosed in the application is sufficient to fully apprise any interested member of the public of the basis for the relief requested under section 6(c) of the Act. SPH states that the public will be able to see various data reflecting the progress SPH has made in its transition to non-investment company business and its intention to complete such transition by the expiration of the requested exemption. SPH submits that based on such information, any interested person will be able to assess SPH's intention and ability to pursue a non-investment company business strategy and its prospects for achieving non-investment company status by the end of the requested one year exemption.

3. SPH states that it has valid business reasons for not wanting to make public information that relates to its future business plans, including its intention with regard to transactions in securities of certain companies. SPH asserts that the public disclosure of such information, much of which relates to publicly traded securities, could affect the prices and markets for such securities (for example, by allowing those who view this information to ''front run'' SPH's intended transactions) in a way that would severely burden SPH's transition to non-investment company business. For these reasons, SPH submits that public disclosure of the Supplemental Material is neither necessary nor appropriate in the public interest or for the protection of investors.

Applicant's Conditions:

SPH agrees that the requested exemption will be subject to the following conditions:

1. SPH will continue to be engaged primarily in a non-investment company business and to seek to decrease the percentage of its total assets comprised of investment securities so as not to be an investment company within the meaning of the Act and the rules and regulations thereunder as soon as reasonably possible and in any event within one year from the date of the requested order.

2. SPH will not engage in the trading of securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10756 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30057]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 30, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2012. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 2012, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

PNC Absolute Return Fund LLC [File No. 811–21088]

PNC Absolute Return Master Fund LLC [File No. 811–21814]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2011, each applicant made a liquidating distribution to its shareholders, based on net asset value. Each applicant incurred approximately $2,888 in expenses in connection with its liquidation.

Filing Dates: The applications were filed on March 5, 2012, and amended on April 19, 2012.

Applicants' Address: Two Hopkins Plaza, Baltimore, MD 21201.

PNC Alternative Strategies Fund LLC [File No. 811–21257]

PNC Alternative Strategies Master Fund LLC [File No. 811–21816]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 23, 2011, each applicant made a liquidating distribution to its shareholders, based on net asset value. Each applicant incurred approximately $2,888 in expenses in connection with its liquidation.

Filing Dates: The applications were filed on March 5, 2012, and amended on April 19, 2012.

Applicant's Address: Two Hopkins Plaza, Baltimore, MD 21201.

PNC Long-Short Master Fund LLC [File No. 811–21818]

PNC Long-Short Fund LLC [File No. 811–21258]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 28, 2011, each applicant made a liquidating distribution to its shareholders, based on net asset value. Each applicant incurred approximately $2,888 in expenses in connection with its liquidation.

Filing Dates: The applications were filed on March 5, 2012, and amended on April 19, 2012.

Applicant's Address: Two Hopkins Plaza, Baltimore, MD 21201.

PNC Alternative Strategies TEDI Fund LLC [File No. 811–21817]

PNC Absolute Return TEDI Fund LLC [File No. 811–21815]

PNC Long-Short TEDI Fund LLC [File No. 811–21819]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 23, 2011, December 27, 2011, and December 28, 2011, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Each applicant incurred approximately $4,867, $4,740 and $4,470, respectively, in expenses in connection with its liquidation.

Filing Dates: The applications were filed on March 5, 2012, and amended on April 19, 2012.

Applicants' Address: Two Hopkins Plaza, Baltimore, MD 21201.

American Beacon Mileage Funds [File No. 811–9018]

American Beacon Master Trust [File No. 811–9098]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 2011, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $5,767 and $1,585, respectively, incurred in connection with the liquidations were paid by the applicants and American Beacon Advisors, Inc., applicants' investment adviser.

Filing Date: The applications were filed on March 26, 2012.

Applicants' Address: 4151 Amon Carter Blvd., MD 2450, Fort Worth, TX 76155.

Old Mutual Funds III [File No. 811–22149]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 7, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $23,000 incurred in connection with the liquidation were paid by applicant, with all legal expenses being incurred by Old Mutual Capital, applicant's investment adviser.

Filing Date: The application was filed on March 27, 2012.

Applicant's Address: 4643 South Ulster St., Suite 800, Denver, CO 80237.

RAM Funds [File No. 811–22162]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 15, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $5,135 incurred in connection with the liquidation were paid by Riazzi Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on April 4, 2012.

Applicant's Address: Riazzi Asset Management, LLC, 2331 Far Hills Ave., Suite 200, Dayton, OH 45419.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10757 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Recycle Tech, Inc.; Order of Suspension of Trading

May 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Recycle Tech, Inc. (''Recycle Tech'') because it has not filed a periodic report since its 10–Q for the quarterly period ending November 30, 2009, filed on January 13, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Recycle Tech. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Recycle Tech is suspended for the period from 9:30 a.m. EDT on May 2, 2012, through 11:59 p.m. EDT on May 15, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–10916 Filed 5–2–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66881; File No. SR–BX–2012–028]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for BX Members Using the NASDAQ OMX BX Equities System

April 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on May 1, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at BX's principal office, 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, BX 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. BX 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 Changes

1. Purpose

BX is proposing to modify its rebate schedule with respect to orders that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

access liquidity at BX.[3] Currently, BX pays a rebate of $0.0014 per share executed with respect to:

• An order entered by a member through a BX Equities System Market Participant Identifier (''MPID'') through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily volume of 25,000 or more shares of liquidity during the month; or

• A BSTG, BSCN, BMOP, BTFY or BCRT order that accesses liquidity in the NASDAQ OMX BX Equities System.

BX pays a rebate of $0.0005 with respect to all other liquidity-accessing orders. BX is proposing to eliminate the rebate with respect to all orders that access liquidity provided by a midpoint pegged order.[4] Because such orders access liquidity at the midpoint between the best bid and offer, they receive price improvement of at least $0.005 per share. Accordingly, BX does not believe that it is necessary also to pay a rebate to encourage the submission of such orders. Rather, the execution of such orders will be free of charge.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and (5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

The elimination of the rebate for orders that access liquidity provided by midpoint pegged orders is reasonable because the execution of such orders is free of charge. Moreover, the change is consistent with an equitable allocation of fees because such orders invariably receive price improvement of at least $0.005 per share, and therefore do not need an additional rebate of $0.0005 to $0.0014 to encourage their submission to BX. Finally, BX believes that the change is not unfairly discriminatory because the price improvement provided to these orders provides a rational basis for treating them differently from other orders that access liquidity at BX.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because numerous alternatives exist to the execution and routing services offered by BX, if BX increases its fees to an excessive extent, it will lose customers to its competitors. Accordingly, BX believes that competitive market forces help to ensure that the fees it charges for execution and routing are reasonable, equitably allocated, and non-discriminatory.

B. Self-Regulatory Organization's Statement of Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. For these reasons and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will unfairly affect the ability of members or competitors to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–028 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BX–2012–028. 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

[3] The change applies to securities priced at $1 or more per share. Fees and rebates for lower-priced securities are unchanged.

[4] ''Pegged Orders'' are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the NASDAQ OMX BX Equities Market inside bid or offer or bids or offers in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market (''Primary Peg''), the opposite side of the market (''Market Peg''), or the midpoint of the national best bid and offer (''Midpoint Peg''). A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–028 and should be submitted on or before May 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10752 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66880; File No. SR–ISE–2012–16]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Procedures for Executing the Stock Leg(s) of Stock-Option Orders

April 30, 2012.

I. Introduction

On February 29, 2012, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 722, ''Complex Orders,'' to modify its procedures for executing the stock leg(s) of stock-option orders. The proposed rule change was published for comment in the **Federal Register** on March 19, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Currently, ISE Rule 722, Supplementary Material .02 allows ISE members to elect to have ISE electronically transmit the stock leg(s) of a stock-option transaction to a designated broker-dealer for execution. To participate in this automated process, ISE members must enter into a brokerage agreement with the designated broker-dealer.[4] Members must enter into a brokerage agreement with ISE's designated broker-dealer to ensure that there is at least one common available broker-dealer through which the matched stock leg(s) of a stock-option transaction may be executed.[5]

The proposal would allow ISE members to enter into brokerage agreements with one or more additional broker-dealers to which ISE will be able to route stock orders.[6] ISE will automatically transmit the stock leg(s) of a stock-option trade on behalf of a member to one or more broker-dealer(s) with which the member has an agreement for execution, using routing logic that considers objective factors such as execution cost, speed of execution, and fill rates.[7] Members may indicate preferred execution brokers, and these preferences will determine order routing priority whenever possible.[8] ISE will have no financial arrangements with the brokers with respect to routing stock orders to them,[9] and ISE receives no fees related to the stock portion of a stock-option trade.[10]

As is the case currently, after ISE routes the stock leg(s) of a stock-option trade to a broker-dealer for execution, the broker-dealer will be responsible for determining whether the orders may be executed in accordance with applicable rules, including the Regulation NMS trade-through rules.[11]

The proposal eliminates the manual process for executing the stock leg(s) of stock-option orders. ISE believes that it is fair, reasonable, and not discriminatory to eliminate the manual procedure for executing the stock leg(s) of stock option orders because, according to ISE, there is no demand from ISE members for the manual execution alternative.[12]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal should enhance the processing of stock-option orders by facilitating the automated processing of the stock component of a stock-option transaction. In addition, the Commission notes that other options exchanges have adopted similar requirements in connection with the processing of stock-option orders.[15]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–ISE–2012–16) is approved.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66582 (March 13, 2012), 77 FR 16106 (''Notice'').

[4] ISE members also may choose to execute the stock leg(s) of a stock-option trade manually, by transmitting the stock leg(s) to a non-ISE market for execution.

[5] *See* Notice, 77 FR at 16107. ISE is not able to execute the stock leg(s) of a stock-option transaction unless both members on the trade have a brokerage agreement with the broker-dealer to which the stock leg(s) are routed. *See* Notice, 77 FR at footnote 3.

[6] *See* ISE Rule 722, Supplementary Material .02.

[7] *See id.* ISE's routing logic will route the stock leg(s) only to a broker-dealer with which a member has a brokerage agreement. *See* Notice, 77 FR at 16107.

[8] *See* ISE Rule 722, Supplementary Material .02.

[9] *See id.*

[10] *See* Notice, 77 FR at 16107.

[11] *See* Notice, 77 FR at 16107. *See also* Securities Exchange Act Release No. 49251 (February 13, 2004), 69 FR 8252 (February 23, 2004) (File No. SR–ISE–2003–37) (stating that the designated broker-dealer will be responsible for determining whether the stock leg(s) of a stock-option transaction may be executed in accordance with all of the rules applicable to the execution of equity orders, including compliance with applicable short sale, trade-through, and trade reporting rules).

[12] *See* Notice, 77 FR at 16107.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* C2 Rule 6.13, Interpretation and Policy .06(a) (requiring Permit Holders to enter into a brokerage agreement with one or more designated broker-dealers to participate in stock-option order automated processing). *See also* CBOE Rule 6.53C, Interpretation and Policy .06(a) (requiring Trading Permit Holders to enter into a brokerage agreement with one or more designated dealers to participate in stock-option order automated processing); and Phlx Rule 1080, Commentary .08(a)(i) (to trade Complex Orders with a stock/ETF component, members of FINRA or Nasdaq must have a Uniform Service Bureau/Executing Broker Agreement with Nasdaq Options Services LLC (''NOS''), the exchange's designated broker-dealer; firms that are not members of FINRA or Nasdaq must have a Qualified Special Representative arrangement with NOS).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10753 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66883; File No. SR–Phlx–2012–54]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Order Fees for Removing Liquidity in Select Symbols

April 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 23, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replace a portion of a previously filed rule change. Specifically, PHLX is replacing SR–Phlx–2012–27,[3] which amended Section I of the Exchange's Pricing Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' with this filing which provides additional information concerning the current Complex Order Directed Participant and Market Maker Fees for Removing Liquidity in Select Symbols. Those fees became effective on March 1, 2012 pursuant to SR–Phlx–2012–27, and they will remain in effect, unchanged by this filing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This rule change seeks to replace a portion of SR–Phlx–2012–27 to provide additional information concerning the Directed Participant and Market Maker Fees for Removing Liquidity in Complex Orders.[4] The Exchange filed SR–Phlx–2012–27 in order to attract additional Customer Complex Orders from competing exchanges because increased order flow benefits all market participants and investors that trade on the Exchange. This filing maintains the fees adopted in SR–Phlx–2012–27 related to Directed Participants and Market Makers because the evidence (set forth below) demonstrates that while those fees have been in effect, since March 1, 2012 to the present, the Exchange has experienced increased Customer order flow. The Exchange continues to believe such Customer order flow will encourage Market Makers to compete more aggressively to trade against that order flow.

Specifically, the Exchange amended certain fees in Section I of the Exchange's Pricing Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''[5] The Directed Participant Complex Order Fee for Removing Liquidity was increased from $0.30 per contract to $0.32 per contract and the Market Maker Complex Order Fee for Removing Liquidity was increased from $0.32 per contract to $0.37 per contract. Today, the Complex Order Fees for Removing Liquidity are as follows:

	Customer	Directed participant	Market maker	Firm	Broker-dealer	Professional
Fee for Removing Liquidity	$0.00	$0.32	$0.37	$0.38	$0.38	$0.38

The Exchange is not amending any of these prices in this proposal. Rather, this proposal is intended to justify further the differential between the fees paid by different participants that trade Complex Orders. Specifically, the filing addresses the Directed Participant Complex Order Fee for Removing Liquidity, which was increased from $0.30 per contract to $0.32 per contract, and the Market Maker Complex Order Fee for Removing Liquidity, which was increased from $0.32 per contract to $0.37 per contract.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27). This rule proposal amended the Customer Complex Order Rebate to Add Liquidity, adopted a new category of Complex Order ''Rebate to Remove Liquidity,'' amended various Complex Order Fees for Removing Liquidity and created a volume tier for certain market participants that transact significant volumes of Complex Orders. These fees became effective on March 1, 2012. The Exchange does not intend to amend any pricing changes that became effective in SR–Phlx–2012–27.

[4] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[5] The Select Symbols are listed in Section I of the Pricing Schedule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

SR–Phlx–2012–27 amended the Complex Order Fees for Removing Liquidity in Select Symbols to assess a $0.32 per contract Complex Order Directed Participant Fee for Removing Liquidity and a $0.37 per contract Complex Order Market Maker Fee for Removing Liquidity. The Exchange argued in SR–Phlx–2012–27 that it is reasonable, equitable and not unfairly discriminatory to increase the Market Maker Complex Order Fee for Removing Liquidity from $0.32 to $0.37 per contract and increase the Directed Participant Complex Order Fee for Removing Liquidity from $0.30 to $0.32 per contract. The Exchange intends in this filing to justify further the differential by indicating that the differential is reasonable, equitable and not unfairly discriminatory because (i) the current fee structure is consistent with fee structures at other options exchanges, and reflects a degree of price differentiation that is comparable to or lower than the degree that exists elsewhere; [8] (ii) Market Makers are not entitled to guaranteed allocations for directed Complex Orders; [9] (ii) [sic] only Market Maker executions against Customer orders that are directed by an OFP and executed by that specific Market Maker receive the Complex Order Directed Participant fee; [10] (iii) Market Makers are unaware of the identity of the contra-party at the time of the trade and are also required to execute at the best price, pursuant to Exchange Rules; (iv) Market Makers compete in offering price improvement in auctions; and (v) the Directed Participant and Market Maker Fees for Removing Liquidity in Complex Orders, along with other Complex Order fee increases proposed in SR–Phlx–2012–27,[11] provide the Exchange an opportunity to offer increased Customer rebates,[12] which attracts additional Customer order flow and benefits all market participants.

As noted above, SR–Phlx–2012–27 increased Complex Order Fees for Removing Liquidity in Select Symbols for all market participants, except Customers who pay no fee, in order to offer greater Customer Complex Order rebates. Market Makers are assessed lower fees than Professionals,[13] Firms and Broker-Dealers. By way of background, Specialists,[14] ROTs,[15] SQTs [16] and RSQTs [17] are Market Makers. Such Market Makers may also be categorized as Directed Participants only at the time when such Market Makers execute against a Customer order directed to that Market Maker for execution by an Order Flow Provider (''OFP'').[18] For example, a Market Maker is assessed the Directed Participant category fee for trading against a Customer order directed to it for execution by an OFP. That Market Maker is not assessed the Directed Participant category fee for executing a Customer order directed to different Market Maker, but rather is assessed the Market Maker category fee.[19]

The fee structure is consistent with fee structures at other options exchanges.

Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants including, but not limited to, SQF Port Fees [20] to assist them in responding to auctions and providing liquidity to the market.[21] The Directed Participant and Market Maker fees were lower as compared to those charged to other market participants prior to the amendment which became effective on March 1, 2012 with SR–Phlx–2012–27 and continue to be lower. In addition, the Exchange believes that its fee differentiation is within the range of other exchanges, as mentioned previously with respect to ISE and Amex, and lower than other fee

[8] The Exchange believes that its fee differentiation as between Directed Participants and Market Makers is comparable to a fee differentiation at The International Securities Exchange LLC (''ISE'') which assesses a complex order take fee in Select Symbols of $0.32 per contract for preferenced market makers, $0.34 per contract for non-preferenced market makers, firm proprietary and customer professionals and $0.38 per contract for the non-ISE market maker (FARMM). *See* ISE's Fee Schedule. The Exchange believes that its fee differentiation as between Directed Participants and Market Makers is lower than a similar fee differentiation in place at NYSE Amex, LLC (''Amex'') which assesses $0.13 per contract for Specialists and eSpecialists complex orders, $0.20 per contract for an NYSE Amex Options Market Maker-Non Directed and $0.18 per contract for a NYSE Amex Options Market Maker-Directed.

[9] Unlike Complex Orders, Single contra-side orders are governed by Rule 1014. Specifically, Directed Orders that are executed electronically shall be automatically allocated as follows: (A) First, to customer limit orders resting on the limit order book at the execution price; (B) Thereafter, contracts remaining in the Directed Order, if any, shall be allocated automatically as follows: (1) [sic] The Directed Specialist (where applicable), shall be allocated a number of contracts that is the greater of: (a) the proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, Streaming Quote Trader (''SQT'') and Remote Streaming Quote Trader (''RSQT'') quotes, and non-SQT Registered Options Trader (''ROT'') limit orders entered on the book at the disseminated price represented by the size of the Directed Specialist's quote; (b) the Enhanced Specialist Participation as described in Rule 1014(g)(ii); or (c) 40% of the remaining contracts. *See* Rule 1014(g)(viii). Thereafter, SQTs and RSQTs quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price shall be allocated contracts according to a formula specified in Rule 1014(g)(viii). If any contracts remain to be allocated after the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book which represent the Exchange's disseminated price shall be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book.

[10] Other markets discount their directed fee for other classes of market participants in addition to customers. For example, Amex assesses an NYSE Amex Options Market Maker-Non Directed a fee of $0.20 per contract and a NYSE Amex Options Market Maker-Directed a fee of $0.18 per contract. *See* Amex's Fee Schedule. Phlx only assesses the Directed Participant Fee for Removing Liquidity with respect to Customer orders.

[11] SR–Phlx–2012–27 amended the Complex Order Fees for Removing Liquidity in Select Symbols to assess Directed Participants $0.32 per contract, Market Makers $0.37 per contract, and Firms, Broker-Dealer and Professionals $0.38 per contract.

[12] The Exchange amended its Pricing Schedule to offer a higher Customer Complex Order Rebate for Adding Liquidity ($0.32 per contract) and offer a new Customer Complex Order Rebate for Removing Liquidity ($0.06 per contract) in SR–Phlx–2012–27.

[13] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[14] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[15] A ROT includes an SQT, an RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[16] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[17] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[18] The term ''Order Flow Provider'' means any member or member organization that submits, as agent, orders to the Exchange. *See* Rule 1080(l)(i)(B).

[19] Neither a Market Maker nor a Directed Participant is entitled to a rebate for transacting a Customer Complex Order today.

[20] SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII.

[21] Also important are the continuous quoting obligations applicable to Market Makers. Market Makers have these obligations for each series in which they are assigned pursuant to Rule 1014 entitled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.'' These burdensome quoting obligations to the market do not apply to Customers, Firms, Professionals and Broker-Dealers. Also, Market Makers that receive Directed Orders have higher quoting obligations compared to other Market Makers.

differentiations that exist today, and have for some time, at Amex. The Exchange notes that Amex has three classes of market makers on its fee schedule: (1) Specialist, eSpecialist; (2) NYSE Amex Options Market Maker-Non-Directed; and (3) NYSE Amex Options Market Maker-Directed (taken together, ''Amex Market Makers''). Amex imposes the standard per contract fees on electronic trades for simple and complex orders.[22] Pursuant to Amex rules, Amex Market Makers have no allocation rights or quoting obligations in the Amex complex order system and Amex Market Makers are eligible to receive orders directed to them for execution.[23] With no additional quoting obligations or other requirements for complex orders, Amex assesses a Specialist and eSpecialist a fee of $.13 per contract while assessing a NYSE Amex Options Market Maker-Non-Directed a fee of $.20 per contract. This fee differentiation is greater than that currently in place on the Exchange. Amex differentiates one type of market maker, the Specialist and eSpecialist, from other Amex Market Makers who receive directed orders, in its pricing with a $.07 per contract fee differential.[24] As mentioned herein, a Market Maker on Phlx includes Specialists and Remote Specialists.[25] For this reason, the Exchange believes that its current fee differentiation is equitable and not unfairly discriminatory because the fees and fee differentiation in place at the Exchange are competitive with and lower than fees and differentials at other options exchanges.[26]

Only Market Maker executions against Customer orders that are directed by an OFP and executed by that specific Market Maker receive the Complex Order Directed Participant fee.

The Exchange's Fee for Removing Liquidity for Single contra-side transactions in Select Symbols for the Directed Participant category is two cents lower than the Fee for Removing Liquidity for the Market Maker category.[27] The Exchange amended the Complex Order Fees for Removing Liquidity in Select Symbols to increase the fee differential between the Directed Participant and Market Maker categories from $0.02 per contract to $0.05 per contract for Complex Order transactions to also reflect the fact that unlike in the case of a Single contra-side order, a Directed Participant does not have a guaranteed allocation in a Complex Order. Market Makers receive no allocation guarantee when a Customer Complex Order is directed to them by an OFP and the order is executed. Directed Specialists, Directed ROTs, Directed SQTs and Directed RSQTs are guaranteed a 40% allocation with respect to Single contra-side transactions eligible as a Directed Order.[28]

Market Makers are unaware of the identity of the contra-party at the time of the trade and are required to execute at the best price.

Also, only Customer Complex Order flow which is directed to a Market Maker by an OFP and is executed by that particular Market Maker is eligible for Directed Participant fees for Complex Orders.[29] When a Market Maker executes against a Customer Complex Order the Market Maker may do so by responding to an auction,[30] executing against an order on the Complex Order Book (''CBOOK''), or sweeping a resting Customer Complex Order.[31] The Customer Complex Order may also be executed against existing quote and or limit orders on the limit order book for the individual components of the Complex Order.[32] In each of these cases, the order will trade based on the best price or prices available pursuant to Exchange Rules.[33] Therefore, in order to enjoy the benefits of trading against a directed Complex Customer order by receiving a lower transaction fee (the Directed Participant Complex Order Fee for Removing Liquidity), the transaction must: (i) Occur at the best price; and (ii) be directed, by an OFP, to the particular Market Maker that executed the order. Also, it is important to note that all market participants may compete equally for Customer Complex Order executions, even if that Customer Complex Order is directed to a specific Market Maker.

[22] *See* Securities Exchange Act Release No. 65549 (October 13, 2011), 76 FR 64983 (SR–NYSEAmex–2011–77) (notice of filing and immediate effectiveness amending electronic complex orders). Amex noted in that filing that the standard per contract fees apply to electronic complex orders.

[23] *See* Amex Rule 964NY entitled ''Display, Priority and Order Allocation-Trading Systems.'' *See also* Amex Rule 980NY ''Electronic Complex Order Trading.''

[24] Pursuant to Amex's Rules, specialists and market makers may receive directed orders in their appointed classes. *See* Amex Rule 964.1NY entitled ''Directed Orders.''

[25] *See* Exchange Rule 1020. An options Specialist includes a Remote Specialist which is a defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[26] By way of further example, the Exchange notes that Amex assesses a NYSE Amex Options Market Maker-Directed a fee of $.18 per contract which creates a $.05 per contract fee differential when compared to the Specialist and eSpecialist fee of $.13 per contract for electronic executions in complex orders.

[27] Today, the Exchange assess Directed Participants a fee of $0.36 per contract and Market Makers a fee of $0.38 per contract for Single contra-side transactions in Select Symbols.

[28] Complex Orders can be distinguished from Single contra-side transactions with respect to allocation guarantees applicable to Directed Specialists, Directed ROTs, Directed SQTs and Directed RSQTs pursuant to Rule 1014(g)(viii). *See also* Securities Exchange Act Release No. 57844 (May 21, 2008), 73 FR 30988 (May 29, 2008) (SR–Phlx–2008–39) (notice of filing and order granting accelerated approval relating to the permanent approval of the Exchange's Directed Order Flow program.)

[29] All other types of directed non-Customer order flow are not eligible for Directed Participant pricing.

[30] The Complex Order Live Auction (''COLA'') is the auction for eligible Complex Orders. *See* Rule 1080, Commentary .08.

[31] A COLA Sweep is when a Phlx XL participant bids and/or offers on either or both sides of the market during the COLA Timer (a timing mechanism which is a counting period not to exceed 5 seconds) by submitting one or more bids or offers that improve the cPPBO (the best net debit or credit price for a Complex Order Strategy based on the PBBO for individual components of such Complex Order Strategy). *See* Rule 1080, Commentary .08.

[32] In this scenario the Customer order is ''legged'' against interest present in the disseminated market.

[33] *See* Rule 1080.

A Market Maker, at the time of the trade, is unaware of the identity of the contra-party to the trade. In other words, it is only sometime after the trade occurs that the Market Maker learns whether the Market Maker or Directed Participant fees will be assessed on a particular transaction.[34] It is important to note that Customer Complex Orders do not always interact with the intended recipient of the order where such an order was directed because the Market Maker may not have been at the best price at the time the order was executed. For the time period from September 1, 2011 through April 19, 2012, the percentage of Customer Complex directed orders that traded with the Market Maker to which the trade was directed is reflected in the table below:

September 2011	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 1–19, 2012
17.02%	16.16%	17.94%	14.01%	6.19%	11.47%	14.19%	17.13%

Generally, a Market Maker will be assessed the Market Maker Fee for Removing Liquidity in Complex Orders when the Market Maker is not executing a Customer order intended for that Market Maker. Moreover, in a given month the effective Complex Order Fee for Removing Liquidity for a Market Maker that also has executions subject to the Directed Participant rate is approximately $0.02 below the Market Maker Complex Order Fee for Removing Liquidity.[35]

Market Makers compete in offering price improvement in auctions.

The Exchange bases its belief that the fees are reasonable, in part, on an analysis of the level of price improvement currently received by Customer Complex Orders trading in an auction process. Based on an analysis of the week of October 10, 2011, Customer Complex Orders received price improvement 29% of the time and the average level of price improvement was $0.059 per option or $5.90 per contract for options receiving price improvement. Based on an analysis of the week of April 9, 2012, Customer Complex Orders received price improvement 29% of the time and the average level of price improvement was $0.056 per option or $5.60 per contract for options receiving price improvement.

Market Makers compete in offering price improvement in auctions. The significant difference in magnitude between the proposed $0.05 per contract increased fee differential (between Market Makers and Directed Participants) and the extent of price improvement supports the Exchange's belief that the fee is reasonable and will have a negligible impact on Directed and non-Directed Market Makers.

The Directed Participant and Market Maker Complex Order Fees for Removing Liquidity provide the Exchange an opportunity to offer increased Customer rebates to attract Customer order flow.

Today, options exchanges aggressively compete for Complex order flow. In January 2012, based on data from the Options Price Reporting Authority (''OPRA''), the average daily equity options complex order transactions on the various option exchanges totaled 117,539. The combined total for the last six months of 2011 was 593,286. With respect to market share, the six options exchanges handling complex orders had market share in complex orders ranging from 2.4% to 40.1% in January 2012. The Exchange believes the increased fees, which fund Customer Complex Order rebates, bring more Customer order flow to the market and, in turn, benefit all market participants.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates offered to be insufficient. Accordingly, the fees that are assessed by the Exchange and the rebates it pays for options overlying the various Select Symbols in Complex Orders must remain competitive with fees and rebates charged/paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[36] 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.[37]

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:

[34] This distinction holds true today for Market Makers and Directed Participants executing either Single contra-side transactions (Part A of Section I of the Pricing Schedule) or Complex Orders (Part B of Section I of the Pricing Schedule). When a Single contra-side transaction is executed against the individual components of a Complex Order, the Single contra-side part of the order will be subject to the fees in Part A of the Pricing Schedule and the individual components will be subject to the fees in Part B.

[35] For example if a Market Maker, that is the intended recipient of a Customer Complex Order, only executes the Customer Complex Order 14.5% of the time (paying the Directed Participant Complex Order fee of $0.32 per contract), then that Market Maker is paying the proposed Market Maker Complex Order fee of $0.37 per contract the other 85.5% of the time. The effective Complex Order Fee for Removing Liquidity for that Market Maker is $0.3613 in a given month, less than $0.01 below the rate paid by a Market Maker that never receives a Customer Complex Order directed to it for execution.

[36] 15 U.S.C. 78s(b)(3)(A)(ii).

[37] In a separate order, the Commission is temporarily suspending and instituting proceedings to determine whether the proposed rule change SR–Phlx–2012–54, as well as SR–Phlx–2012–27, should be approved or disapproved. *See* Securities Exchange Act Release No. 66884 (April 30, 2012).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–54 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–54 and should be submitted on or before May 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10754 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66884; File Nos. SR–Phlx–2012–27; SR–Phlx–2012–54]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Relating to Complex Order Fees and Rebates for Adding and Removing Liquidity in Select Symbols

April 30, 2012.

I. Introduction

On March 1, 2012 and April 23, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] two proposed rule changes relating to the transaction fees for certain Complex Order transactions.[3]

In SR–Phlx–2012–27 (filed on March 1, 2012), Phlx proposed to amend the Exchange's Fee Schedule to increase the transaction fees and rebates for certain Complex Order transactions and create a new rebate for certain Complex Orders. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] Notice of filing of the proposed rule change was published in the **Federal Register** on March 15, 2012.[5]

In SR–Phlx–2012–54 (filed on April 23, 2012), Phlx proposed to replace a portion of SR–Phlx–2012–27 to provide additional information concerning the Directed Participant and Market Maker fees for removing liquidity in Complex orders (''Second Proposal,'' and, together with SR–Phlx–2012–27, the ''Phlx Proposals'').[6] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[7]

To date, the Commission has not received any comment letters on the Exchange's proposed rule changes.

Under Section 19(b)(3)(C) of the Act, the Commission is: (1) Hereby temporarily suspending the Phlx Proposals; and (2) instituting proceedings to determine whether to approve or disapprove the Phlx Proposals.

II. Summary of the Proposed Rule Changes

SR–Phlx–2012–27

The Exchange's proposal amended Complex Order fees and rebates for adding and removing liquidity in its Select Symbols.[8] Specifically, Phlx's proposal: (1) Increased the Customer Rebate for Adding Liquidity from $0.30 per contract to $0.32 per contract; (2) created a new Rebate for Removing Liquidity of $0.06 per contract for each contract of liquidity removed by an order designated as a Customer Complex Order; (3) amended the Fee for Removing Liquidity for all participants who are assessed such a fee; and (4) created a volume incentive for certain market participants that transact significant volumes of Complex Orders on the Exchange.

Phlx's proposal to amend the Fee for Removing Liquidity increased the Complex Order Fees for Removing Liquidity for the Directed Participant,[9] Market Maker,[10] Firm, Broker-Dealer, and Professional [11] categories of market participants. The fee for Directed Participant transactions increased from $0.30 to $0.32 per contract; the fee for Market Makers increased from $0.32 to $0.37 per contract; and the fee for Firms, Broker-Dealers, or Professionals

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b 4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A Complex Order may also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 66551 (March 9, 2012) 77 FR 15400 (''Notice'').

[6] *See* Securities Exchange Act Release No. 66883 (April 30, 2012) (SR–Phlx–2012–54) (notice of filing of the proposed rule change).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] The Select Symbols are listed in Section I of the Phlx Fee Schedule.

[9] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader (''SQT'') or Remote Streaming Quote Trader (''RSQT'') resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II. *See* Phlx Fee Schedule at 3.

[10] A ''Market Maker'' includes Specialists (*see* Exchange Rule 1020) and Registered Options Traders (''ROTs'') (see Exchange Rule 1014(b)(i) and (ii), which includes SQTs (*see* Exchange Rule 1014(b)(ii)(A)) and RSQTs (*see* Exchange Rule 1014(b)(ii)(B)).

[11] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 1000(b)(14).

increased from $0.35 to $0.38 per contract.

The proposal also provided a new volume incentive to Market Makers. The Exchange has four categories of market makers—Specialists,[12] ROTs,[13] SQTs [14] and RSQTs [15]—that would all be eligible to receive the volume incentive. If the Market Maker executes more than 25,000 contracts of Complex Orders each day in a given month, all of that Market Maker's transactions in Complex Orders that remove liquidity, both as a Directed Participant and as a Market Maker, shall be reduced by $0.01 per contract for that month.

SR–Phlx–2012–54

The Exchange's proposal replaced a portion of SR–Phlx–2012–27 to provide additional information concerning the current Complex Order Directed Participant and Market Maker Fees for Removing Liquidity in Select Symbols. The Exchange did not propose to amend any of the fees for the Complex Order Directed Participant and Market Maker Fees for Removing Liquidity in Select Symbols, but rather included additional justification for the differential between the fees paid by Directed Participants and Market Makers.

III. Suspension of the Phlx Proposals

Pursuant to Section 19(b)(3)(C) of the Act,[16] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[17] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission believes it is appropriate to further evaluate the potential effect of the proposed rule changes on competition among different types of market participants and on market quality, particularly with respect to the fee differential between Directed Participants and Market Makers, and the basis for such differential put forth by the Exchange. Under the proposed rule changes, the Exchange increased the differential between the fee charged to Directed Participants and Market Makers from $0.02 to $0.05. As a result, if a Market Maker that is a Directed Participant executes against a Customer order directed to that Market Maker for execution by an Order Flow Provider (''OFP''),[18] it will be charged $0.05 less per contract than another Market Maker to whom the order is not directed would have been charged for executing against that same order.

In the Notice for SR–Phlx–2012–27, the Exchange stated that the changes to the Complex Order taker fees in the Select Symbols for Market Makers and Directed Participants are reasonable, equitable, and not unfairly discriminatory.[19] The Exchange did not specifically analyze the impact, if any, of the changes to the Complex Order taker fees on competition.[20] The Exchange argued that the proposed fee change is reasonable, equitable, and not unfairly discriminatory because:

(i) Market Makers are not entitled to guaranteed allocations for directed Complex Orders; (ii) all Market Makers have an equal opportunity to incentivize an OFP to direct an order to it for execution on the Exchange; (iii) only Customer orders that are directed by an OFP and executed by the intended Market Maker receive the Complex Order Directed Participant fee; (iv) the proposed Directed Participant and Market Maker Complex Order fees are less than the fees assessed to Firms, Professionals and Broker-Dealers because of obligations carried by those Market Makers which do not burden other participants; (v) Market Makers are unaware of the identity of the contra-party at the time of the trade and are also required to execute at the best price, pursuant to Exchange Rules, against an order intended for them by an OFP in order to be assessed the Directed Participant Complex Order Fee for Removing Liquidity (the only benefit) which does not happen more than 80% of the time; (vi) order flow arrangements benefit all market participants equally through added liquidity * * *[21]

In support of this argument, the Exchange noted that ''an average of 14.5% of Customer Complex Orders trade with the Market Maker to which they are directed.'' [22] It also provided an analysis for the week of October 10, 2011 of the level of price improvement received by Customer Complex Order trading in an auction process on the Exchange. Phlx noted that, based on its analysis, ''Customer Complex Orders received price improvement 29% of the time and the average level of price improvement was $0.059 per option or $5.90 per contract for options receiving price improvement.'' [23] The Exchange stated that difference between the proposed fee differential and the price improvement levels ''supports the Exchange's belief that the proposed fee is reasonable and will have a negligible impact on Directed and non-Directed Market Makers,'' [24] given that the fee differential between Directed Participants and Market Makers rose by $0.03 per contract, while the average level of price improvement, for options receiving price improvement, is $5.90 per contract.

The Exchange also noted the justification for the existing $0.02 differential between Directed Participants and Market Makers is that Market Makers that receive Directed Orders have higher quoting obligations than Market Makers who do not.[25]

The Exchange further stated that increasing this differential is intended ''to also reflect the increased costs that are incurred by such Market Makers that enter into order flow arrangements at a cost and without the benefit of a guaranteed allocation.'' [26] Phlx stated that it wants to encourage Market Makers to enter into order flow arrangements and that ''[t]he benefit that a Market Maker brings to the Exchange when it pays for order flow is not an insignificant one and this benefit should not go unrewarded.'' [27] The competition for order flow, according to the Exchange, provides better execution quality on the Exchange, which benefits all participants.[28]

In the Second Proposal, Phlx replaced a portion of SR–Phlx–2012–27 to provide additional justification for the

[12] A Specialist is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a).

[13] A ROT includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT nor a RSQT. A Registered Option Trader is defined in Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[14] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[15] An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 15 U.S.C. 78s(b)(1).

[18] The term ''Order Flow Provider'' (''OFP'') means any member or member organization that submits, as agent, orders to the Exchange. *See* Exchange Rule 1080(l)(i)(B).

[19] *See* Notice, *supra* note 5, at 15403.

[20] *See* Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].''

[21] *See id.* at 15404.

[22] *See id.* at 15403.

[23] *See id.*

[24] *Id.*

[25] *See id.* at 15402.

[26] *See id.*

[27] *See id.* at 15404.

[28] *See id.*

differential between the Complex Order Directed Participant and Market Maker Fees for Removing Liquidity in Select Symbols (as modified by SR–Phlx–2012–27). The Exchange argued that the $0.05 per contract differential is reasonable, equitable and not unfairly discriminatory because: (i) It is consistent with the fee structures at other options exchanges; (ii) Market Makers do not receive guaranteed allocations for directed Complex Orders; (iii) the only executions that receive the reduced Complex Order Directed Participant fee are Market Maker executions against Customer orders that are directed by an OFP to the executing Market Maker; (iv) Market Makers do not know the identity of the contra-party at the time of a trade and must execute at the best price; (v) Market Makers compete to offer price improvement in auctions; and (vi) the fees for removing liquidity in Complex Orders allow the Exchange to offer increased Customer rebates, which attracts additional Customer order flow to the Exchange and benefits all market participants.

The Exchange also provided data for the time period from September 1, 2011 through April 19, 2012, showing the percentage of Customer Complex directed orders that traded with the Market Maker to which the order was directed, as follows:

September 2011	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 1–19, 2012
17.02%	16.16%	17.94%	14.01%	6.19%	11.47%	14.19%	17.13%

The Exchange maintained that ''in a given month the effective Complex Order Fee for Removing Liquidity for a Market Maker that also has executions subject to the Directed Participant rate is approximately $0.02 below the Market Maker Complex Order Fee for Removing Liquidity.'' The Exchange also updated the price improvement statistics described above to note that the average level of price improvement during the week of April 9, 2012 was $5.60 per contract for options receiving price improvement.

The Commission intends to further assess whether the resulting fee disparity between Directed Participants and Market Makers ($0.05 per contract) is consistent with the statutory requirements applicable to a national securities exchange under the Act, as described below. In particular, the Commission will assess whether the Phlx Proposals satisfy the standards under the Exchange Act and the rules thereunder requiring, among other things, that an exchange's rules: provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.

IV. Proceedings To Determine Whether To Approve or Disapprove the Phlx Proposals

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[29] and 19(b)(2) of the Act[30] to determine whether the Exchange's proposed rule changes should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, under the proposal, a Market Maker that is a Directed Participant pays a lower fee than a Market Maker that is not a Directed Participant when executing against a Complex Order in a Select Symbol that was directed to the Directed Participant. The Exchange Act and the rules thereunder require that an exchange's rules: Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission intends to further assess whether the Phlx Proposals are consistent with these Exchange Act standards.

The Commission believes it is appropriate and in the public interest to institute disapproval proceedings at this time in view of the significant legal and policy issues raised by the Phlx Proposals.[32] Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder that are applicable to the proposed rule changes include:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;''[33]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;''[34] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].''[35]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by May 25, 2012. Rebuttal comments should be submitted by June 8, 2012. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and

[29] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(2).

[31] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[32] *See also* Securities Exchange Act Release No. 61547 (February 19, 2010) 75 FR 8762 (February 25, 2010) (Order of Summary Abrogration, in which the Commission abrogated several Phlx fee filings, including a fee that would have instituted a $0.16 differential between certain classes of market makers depending on whether they had orders directed to them).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[36]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes. The Commission is focusing its request for comment on the fee for removing liquidity assessed on Directed Participants as compared to the fee for removing liquidity assessed on Market Makers, not the other fee changes that were included in Phlx–2012–27. In particular, the Commission seeks comment on the following:

- As noted above, Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers or dealers.'' The Commission seeks comment on whether discrimination on the basis of whether a market maker has an off-exchange arrangement to pay an OFP to direct its orders to that market maker is a ''fair'' basis for discrimination among its members with respect to the fees charged by the exchange. Do commenters' views change depending on whether the payment for order flow is pursuant to exchange rules or an off-exchange payment for order flow arrangement?;
- The Commission seeks comment on whether the filing for SR–Phlx–2012–27 or for SR–Phlx–2012–54 was sufficient under Section 19(b) of the Act in addressing issues regarding the basis for discrimination between Market Makers and Directed Participants in Complex Order transaction fees, and whether the basis for such discrimination is fair, and why or why not;
- As noted above, Section 6(b)(4) requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' The Commission seeks comment on whether the filing for SR–Phlx–2012–27 or for SR–Phlx–2012–54 was sufficient under Section 19(b) of the Act in addressing issues regarding the reasonableness of the proposed fees (and thus the proposed fee differential), and whether the amount of the proposed fees (and thus the amount of the proposed fee differential), are reasonable, and why or why not. Does a flat $0.05 fee differential appropriately reflect potential differences that may exist in payment for order flow arrangements between market makers and OFPs?;
- Section 6(b)(8) of the Act requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act]. The Commission seeks comment on whether the filing for SR–Phlx–2012–27 or for SR–Phlx–2012–54 was sufficient under Section 19(b) of the Act in addressing issues regarding the effects of the proposed fee change on competition, and what, if any, impact the proposed fee change has or will have on competition, especially as between Directed Participants and Market Makers; and
- Whether the proposed fee changes will affect the quality of execution of Customer Complex Orders or broader market quality; and if so, how and what type of impact will they have.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–Phlx–2012–27 and/or SR–Phlx–2012–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–27 and/or SR–Phlx–2012–54. The 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 publicly available. All submissions should refer to File Number SR–Phlx–2012–27 and SR–Phlx–2012–54 and should be submitted on or before May 25, 2012. Rebuttal comments should be submitted by June 8, 2012.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[37] that File Nos. SR–Phlx–2012–27 and SR–Phlx–2012–54, be and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10755 Filed 5–3–12; 8:45 am]

BILLING CODE 8011–01–P

[36] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[37] 15 U.S.C. 78s(b)(3)(C).

[38] 17 CFR 200.30–3(a)(57) and (58).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13069 and #13070]

Oklahoma Disaster #OK–00059

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma.

Incident: Severe Storms, Tornadoes and Hail.

DATES: Effective April 26, 2012.

Incident Period: April 13, 2012 through April 15, 2012.

Physical Loan Application Deadline Date: June 25, 2012.

Economic Injury (EIDL) Loan Application Deadline Date: January 28, 2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Woodward.

Contiguous Counties: Oklahoma:

Dewey, Ellis, Harper, Major, Woods.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13069B and for economic injury is 130700.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 26, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–10795 Filed 5–3–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7868]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Artist in the Garden''

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 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Artist in the Garden'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The New York Botanical Garden, Bronx, NY, from on or about May 19, 2012, until on or about October 21, 2012; 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 exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 27, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–10830 Filed 5–3–12; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter Nine of the United States-Colombia Trade Promotion Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Regarding Waiver of Discriminatory Purchasing Requirements Under Trade Agreements Act of 1979.

DATES: *Effective Date:* May 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, (202) 395–9617.

SUPPLEMENTARY INFORMATION: On November 22, 2006, the United States and Colombia entered into the United States-Colombia Trade Promotion Agreement (''Colombia TPA''). Chapter Nine of the Colombia TPA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1 of the Colombia TPA. On October 21, 2011, the President signed into law the United States-Colombia Trade Promotion Agreement Implementation Act (''the Colombia TPA Act'') (Pub. L. 112–42, 125 Stat. 462 (19 U.S.C. 3805 note). In section 101(a) of the Colombia TPA Act, the Congress approved the Colombia TPA. The Colombia TPA will enter into force on May 15, 2012.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Determination: In conformity with sections 301 and 302 of the Trade Agreements Act and Executive Order 12260, and in order to carry out U.S. obligations under Chapter Nine of the Colombia TPA, I hereby determine that:

1. Colombia is a country, other than a major industrialized country, which, pursuant to the Colombia TPA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Colombia is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Colombia (*i.e.,* goods and services covered by the Schedule of the United States in Annex 9.1 of the Colombia TPA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Colombia, this waiver shall be applied by all entities listed in the Schedule of the United States in Annex 9.1 of the Colombia TPA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2012–10821 Filed 5–3–12; 8:45 am]

BILLING CODE 3190–W2–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS436]

WTO Dispute Settlement Proceeding Regarding United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on April 24, 2012, India requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning countervailing measures regarding certain hot-rolled carbon steel flat products from India. That request may be found at *www.wto.org* contained in a document designated as WT/DS436/1/Rev.1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 22, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0008. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Greta Milligan, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by India

On April 24, 2012, India requested consultations concerning countervailing measures regarding certain hot-rolled carbon steel flat products from India (Investigation C–533–821). (This request supersedes a prior request for consultations received from India on April 12, 2012.) India's challenge addresses the Tariff Act of 1930, in particular sections 771(7)(G) and 776(b), as well as Title 19 of the Code of Federal Regulations, sections 351.308 and 351.511(a)(2)(i)–(iv). In addition, India challenges certain actions of the United States with respect to U.S. Department of Commerce countervailing duty determinations and the countervailing duty order related to certain hot-rolled carbon steel flat products from India. The consultation ''request covers the countervailing duties and other measures, if any, applied on the subject goods from India through any notice, determination, decision memorandum, order, or any other instrument issued by the United States from time to time in connection with case no. C–533–821.'' A list of proceedings and actions subject to the consultation request is provided at Annex 1 to the request and includes determinations related to the original investigation, certain administrative reviews of the countervailing duty order, and a five-year ''sunset'' review of that order. Finally, the ''request also covers all the amendments, replacements, implementing acts or any other related measure in connection with the measures'' described above.

India alleges inconsistencies with Articles I and IV of the *General Agreement on Tariffs and Trade 1994* and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22 and 32 of the *Agreement on Subsidies and Countervailing Measures.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0008. If you are unable to provide submissions via *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0008 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2012–0008.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Bradford L. Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–10818 Filed 5–3–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Portsmouth International Airport at Pease, Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from Portsmouth International Airport at Pease to waive the surplus property requirements for 65.42 acres of airport property located at Portsmouth International Airport at Pease.

DATES: Comments must be received on or before June 4, 2012.

ADDRESSES: Send comments on this document to Mr. Barry J. Hammer at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7625.

FOR FURTHER INFORMATION CONTACT: Documents are available for review by appointment by bcintacting Ms. Lynn Marie Hinchee, Telephone 603–766–9286 or by contacting Mr. Barry J. Hammer, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7625.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration is reviewing a request by Portsmouth International Airport at Pease to release 65.42 acres of airport property from surplus property obligations.

The State of New Hampshire is making improvements to approximately 3.5 miles of the Spaulding Turnpike extending from just north of Exit 1 in Newington to just south of the Dover Toll Plaza at Exit 6. The improvements to the roadway will include a new interchange directly into Pease International Tradeport for both north and south-bound traffic, and to service Portsmouth International Airport at Pease.

In addition to the acquisition in fee for a 37.37 acre parcel, further land will be impacted by construction as itemized below:

(a) Permanent access easement—20,187 square feet
(b) Permanent conservation easement—23.22 acres
(c) Permanent utility easement—8,734 square feet
(d) Temporary construction easement—8.47 acres

In addition to receiving fair market value of $550,000 for interests in the aforementioned property, additional considerations of improvement to approximately 1,800 feet of Arboretum Drive will be made resulting in improved access to approximately 20 acres of airport industrial zoned land for development and revenue generating purposes.

Dated: Issued in Burlington, Massachusetts on April 19, 2012.

Bryon H. Rakoff,

Acting Manager, Airports Division, New England Region.

[FR Doc. 2012–10726 Filed 5–3–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the North Hillside Road Extension in Mansfield, Connecticut. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 24, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Jackson-Grove, Division Administrator, Federal Highway Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033; telephone: (860) 659–6703; email: *Amy.Jackson-Grove@dot.gov.* The FHWA Connecticut Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (eastern time). You may also contact Mr. Glenn Elliott, Environmental Protection Specialist, Federal Highway Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033; telephone: (860) 494–7577; email: *Glenn.Elliott@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Connecticut: North Hillside Road Extension in Mansfield, Connecticut.

Project description: The selected alternative, Roadway Alignment Option A and North Campus Development Alternative 2C include the construction of an approximately 3,400-foot, 2-lane, 32-foot wide road through a portion of land adjacent to the University of Connecticut (University) Storrs core academic campus known as the ''North Campus.'' The project will provide an alternative entrance to the University, relieve traffic on surrounding roads, and facilitate the development of the North Campus. Crossing A is designed as a 40-foot precast concrete rigid frame with open bottom designed to comply with the Connecticut Department of Energy and Environmental Protection (CT DEEP, formerly the Connecticut Department of Environmental Protection) and Army Corps of Engineers stream crossing standards. Crossing C is designed as a 76-foot clear span bridge to completely avoid wetland impacts and maintain vernal pool habitat connectivity for semi-aquatic resources and terrestrial wildlife.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) North Hillside Road Extension, approved on December, 6, 2011, in the FHWA Record of Decision (ROD) issued on April 4, 2012, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.envpolicy.uconn.edu/eie.html.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: April 26, 2012.

Amy Jackson-Grove,

Division Administrator, Hartford.

[FR Doc. 2012–10769 Filed 5–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0058; Notice 2]

Withdrawal of Notice of Receipt of Petition

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice withdrawal.

SUMMARY: On April 23, 2012, NHTSA inadvertently republished, at 77 FR 24265, a notice that the agency had received a petition for a decision of inconsequential noncompliance from Toyota Motor Corporation, Inc., on behalf of Toyota Corporation and Toyota Manufacturing, Indiana, Inc. NHTSA has withdrawn that notice. The notice of receipt of the petition was originally published on June 16, 2011 (76 FR 35271), and the comment period closed on July 18, 2011. NHTSA will soon publish the notice of the agency's decision on the petition.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: April 26, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–10770 Filed 5–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 481X)]

BNSF Railway Company—Abandonment Exemption—in Walsh and Pembina Counties, ND

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon 18.12 miles of rail line located between milepost 42.08 at Grafton and milepost 60.20 at Glasston in Walsh and Pembina Counties, ND The line traverses United States Postal Service Zip Codes 58236, 58237, and 58276, and includes the stations of Auburn, St. Thomas, and Glasston.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has been handled on the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either

is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 5, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 14, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 24, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by May 11, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 4, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: April 30, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–10814 Filed 5–3–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35616]

Central Midland Railway Company and Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption

Central Midland Railway Company (CMR) and Progressive Rail Inc. (PGR), both Class III rail carriers, have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) and 1180.2(d)(6) for an intra-corporate family transaction and for reincorporation in a different State, pursuant to which PGR will remain in control of CMR after CMR reincorporates from an Indiana corporation to a Minnesota corporation.

According to applicants, CMR leases and operates certain rail lines within the State of Missouri, but it is incorporated in the State of Indiana. Applicants state that CMR, which currently is in administrative dissolution, seeks to become a Minnesota corporation in lieu of continuing as an Indiana corporation, and that PGR wishes to remain in control of CMR after CMR's reincorporation in Minnesota. PGR, which operates certain rail lines within the States of Minnesota and Wisconsin, acquired control of CMR in 2007.[1] PGR also controls Airlake Terminal Railway Company, LLC, a Class III rail carrier that operates within the State of Minnesota.[2] In addition, PGR has obtained an exemption to continue in control of Montgomery Short Line LLC (MSL) upon MSL's becoming a Class III rail carrier. MSL is a wholly owned subsidiary of PGR.[3]

Applicants state that all the assets and liabilities of the Indiana corporation, known as Central Midland Railway Company, will be transferred to a Minnesota corporation of the same name. Once the transaction is completed, that corporation will be a wholly owned subsidiary of PGR.

Applicants anticipate consummating the proposed transaction on or after May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

The transaction will allow CMR to reincorporate in Minnesota, and allow PGR to remain in control of CMR. In addition, the transaction will facilitate CMR's return to good corporate standing and the efficient administration of these railroads, as the headquarters for both railroads is in Minnesota.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. And the reincorporation of CMR is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(6).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

[1] *See Progressive Rail Inc.—Acquis. of Control Exemption—Cent. Midland Ry.,* FD 35051 (STB served July 5, 2007).

[2] *See Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption—Airlake Terminal Ry.,* FD 35168 (STB served Nov. 28, 2008).

[3] *See Progressive Rail Inc.—Continuance in Control Exemption—Montgomery Short Line LLC,* FD 35092, (STB served Nov. 9, 2007).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35616, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Decided: April 30, 2012.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–10820 Filed 5–3–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35617]

Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company

Under 49 CFR 1011.7(a)(2)(x)(A), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption under 49 U.S.C. 10502 for lease and operation transactions under 49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to issuance of the notice of exemption for lease and operation of the rail line at issue in this case. The Board determines that this notice of exemption should be issued, and does so here.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate a 37.3-mile line of railroad between milepost 49.00 at or near Cameron and milepost 11.70 at or near Norma, in Barron and Chippewa Counties, Wis. (the Line). According to PGR, PGR and UP have entered into a new Lease Agreement (Agreement) for PGR to lease the Line from UP.[1] The term of the lease is 30 years.

As required at 49 CFR 1150.43(h), PGR has disclosed that the Agreement contains an interchange commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Line that is interchanged with UP in that year.[2] Attached to PGR's notice of exemption is the verified statement of David Fellon, President of PGR. PGR states that a relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent, and *vice versa.* According to PGR, it believes that it can substantially grow its outbound traffic if it is able to make significant improvements to the Line. PGR states that the interchange commitment will enable it to make ''major renewals of main tracks, sidetracks, and bridges, and to construct a number of new sidings and yard tracks to enable staging of railcars for loading and to achieve efficiencies in railcar switching,'' to the benefit of the shipping public. PGR also states that (1) although there is a Canadian National Railway Company (CN) line at Cameron, the CN line is officially out of service and would require extensive rehabilitation to be made operable, and (2) there is a CN line at Chippewa Falls, but the Line does not extend to Chippewa Falls.

PGR certifies that its projected annual revenues as a result of this transaction will not result in PGR becoming a Class I or Class II rail carrier. PGR further certifies that its projected annual revenues will not exceed $5 million.

The earliest the transaction can be consummated is May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35617, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*.''

It is ordered:

1. The delegation of authority to the Director of the Office of Proceedings under 49 CFR 1011.7(a)(2)(x)(A) to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: May 1, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman. Vice Chairman Mulvey dissented with a separate expression.

Vice Chairman Mulvey, dissenting:

I disagree with the Board's decision to allow a transaction containing a significant interchange commitment to be processed under the Board's class exemption procedures at 49 CFR part 1150. In general, the Board should be carefully scrutinizing transactions that include interchange commitments before deciding whether to permit them to go into effect.

The notice in this particular case does not allow me to conclude summarily—without any examination—that the lease is consistent with the public interest. 49 U.S.C. 10902(c). The notice asserts that there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational. Yet, disregarding this claimed reality, the lease nonetheless contains an interchange commitment with substantial economic rewards for PGR if it interchanges with UP. One has to wonder why such an economic incentive is necessary if there is little chance that PGR would interchange with CN in any event. The lease term is 30 years, which is far longer than some other recent transactions involving paper barriers. *See e.g., Middletown & New Jersey R.R.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35412 (STB served Sept. 23, 2011) (10-year lease term). Moreover, we do not know how many shippers will be affected, what volume of traffic will be affected, or whether CN has plans to rehabilitate its connecting line. Nor do we know whether the 2004 lease that PGR and UP

[1] PGR previously obtained an exemption in 2004 to lease and operate the Line. *See Progressive Rail, Inc.—Lease & Operation Exemption—Rail Line of Union Pac. R.R.,* FD 34597 (STB served Oct. 29, 2004). The new lease for which an exemption is sought in this proceeding will replace the lease for which the prior exemption was obtained.

[2] Concurrently with its verified notice of exemption, PGR has filed under seal, pursuant to 49 CFR 1150.43(h)(1)(ii), a confidential, complete version of the Agreement.

are currently operating under also included an interchange commitment and, if it did not, why such a provision became necessary eight years later.

The Board needs to take a close look at long-term leases that have the potential to control the competitive environment for shippers—thus affecting rates and service—for years to come. At a time of far different economic circumstances in the railroad industry, our predecessor agency, the Interstate Commerce Commission, approved long-term leases and sales involving interchange commitments with little or no analysis. Years later, the Board is still grappling with the economic and competitive consequences of those transactions.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–10813 Filed 5–3–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 1, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 4, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Financial Management Service (FMS)

OMB Number: 1510–XXXX.

Type of Review: New Collection.

Title: Request for Payment of Federal Benefit by Check, EFT Waiver Form.

Abstract: 31 CFR part 208 requires that all Federal non-tax payments be made by electronic funds transfer (EFT). This form is used to collect information from individuals requesting a waiver from the EFT requirement because of a mental impairment and/or who live in a remote geographic location that does not support the use of EFT. These individuals may continue to receive payment by check. However, 31 CFR part 208 requires individuals requesting one of these waiver conditions to submit a written justification that is notarized by a notary public. In order to assist individuals with this submission, Treasury is preparing a waiver form so that all necessary information is collected.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 3,000.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–10792 Filed 5–3–12; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).''

DATES: Comments must be received by July 3, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0238, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0238, by mail to U.S. Office of Management and Budget, 725, 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting extension of OMB approval for this information collection titled, ''Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).'' There have been no changes to the requirements of the regulations; however, the regulations have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 2036, July 21, 2010 (Dodd-Frank Act), and republished as CFPB regulations (76 FR 79308 (December 21, 2011)). The burden estimates have been revised to remove the burden for OCC-regulated institutions with over $10 billion in assets, now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act, and to remove the initial start-up burden. The OCC retains enforcement authority for its institutions with $10 billion in total assets or less.

Title: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act (FACT Act).

OMB Number: 1557–0238.

Description: Section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) required the issuance of guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the issuance of regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

Twelve CFR 1022.42(a) requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they provide to a consumer reporting agency (CRA). Furnishers' accuracy and integrity policies and procedures may include their existing policies and procedures that are relevant and appropriate.

Section 1022.43(a) permits consumers to initiate disputes directly with the furnishers in certain circumstances. Furnishers are required to have procedures to ensure that disputes received directly from consumers are handled in a substantially similar manner to those complaints received through CRAs.

Section 1022.43(f)(2) incorporates the statutory requirement that a furnisher must notify a consumer by mail or other means (if authorized by the consumer) not later than five business days after making a determination that a dispute is frivolous or irrelevant. Section 1022.43(f) incorporates the statute's content requirements for the notices.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 1,918.

Estimated Total Annual Burden: 185,523 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–10806 Filed 5–3–12; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL REGISTER

Vol. 77 Friday,
No. 87 May 4, 2012

Part II

Department of Energy

10 CFR Part 431
Energy Conservation Program: Test Procedures for Electric Motors and Small Electric Motors; Final Rules

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0008]

RIN 1904–AC05

Energy Conservation Program: Test Procedures for Electric Motors and Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On January 5, 2011, the U.S. Department of Energy (DOE) issued a supplemental notice of proposed rulemaking to amend the test procedures for electric motors and small electric motors. That supplemental proposal, along with an earlier proposal from December 22, 2008, form the basis for today's action to amend the current test procedures used to measure the energy efficiency of electric and small electric motors. These changes will be mandatory to demonstrate compliance with the current energy efficiency standards starting 180 days after publication. The final rule clarifies the scope of regulatory coverage for electric motors and ensures the accurate and consistent measurement of electric motor and small electric motor energy efficiency through changes to the current test procedures. These changes also clarify certain regulatory terms and language related to electric motors and small electric motors, clarify the scope of energy conservation standards for electric motors, update references to several industry and testing standards for electric motors, incorporate by reference and update alternative test methods that manufacturers may use when certifying polyphase and single-phase small electric motors as compliant, and specify the determination of efficiency requirements for small electric motors.

DATES: *Effective date:* June 4, 2012.

Compliance dates: The final rule changes will be required for equipment testing starting October 31, 2012. Representations either in writing or in any broadcast advertisement respecting energy consumption must also be made using the revised DOE test procedure starting on October 31, 2012. DOE is also establishing a compliance date for energy conservation standards for IEC 100 mm frame series electric motors (as well as motors built in a frame that is not necessarily a NEMA-equivalent but otherwise covered under EISA 2007) that is June 4, 2015. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register on June 4, 2012.

ADDRESSES: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. Link to the docket by entering EERE–2008–BT–TP–0008 in the ''Search ID'' window. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/small_electric_motors.html* for small electric motors and *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/electric_motors.html* for electric motors. This web page will contain a link to the docket for this notice on the regulations.gov site.

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.*

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SUPPLEMENTARY INFORMATION: This final rule incorporates by reference the following standards into part 431:

(1) CSA C390–10, Test methods, marking requirements, and energy efficiency levels for three-phase induction motors, March 2010.

(2) CSA C747–09, Energy efficiency test methods for small motors, October 2009.

(3) IEC Standard 60034–1, Rotating Electrical Machines, Part 1: Rating and Performance, Section 4: Duty, clause 4.2.1 and Figure 1, February 2010.

(4) IEC Standard 60034–12, Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors, clauses 5.2, 5.4, 6, and 8, and Tables 1, 2, 3, 4, 5, 6, and 7, September 2007.

(5) The following provisions of IEEE Standard 112–2004, Test Procedure for Polyphase Induction Motors and Generators, approved February 9, 2004:

(i) Section 6.3, Efficiency Test Method A, Input-Output; and

(ii) Section 6.4, Efficiency Test Method B, Input-Output with Loss Segregation.

(6) IEEE Standard 114–2010, Test Procedure for Single-Phase Induction Motors, approved September 30, 2010.

(7) The following provisions of NEMA Standards Publication MG1–2009, Motors and Generators, 2009:

(i) Section I, General Standards Applying to All Machines, Part 1, Referenced Standards and Definitions, paragraphs 1.18.1, 1.18.1.1, 1.19.1.1, 1.19.1.2, 1.19.1.3, and 1.40.1;

(ii) Section I, General Standards Applying to All Machines, Part 4, Dimensions, Tolerances, and Mounting, paragraphs 4.1, 4.2.1, 4.2.2, 4.4.1, 4.4.2, 4.4.4, 4.4.5, and 4.4.6, Figures 4–1, 4–2, 4–3, 4–4, and 4–5, and Table 4–2;

(iii) Section II, Small (Fractional) and Medium (Integral) Machines, Part 12, Tests and Performance—AC and DC Motors, paragraphs 12.35.1, 12.38.1, 12.38.2, 12.39.1, 12.39.2, and 12.40.1, 12.40.2, 12.58.1, and Tables 12–2, 12–3, and 12–10; and

(iv) Section II, Small (Fractional) and Medium (Integral) Machines, Part 14, Application Data—AC and DC Small and Medium Machines, paragraphs 14.2 and 14.3.

(8) The following provisions of NEMA Standards Publication MG1–1967, Motors and Generators, January 1968:

(i) Part 11, Dimensions; and

(ii) Part 13, Frame Assignments—A–C Integral-Horsepower Motors.

(9) NFPA Standard 20–2010, Standard for the Installation of Stationary Pumps for Fire Protection, section 9.5, approved August 26, 2009.

Copies of the CSA standards are available from the Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or go to *http://www.shopcsa.ca/onlinestore/welcome.asp.*

Copies of the IEC standards are available from the International Electrotechnical Commission Central Office, 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland, +41 22 919 02 11, or go to *http://webstore.iec.ch.*

Copies of the IEEE standards are available from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), or *http://www.ieee.org/web/publications/home/index.html.*

Copies of the NEMA standard are available from the National Electrical Manufacturers Association, 1300 North

17th Street, Suite 1752, Rosslyn, Virginia 22209, 703–841–3200, or go to *http://www.nema.org/.*

Copies of the NFPA standard are available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471, 617–770–3000, or go to *http://nfpa.org/.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve appliance and commercial equipment energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (December 19, 2007)). Part C of Title III (42 U.S.C. 6311–6317), which was subsequently redesignated as Part A–1 for editorial reasons, establishes an energy conservation program for certain industrial equipment, which includes electric motors and small electric motors, the subject of today's notice. (42 U.S.C. 6311(1)(A), 6313(b))

Under EPCA, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards (referred to herein as ''energy conservation standards,'' ''energy efficiency levels,'' or ''energy efficiency standards''). The testing requirements consist of test procedures that manufacturers of covered products or equipment must use as the basis for certifying to DOE that their products or equipment comply with the applicable energy conservation standards adopted under EPCA and for making representations about the efficiency of those products or equipment. Similarly, DOE must use these test requirements to determine whether the products or equipment comply with any relevant standards promulgated under EPCA.

In the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486 (October 24, 1992), Congress amended EPCA to establish: (1) Energy conservation standards, (2) test procedures, (3) compliance certification, and (4) labeling requirements for certain electric motors.[1] In addition, EPACT 1992 directed the Secretary of Energy to determine whether energy conservation standards for small electric motors would be technologically feasible and economically justified, and would result in significant energy savings.[2] On October 5, 1999, DOE issued a final rule setting forth procedures to determine the energy efficiency of electric motors. 64 FR 54114. After determining that energy conservation standards for small electric motors would be technologically feasible and economically justified, see 71 FR 38799 (July 10, 2006), DOE initiated a rulemaking to begin the development of standards for small electric motors.[3] Related to these efforts was DOE's publication of a final rule prescribing test procedures for small electric motors. 74 FR 32059 (July 7, 2009). That rule followed from an earlier December 2008 proposal to amend test procedures for electric and small electric motors. See 73 FR 78220 (December 22, 2008). DOE finalized key provisions related to small electric motor testing in the July 2009 final rule, but opted to solicit further comment on certain issues from the December 2008 proposal. To this end, DOE issued a supplemental notice of proposed rulemaking, which also raised other related issues. 76 FR 648 (January 5, 2011) Today's final rule addresses these remaining issues.

1. Electric Motors

EPCA, through EPACT 1992, initially required that DOE adopt the then-current test procedures prescribed by the National Electrical Manufacturers Association (NEMA) in its MG1–1987 publication and those procedures contained in IEEE Standard 112 (Test Method B) when determining an electric motor's efficiency. (42 U.S.C. 6314(a)(5)(A)) MG1 is a voluntary industry standards publication produced by NEMA that facilitates communication between manufacturers and users about the selection and application of electric motors and generators. MG1 provides practical information to electric motor manufacturers and users concerning the construction, testing, performance, and safety of alternating current (AC) and direct current (DC) motors and generators. IEEE Standard 112 (Test Method B) is an industry-accepted test method that outlines the methods and

[1] EPCA, as amended by EPACT 1992, had previously defined an ''electric motor'' as any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. (42 U.S.C. 6311(13)(A) (1992)) Through subsequent amendments to EPCA, Congress removed this definition and replaced it with the heading ''Electric motors'' and added language denoting two new subtypes of electric motors: general purpose electric motor (subtype I) and general purpose electric motor (subtype II). (See 42 U.S.C. 6311(13)(A)–(B) (2010))

[2] EPCA, as amended by EPACT 1992, defines the term ''small electric motor'' to mean a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987. (42 U.S.C. 6311(13)(G))

[3] A single-phase small electric motor is a rotating electrical machine that operates on single-phase electrical power, which refers to a single alternating voltage sinusoidal waveform. Similarly, a polyphase small electric motor is a rotating electrical machine that operates on three-phase electrical power, which refers to the sinusoidal waveforms of three supply conductors that are offset from one another by 120 degrees. Small electric motors are generally used as components to drive commercial and industrial pumps, fans, conveyors, and other equipment that require low power. 73 FR 78220, 78221 n.2 (December 22, 2008).

calculations that manufacturers should use to determine their electric motors' full-load efficiencies. EPCA required DOE to conform its procedures to any amendments to these protocols unless the Secretary determines, by rule, that the amended procedures are not reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs, and would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(5)(B)) Consistent with this requirement, DOE has amended its regulations to incorporate more recent versions of these procedures.

In addition, DOE incorporated Canadian Standards Association (CSA) C390–93, ''Energy Efficiency Test Methods for Three-Phase Induction Motors'' into the October 5, 1999, final rule as a widely recognized alternative that is consistent with IEEE Standard 112 (Test Method B). 64 FR 54114 (October 5, 1999).[4] In light of changes to the CSA test procedure, DOE reexamined and updated its test procedures consistent with its practice of ensuring that the latest industry practices (and related equivalent procedures) are incorporated into DOE's regulations.

The testing protocols considered by DOE have all been updated—MG1 on April 9, 2010, IEEE Standard 112 (Test Method B) on February 9, 2004, and CSA C390 on March 22, 2010 (''Test methods, marking requirements, and energy efficiency levels for three-phase induction motors''). Consistent with its obligations under EPCA, DOE had proposed to incorporate the most current versions of the IEEE and NEMA protocols into its regulations. 73 FR 78220 (December 22, 2008).

2. Small Electric Motors

Among its many requirements, EPCA requires DOE to prescribe test procedures for those small electric motors for which the Secretary of Energy makes a positive determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(b)(1)) Consistent with this requirement, DOE indicated it would initiate the development of test procedures for certain small electric motors. 71 FR 38807 (July 10, 2006).

DOE proposed possible test methods for measuring the energy efficiency of both small electric motors and electric motors in the December 2008 notice of proposed rulemaking (NOPR). 73 FR 78220. For small electric motors, DOE proposed to base its test procedure on IEEE Standard 114–2001, ''Test Procedure for Single-Phase Induction Motors,'' IEEE Standard 112–2004, ''Test Procedure for Polyphase Induction Motors and Generators,'' and CSA C747–94, ''Energy Efficiency Test Methods for Single- and Three-Phase Small Motors.'' [5] DOE proposed these three procedures based in part on their wide use and acceptance by small electric motor manufacturers.

On July 7, 2009, DOE published a final rule adopting test procedures for measuring the energy efficiency of small electric motors. 74 FR 32059. However, certain subsidiary issues raised in response to the December 2008 NOPR required additional consideration by DOE. These issues are addressed in today's final rule.

3. Supplemental Notice of Proposed Rulemaking

In January 2011, DOE published a supplemental notice of proposed rulemaking (SNOPR) that attempted to address a variety of issues related to the test procedures for electric motors and small electric motors. 76 FR 648. Among these issues included those items that remained unresolved from the July 2009 test procedure final rule, along with other issues raised in the interim since that rule's publication.

For electric motors, the SNOPR proposed to clarify certain terms and language in the DOE regulations. Specifically, DOE proposed to revise the definitions of certain terms related to electric motors, clarify the scope of energy conservation standards for electric motors, and update references to several industry and testing standards for electric motors. These proposals were made in an effort to help clarify the scope of regulatory coverage for electric motors and ensure the accurate and consistent measurement of energy efficiency.

For small electric motors, the SNOPR proposed to revise the definitions of certain terms, incorporate by reference and update alternative test methods for polyphase and single-phase small electric motors, and specify the determination of efficiency requirements. As with electric motors, DOE made these proposals to ensure the accurate and consistent measurement of energy efficiency.

For both motor types, the January 2011 SNOPR invited comments on the issues presented and requested comments, data, and other information that would enable DOE to promulgate a final rule. In response, DOE received comments addressing its supplemental notice. Today's notice addresses these issues.

4. General Test Procedure Rulemaking Process

EPCA, through 42 U.S.C. 6314, sets forth the criteria and procedures DOE must generally follow when prescribing or amending test procedures for commercial or industrial equipment. That provision generally requires that a test procedure that is either prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, and the estimated annual operating cost of a type of covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6314(a)(2)) In instances where the test procedure is one that determines annual operating costs, the costs must be calculated from energy use measurements taken during a representative average use cycle and from the average unit costs of the energy needed to operate such equipment. (See 42 U.S.C. 6314(a)(3))

When amending a test procedure, DOE must determine the extent to which a proposed procedure will alter the measured energy efficiency of a given type of covered equipment when compared to the current procedure. (See 42 U.S.C. 6314(a)(5)(C) (incorporating the procedural steps of 42 U.S.C. 6293(e) for electric motors)) As described later in this notice, DOE compared IEEE Standard 112–1996 (Test Method B) and CSA C390–93 with IEEE Standard 112–2004 (Test Method B) and CSA C390–10, respectively, and determined that there were no substantive differences that would alter the measured efficiency of the covered motors.

II. Summary of the Final Rule

Today's final rule, which is based on feedback received in response to the December 2008 and January 2011 notices, amends the current DOE test procedures and definitions for electric motors and small electric motors. These changes will not affect the measured efficiency of this equipment. Instead, these changes will primarily clarify certain terms, language and the scope of energy conservation standards for electric motors. They will also minimize any potential ambiguity contained in the test procedures for electric motors and small electric motors.

[4] See also MG1–1993 with Revision 1, section MG1–12.58.1, which states: ''Efficiency and losses shall be determined in accordance with IEEE Std 112 or Canadian Standards Association Standard C390.''

[5] The IEEE Standards addressed in this notice are generally listed chronologically by their last date of revision and adoption rather than their sequential number.

Electric Motors

Today's rule makes four changes with respect to electric motors. First, it clarifies the definitions for ''electric motor,'' ''fire pump motor,'' ''general purpose electric motor (subtype I),'' ''general purpose electric motor (subtype II),'' and ''NEMA Design B motor.'' Each of these terms was either added or modified by EISA 2007. Additionally, the rule clarifies that the term ''general purpose electric motor'' denotes a ''general purpose motor'' to ensure the use of consistent terminology in DOE's regulations. These revisions, in addition to addressing the specific comments raised by interested parties, will help ensure that the test procedures are applied appropriately.

Second, today's final rule clarifies the scope of existing energy conservation standards for electric motors (10 CFR 431.25).

Third, the rule updates the references to (1) NIST Handbook 150–10, ''Efficiency of Electric Motors,'' and the associated NIST Handbook 150–10 checklist, (2) IEC standards documents, (3) CSA C390, (4) CSA C747, (5) NEMA MG1, and (6) IEEE Standard 112 throughout subpart B of 10 CFR part 431.

Finally, today's rule removes the guidance from appendix A to subpart B, of 10 CFR part 431. That guidance, which will be updated to maintain consistency with the more recent amendments made by EISA 2007, will be posted on DOE's Web site as a vehicle for DOE to periodically update its interpretive guidance with respect to the treatment of certain aspects related to electric motors. Separating this guidance and placing it on the agency's public Web site will enable DOE to periodically update this guidance more expeditiously in response to public feedback and changing conditions in the industry. The updates may also serve as the basis for future rulemaking amendments as required.

Small Electric Motors

Today's final rule addresses two related matters that clarify the codified definition of ''small electric motor'' and should alleviate any potential undue testing burden related to small electric motors. These changes will help clarify aspects of the July 2009 final rule for small electric motors.

First, the rule clarifies the terms ''represented efficiency value'' and ''average full-load efficiency'' for small electric motors.

Second, the rule adds CSA C747–09 and CSA C390–10 as alternative test procedures that manufacturers may use for measuring the energy efficiency of polyphase small electric motors. After receiving comments and data from multiple interested parties, DOE found that both test methods are equivalent to IEEE Standard 112 Test Methods A and B, respectively, which were adopted in the July 2009 final rule. DOE is also updating its current CSA C747 references to account for the latest version of that protocol.

Finally, although DOE had contemplated in the SNOPR providing a method to validate an alternative efficiency determination method (AEDM) for small electric motors, including the statistical requirements needed to substantiate the AEDM, it has elected to address these requirements in a separate rulemaking currently under development. To this end, DOE has initiated a separate rulemaking effort to address the AEDM requirements for all products and equipment for which DOE has test procedures, including motors.

The revisions are summarized in the table below and addressed in detail in the following section. Note that all citations to 10 CFR part 431 in today's notice refer to the current version of 10 CFR part 431. The corresponding revisions to the regulatory text follow the preamble to this final rule.

TABLE II.1—SUMMARY OF CHANGES PROMULGATED IN THIS FINAL RULE AND AFFECTED SECTIONS OF 10 CFR PART 431

Section in 10 CFR Part 431	Summary of modifications
Section 431.11 of Subpart B—Purpose and Scope	• Clarifies that subpart B is applicable to ''electric motors,'' but not ''small electric motors.''
Section 431.12 of Subpart B—Definitions	• Revises the definitions of ''accreditation,'' ''definite purpose motor,'' ''general purpose electric motor (subtype I),'' ''general purpose electric motor (subtype II),'' and ''nominal full-load efficiency.'' • Adds new definitions for ''electric motor,'' ''fire pump motor,'' ''general purpose electric motor,'' and ''NEMA Design B motor.'' • Removes definition of ''general purpose motor.''
Section 431.14 of Subpart B—Sources for information and guidance	• Moves the list of references from 431.15 into a new section.
Section 431.15 of Subpart B—Materials incorporated by reference	• Updates reference to CSA–C390. • Updates references to IEC standards. • Updates reference to IEEE Standard 112. • Updates reference to NEMA MG1.
Section 431.18 of Subpart B—Testing Laboratories	• Updates reference to NIST Handbook 150–10.
Section 431.19 of Subpart B—Department of Energy recognition of accreditation bodies.	• Updates references to IEEE Standard 112 and CSA C390.
Section 431.20 of Subpart B—Department of Energy recognition of nationally recognized certification programs.	• Updates references to IEEE Standard 112 and CSA C390 for electric motors.
Section 431.25 of Subpart B—Energy conservation standards and effective dates.	• Removes the existing 431.25(a). • Clarifies the scope of efficiency standards in 431.25(a) through (d). • Inserts kilowatt equivalent power ratings in the efficiency standard tables.
Section 431.31 of Subpart B—Labeling Requirements	• Updates reference to NEMA MG1.
Appendix A to Subpart B—Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act.	• Removes appendix A to subpart B; guidance will be posted on the DOE Appliance Standards Program website.
Appendix B to Subpart B—Uniform Test Method for Measuring Nominal Full-Load Efficiency of Electric Motors.	• Updates references to NEMA MG1, IEEE Standard 112, and CSA C390.
Section 431.441 of Subpart X—Purpose and Scope	• Clarifies that subpart X is applicable to ''small electric motors,'' but not ''electric motors.''
Section 431.443 of Subpart X—Materials incorporated by reference	• Updates reference to CSA C747. • Adds reference to CSA C390. • Updates references to IEEE Standard 112 and 114.

TABLE II.1—SUMMARY OF CHANGES PROMULGATED IN THIS FINAL RULE AND AFFECTED SECTIONS OF 10 CFR PART 431—Continued

Section in 10 CFR Part 431	Summary of modifications
Section 431.444 of Subpart X—Test procedures for measurement of energy efficiency.	• Updates reference to CSA C747. • Adds reference to CSA C390. • Updates reference to IEEE Standard 114.
Section 431.445 of Subpart X—Determination of small electric motor efficiency.	• Adds additional guidelines on use of a certification program and references section 431.447 for small electric motors. • Clarifies the term ''represented average full-load efficiency'' and renames as ''required average full-load efficiency''.
Section 431.447 of Subpart X—Department of Energy recognition of nationally recognized certification programs.	• Adds a section on nationally recognized certification programs for small electric motors similar to section 431.20 for electric motors.
Section 431.448 of Subpart X—Procedures for recognition and withdrawal of recognition of certification programs.	• Adds a section on procedures for recognition of certification programs for small electric motors similar to section 431.21 for electric motors.

As noted earlier, DOE developed today's rule after considering input, including written comments, from a variety of interested parties that represent a variety of interests. All commenters, their corresponding abbreviations and type are listed in Table II.2 below. The issues raised by these commenters are addressed in the various discussions that follow.

TABLE II.2—SUMMARY OF SNOPR COMMENTERS

Company	Abbreviation	Interested party type
Baldor Electric Co	Baldor	Manufacturer.
WEG Electric	WEG	Manufacturer.
Advanced Energy	Advanced Energy	Independent Test Laboratory.
National Electrical Manufacturers Association	NEMA	Trade Association.
Northwest Energy Efficiency Alliance	NEEA	Efficiency/Environmental Advocate.
Grundfos Pumps Co	Grundfos	Manufacturer.
Habasit America, Rossi Gearmotor Division	Rossi	Manufacturer.
GEA Mechanical Eq. US, Inc	GEA	Manufacturer.
Northwest Energy Efficiency Alliance, Appliance Standards Awareness Project, American Council for an Energy Efficient Economy, Earthjustice, Natural Resources Defense Council, Alliance to Save Energy.	NEEA, et al	Efficiency/Environmental Advocate Group.
National Electrical Manufacturers Association and the American Council for an Energy Efficient Economy.	NEMA and ACEEE	Trade Groups.

III. Discussion

A. Definition of Electric Motor

Before the enactment of EISA 2007, EPCA defined the term ''electric motor'' as any motor that is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. (See 42 U.S.C. 6311(13)(A) (2006)) Section 313(a)(2) of EISA 2007 removed that definition, inserted a new ''Electric motors'' heading, and created two new subtypes of electric motors: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)(A)–(B)(2011)) In addition, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of electric motors: general purpose electric motors (subtype I) (i.e., subtype I motors) with a power rating of 1 to 200 horsepower; fire pump motors; general purpose electric motor (subtype II) (i.e., subtype II motors) with a power rating of 1 to 200 horsepower; and NEMA Design B, general purpose electric motors with a power rating of more than 200 horsepower, but less than or equal to 500 horsepower. (42 U.S.C. 6313(b)(2)) These standards were set out in statutory provisions that referenced specific tables from the 2006 version of NEMA MG1. All of these standards apply to covered motors that are manufactured alone or as a component of another piece of equipment. The term ''electric motor'' (which frequently appears throughout EPCA, as amended by EISA 2007, and various subparts of 10 CFR part 431) was left undefined. Consequently, DOE noted that the absence of a definition may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards. 73 FR 78225.

In the December 2008 NOPR, DOE proposed to clarify the EISA 2007 term ''electric motor'' to mean any of the following four types of motors: a subtype I motor, a fire pump motor, a subtype II motor, or a NEMA Design B general purpose electric motor. 73 FR 78225 and 78235. In DOE's view, applying the term ''electric motor'' in this manner would clarify that the test procedures prescribed for electric motors would also apply to each of the four types of motors. 73 FR 78225. In the January 2011 SNOPR, DOE revisited this issue and proposed to broadly define ''electric motor'' to mean ''a machine which converts electrical power into rotational mechanical power.'' 76 FR 651.

In a comment submitted jointly with other interested parties, the Northwest Energy Efficiency Alliance (NEEA) responded to the SNOPR and asserted that DOE could create either a broad, high-level definition of electric motor that is carefully broken down into various subtypes of electric motors, or a narrow definition exclusive to these electric motors that are currently subject to standards. Ultimately, NEEA agreed with the approach proposed by DOE to

broadly define an electric motor. NEEA believed that this approach would minimize confusion by providing stability to the ''electric motor'' definition. It added that DOE's proposed approach could provide the foundation for extending standards to other electric motors not currently covered by DOE regulations. Further, they noted that using a narrower definition would have the disadvantage of requiring DOE to redefine the term ''electric motor'' each time the scope of energy conservation standards for electric motors changes. (NEEA, et al., No. 24 at p. 2) [6]

Separately, a joint comment from NEMA and ACEEE supported DOE's intent to modify the definition for ''electric motors'' to include a common definition of the term. However, NEMA and ACEEE added that the proposed definition was too broad, stating that such a definition would make all references to ''electric motor'' in subparts B and U of 10 CFR part 431 apply to all possible types of motors, including direct current, single-phase, variable speed, and multi-speed motors. In their view, the proposal would eliminate qualifiers that are necessary to narrow the definition to include only motors for which energy efficiency standards are prescribed. Commenters also asserted that such a change would alter the ''covered equipment'' provision at 10 CFR 431.12 to include a set of motors for which no energy conservation standards are prescribed. NEMA and ACEEE suggested the following definition as an alternative for DOE to consider: ''Electric motor means a machine that converts electrical power into rotational mechanical power and is configured as a general purpose electric motor (subtype I) or general purpose electric motor (subtype II).''

Further, NEMA and ACEEE recommended that if DOE believes that fire pump motors require a classification separate from general purpose electric motors (subtype I and II), then the definition should be changed to, ''electric motor means a machine that converts electrical power into rotational mechanical power and is configured as a general purpose electric motor (subtype I) or general purpose electric motor (subtype II), including, but not limited to, fire pump electric motors.'' (NEMA and ACEEE, No. 25 at pp. 3 and 4)

Although Congress retained the term ''electric motors'' as part of EPCA, it removed the definition that had previously been in place. In its place, Congress added two new electric motor subtypes—general purpose electric motor (subtype I) and general purpose electric motor (subtype II). (See 42 U.S.C. 6311(13)) As NEMA and ACEEE observed in its comments to the recent framework document for electric motors, the removal of this definition also removed the prior limits that narrowly defined what types of motors would be considered as electric motors. These commenters asserted that DOE already has the statutory authority to regulate definite and special purpose motors. (ASAP and NEMA, No. 12.1 [7] at p. 1)

DOE believes that a definition for ''electric motor'' is necessary and today's rule retains the broader approach proposed in the SNOPR. The definition that DOE is adopting should be sufficiently broad to encompass all electric motor subtypes. At this time, while the definition covers a large set of motors, only those for which energy conservation standards have been set are currently regulated equipment—i.e., subtype I and II motors, fire pump motors that are subtype I or II motors, and Design B motors that are subtype I or II motors. This approach allows DOE to fill the definitional gap created by the EISA 2007 amendments while providing DOE with the flexibility to set energy conservation standards for other types of electric motors without having to continuously update the definition of ''electric motors'' each time DOE sets energy conservation standards for a new subset of electric motors. Accordingly, DOE is declining to adopt the approach suggested by NEMA and ACEEE.

B. Definition of General Purpose Electric Motors Subtypes I and II

Before the enactment of EISA 2007, EPCA defined a general purpose electric motor (subtype I) as a motor that meets the definition of ''general purpose'' that was in effect in DOE's regulations at the time of EISA 2007's enactment. (See 42 U.S.C. 6311(13)(A)(2006)) At that time, 10 CFR part 431 did not contain a definition of ''general purpose,'' but instead defined the term ''general purpose motor.'' That term was defined to refer to a motor designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, ''Usual Service Conditions,'' and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.03, ''Unusual Service conditions,'' or for a particular type of application, and which can be used in most general purpose applications. See 64 FR 54142 (codified at 10 CFR 431.12).

Consistent with the EISA 2007 amendments, DOE subsequently adopted this definition of ''general purpose motor'' as the definition of ''general purpose electric motor (subtype I).'' 74 FR 12058, 12071 (March 23, 2009) (codified at 10 CFR 431.12). DOE did not propose any changes to this definition in its December 2008 proposal. 73 FR 78220.

DOE also adopted a definition for ''general purpose electric motor (subtype II).'' 74 FR 12071 (codified at 10 CFR 431.12). This definition mirrored the statute, which defined this type of motor as one that incorporates the design elements of a subtype I motor but is configured as one of the following:

(i) A U-frame motor;

(ii) A Design C motor;

(iii) A close-coupled pump motor;

(iv) A footless motor;

(v) A vertical solid shaft normal thrust motor (as tested in a horizontal configuration);

(vi) An 8-pole motor (900 rpm); or

(vii) A polyphase motor with voltage of not more than 600 volts (other than 230 or 460 volts).

(See 42 U.S.C. 6311(13)(B))

Responding to comments received in response to the December 2008 NOPR, DOE proposed in the January 2011 SNOPR to clarify the definition for a subtype I motor. Particularly, DOE proposed adding parentheticals referring to either MG1 or IEC to denote those terms that were used by those protocols with respect to certain motors or motor characteristics. See 76 FR 652.

In the regulatory text following the proposed definition, DOE added a note to clarify that the descriptive elements in this definition followed by the parenthetical ''MG1'' must be construed

[6] Notations of this form appear throughout this document and identify statements made in written comments or at public hearings that DOE has received and has included in the docket for this rulemaking. For example, ''NEEA, et al., No. 24 at p. 2'' refers to: (1) A comment from advocates referred to collectively as the Northwest Energy Efficiency Alliance, et al.; (2) in document number 24 in the docket of this rulemaking; and (3) appearing on page 2 of the submission.

[7] This comment comes from the docket EERE–2010–BT–STD–0027 for electric motors standards and was jointly submitted on behalf of ACEEE, ASE, Advanced Energy, Earthjustice, NRDC, the Northeast Energy Efficiency Partnerships, and NEEA by NEMA and ASAP.

with reference to provisions in NEMA Standards Publication MG1–2009 and elements followed by the parenthetical ''IEC'' must be construed with reference to the International Electrotechnical Commission Standards. The note also stated that 10 CFR part 431, subpart B applies even if the NEMA or IEC-equivalent frame size or design element has been discontinued or is discontinued in the future. 76 FR 655, 665. DOE had intended for the note to help ensure that manufacturers apply the various technical characteristics included as part of the definition in a consistent and appropriate manner (examples of these types of characteristics include performance characteristics of NEMA Design A or IEC Design N motors). A similar note was also proposed for inclusion to follow the definition of a subtype II motor.

In distinguishing between subtype I and subtype II motors, DOE looks to whether the motor is configured to have one or more of the design or performance elements listed in the definition of subtype II motors at 42 U.S.C. 6311(13)(B). For example, a subtype I motor could be built in accordance with NEMA T-frame dimensions and could have the performance characteristics of a NEMA Design A motor. In contrast, a motor built with all of these same design elements but with the performance characteristics of a NEMA Design C motor would be a subtype II motor. To clarify this interpretation of the subtype II motor statutory definition, DOE proposed to modify the introductory text of the subtype II definition to read, ''means any general purpose electric motor that incorporates design elements of a general purpose electric motor (subtype I) but, unlike a general purpose electric motor (subtype I), is configured in one or more of the following ways.'' A list of the seven different characteristics added by EISA 2007 then followed. And consistent with the subtype I definition, DOE proposed to add references to MG1 and IEC standards in the subtype II definition to clarify the terms ''U-frame,'' ''NEMA Design C,'' and ''vertical solid shaft normal thrust motor.'' 76 FR 653.

The SNOPR also proposed to include a note as part of the definitions of ''general purpose electric motor (subtype I)'' and ''general purpose electric motor (subtype II)'' to indicate that electric motors that are built according to IEC standards but that otherwise meet the proposed definition of a subtype I or II motor, would be considered covered motors under EPCA, as amended by EISA 2007, even if the NEMA-equivalent frame size had already been discontinued. 76 FR 665. DOE explained that it proposed to add this note to address situations such as the one presented by IEC 100 millimeter (mm) frame sized motors, which DOE had previously indicated were not covered in large part because of the limitations imposed by the prior statutory definition of ''electric motor.'' *See* 76 FR 653 (explaining DOE's tentative determination that IEC 100 mm frame-sized motors were not covered under the previous statutory definition then in place for electric motors). DOE understands that these motors can be used in many of the same applications where other covered electric motors are used, such as fans, pumps, conveyors, machine tools, and gear reducers.

With respect to IEC 100 mm frame-sized motors that fall into the subtype I or II categories, DOE notes that under the previous statutory definition of ''electric motor,'' an electric motor was a motor that possessed certain characteristics. That statutory definition also referenced MG1–1987, an industry-developed guidance document. The inclusion of that reference to MG1–1987 suggested its significance with respect to whether a given motor would be considered an ''electric motor'' as defined under the statute. MG1–1987 omitted any specifications related to motors equivalent to an IEC 100 mm motor.

Meanwhile, NEMA and electric motor manufacturers had submitted information to DOE indicating that a motor that was equivalent to the IEC 100 mm motors—the 160-series T-frame motor—had already been discontinued by motor manufacturers. As a result of this information, coupled with the fact that the relevant industry guidance (MG1–1987) referenced in the prior statutory definition for ''electric motor'' no longer included any technical specifications related to the 160-series T-frame motor, DOE concluded that IEC 100 mm motors were not considered covered ''electric motors'' for purposes of statutory coverage. Therefore, DOE tentatively decided not to treat IEC 100 mm frame size motors as covered electric motors. 61 FR 60440, 60443 (November 27, 1996).

Upon reconsideration and in light of the EISA 2007 amendments to EPCA, which eliminated the previous and more limiting ''electric motor'' definition, DOE proposed as part of the January SNOPR to include both NEMA and IEC frame size motors as covered motors, regardless of whether the equivalent NEMA or IEC frame size had been discontinued. 76 FR 653.

NEEA viewed DOE's proposals for the definitions of ''general purpose electric motor (subtype I)'' and ''general purpose electric motor (subtype II)'' as reasonable. (NEEA, et al., No. 24 at p. 2) Other commenters focused on the proposed inclusion of the note to these definitions and made suggestions on how to characterize U-frame motors. NEMA and ACEEE supported DOE's proposal to include the IEC 100 mm frame size as covered equipment, but otherwise asserted that DOE failed to achieve this goal by the addition of its proposed ''note'' to the subtype I and II definitions. They explained that there were never alternating current motors in the NEMA 160T frame size and, therefore, no NEMA-equivalent to the IEC 100 mm frame size. For this reason, in their view, the added text included in the SNOPR to address the IEC 100 mm frame motor, which generally refers to frame sizes that have already been discontinued, would not cover IEC 100 mm frame motors. Also, NEMA stated that it is unaware of any discontinued T-frame sizes and expressed concern about using a ''note'' in the definitions section because, in the motor industry, a ''note'' to a standard is not viewed as part of the standard itself. (NEMA and ACEEE, No. 25 at pp. 4, 5)

As to the proposed definition for ''general purpose electric motor (subtype II)'' and how it relates to U-frame motors, NEMA and ACEEE also pointed out that the NEMA U-frame was discontinued as a standard frame size when the NEMA T-frame became the standard frame size. NEMA and ACEEE stated that despite the U-frame being directly referenced in the configurations for subtype II motors, the proposed note in the subtype I motor definition would, in their view, imply that motors constructed in a discontinued NEMA U-frame size would be considered a ''general purpose electric motor (subtype I).'' (NEMA and ACEEE, No. 25 at p. 6)

Responding to these comments, DOE has modified its approach. For the subtype I and II definitions, DOE removed the portion of the proposed note regarding discontinued frame sizes. Instead, DOE is adding language to the subtype I and II definitions to include frame sizes that are between two consecutive NEMA frame sizes or their IEC metric equivalents. This language extends coverage to those motors built in accordance with an IEC 100 mm frame. DOE notes that the modification to the subtype I ''note'' also addresses NEMA and ACEEE's concerns regarding U-frame motors and the potential confusion related to them in the context of the subtype I definition.

NEMA and ACEEE also stated that DOE's reference to MG1–2009 in the proposed definition of ''general purpose electric motor (subtype II)'' is incorrect, as dimensions for U-frame motors were not included in MG1–2009. Instead, they suggested that a more appropriate reference for DOE to use is a 1967 edition of a NEMA document entitled, ''NEMA Motor Standards,'' which, according to these commenters, later became known as a ''Condensed MG1.'' (NEMA and ACEEE, No. 25 at p. 6) DOE understands that the industry transitioned from the U-frame motor design to the T-frame motor design after publication of the 1967 edition of ''NEMA Motor Standards'' and that this industry standards document was the last to contain dimensional specifications for U-frame designs. Today's final rule accounts for this situation by adding language referencing NEMA MG1–1967 as part of the subtype II definition in 10 CFR 431.12. Specifically, the amended definition explicitly indicates that those motors built in accordance with the NEMA U-frame dimensions as described in that 1967 document will be treated as subtype II motors.

Additionally, interested parties expressed concern about when manufacturers of IEC 100 mm frame motors would need to comply with the appropriate energy efficiency standards. Given that DOE had previously decided that these motors were not covered, NEMA and ACEEE argued that requiring IEC 100 mm frame motors to comply with standards immediately could have ''serious repercussions on manufacturers and motor users where significant changes in the motor design and size may be required to achieve a sudden increase in efficiency of several NEMA nominal efficiency bands.'' (NEMA and ACEEE, No. 25 at pp. 5–6). Both requested that DOE establish a compliance date that is not less than three years after these motors become covered under 10 CFR 431.12 and that the required efficiency level be equivalent to that for a subtype II motor. Both also cited precedents under EPCA, noting specifically that amendments added by Congress through EPACT 1992 provided 60 months for compliance (42 U.S.C. 6313(b)(1)) and that the EISA 2007 amendments provided three years for compliance (42 U.S.C. 6313(b)) (NEMA and ACEEE, No. 25 at pp. 5–6)

In addition, Grundfos Pumps Co. expressed concern over the timing of enforcing standards for the IEC 100 mm frame size. Grundfos believed that a short grace period or no grace period will harm only foreign manufacturers. It requested a grace period of at least 12 months to minimize these effects. (Grundfos, No. 21 at p. 1).

DOE understands the concerns of motor manufacturers and realizes that a change from DOE's previous views regarding the coverage of these motors could have significant manufacturing redesign and financial impacts on manufacturers and users of such motors. DOE seeks to ensure that these motors satisfy the relevant efficiency standards as expeditiously as possible. Therefore, to mitigate the effects of this transition and to ensure that manufacturers have sufficient time to adjust to this change and certify compliance, DOE is allowing three years from the effective date of today's notice for IEC 100 mm frame series motors (as well as motors built in a frame that is not necessarily a NEMA-equivalent but otherwise covered under EISA 2007) to meet the EISA 2007 standards. The three-year timeline is consistent with the deadline recommended by NEMA and ACEEE and reflects the three years that manufacturers had to comply with energy conservation standards established in EISA 2007. The three-year compliance date also recognizes the change in DOE's previous views regarding 100 mm frame-sized motors. When standards for these 100 mm motors (as well as all other motors built in a frame that is not a direct NEMA-equivalent but is otherwise covered under EISA 2007) become effective, only those motors that also meet the subtype I or II definitions will be subject to the subtype I or subtype II standards, respectively.

Finally, DOE also received comments regarding voltage ratings as it pertains to subtype II motors. NEMA and ACEEE commented that DOE should clarify which voltages apply to this definition by making the language consistent with the subtype I definition. They suggested restating item (vii) of the definition to read ''is a polyphase motor with voltage of not more than 600 volts (other than 230 or 460 volts or *useable on 230 or 460 volts*).'' (NEMA and ACEEE, No. 25 at p. 6) Although the commenters did not offer an explicit reason for their proposed language, DOE has modified the language regarding subtype II voltages to distinguish the standard voltages associated with the definition for subtype I motors from the special voltages that could cause an electric motor to be classified as a subtype II motor. DOE has modified the subtype II definition to clarify that those motors that are not rated for 230 or 460 volts and cannot operate on 230 or 460 volts are subtype II motors because of their voltage rating. (Note that motors that are rated for 230 or 460 volts or can be used on 230 or 460 may also be deemed subtype II based on another characteristic—for example, by being a footless motor).

C. Definition of General Purpose Electric Motor

DOE proposed to amend the definition of ''general purpose motor'' in 10 CFR 431.12 by adding the word ''electric'' in front of the word ''motor'' to clarify that a general purpose motor is a type of electric motor. This proposed change would create consistency between the ''electric motor'' and ''general purpose electric motor (subtype I)'' definitions, the latter of which refers to a ''general purpose motor.'' (See 42 U.S.C. 6311(13)(A)) Additionally, DOE proposed updating the references to NEMA MG1 from NEMA MG1–1993 to the most recent publication, NEMA MG1–2009. Finally, DOE proposed adding text to the end of the definition emphasizing that the various examples of standard operating characteristics and mechanical construction cited as part of the definition were illustrative and not comprehensive. The purpose of the additional text was to reiterate the ''such as those specified'' qualifier used in the references to NEMA MG1–2009 in both the current and proposed ''general purpose electric motor'' definition.

Although DOE is not aware of any other standard operating characteristics and mechanical construction for usual or unusual service conditions, DOE anticipates that there may be now, or in the future, IEC or other standards that may develop such specifications. To address that possibility, DOE proposed to modify its definition to cover those electric motors that are designed in standard ratings and have either: (1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–2009, paragraph 14.2, ''Usual Service Conditions,'' (incorporated by reference, *see* § 431.15) and without restriction to a particular application or type of application; or (2) standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–2009, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, *see* § 431.15) or for a particular type of application, and which can be used in most general purpose applications. 76 FR 665.

The proposed definition also included at the end a brief statement noting that ''[t]hese cited examples of standard

operating characteristics and mechanical construction are for illustrative purposes only.'' 76 FR 665.

In response to this proposal, NEMA and ACEEE raised concerns regarding this final sentence to the proposed definition for ''general purpose electric motor''. NEMA and ACEEE suggested that including this language would create confusion, nullify the current references to NEMA MG1, and invalidate the second part of the definition that lays out the characteristics and construction under unusual service conditions. In their view, the language of the proposed regulatory text appeared to apply only to electric motors designed for unusual service conditions. ACEEE and NEMA also questioned what other examples of ''standard operating characteristics and mechanical construction'' would qualify a motor as a general purpose electric motor. Finally, the commenters stated the added text should be removed from the definition to remove any confusion and ambiguity. (NEMA and ACEEE, No. 25 at p. 7)

DOE has reconsidered its proposed definition for ''general purpose electric motor'' and, in today's final rule, DOE is codifying the definition proposed in the SNOPR without the language noted above. Without that language, the definition remains consistent with previous versions of the definition codified in 10 CFR 431, with the exception of updated references to NEMA MG1. Additionally, DOE believes that this approach will not limit the scope of motors considered as ''general purpose electric motors'' for purposes of satisfying the standards prescribed by EISA 2007. DOE notes, however, that it is removing the proposed text because it is duplicative of the language in the current definition that already notes NEMA MG1 is an example of, but not the only standard for, standard operating characteristics and mechanical construction. DOE does not agree with commenters that the text would have added confusion to the existing definition because the text simply repeated the illustrative nature of the standard operating characteristics and mechanical construction listed in the definition.

Finally, today's rule moves the ''cannot be used in most general purpose applications'' qualifier used in the proposed update to the ''definite purpose motor'' definition to the beginning of the definition. This change does not alter the ''definite purpose motor'' definition as proposed, but clarifies that definite purpose motors cannot be used in most general purpose applications regardless of whether they are designed for unusual service conditions or for use on a particular type of application.

D. Definition of NEMA Design B Motor

In the December 2008 NOPR, DOE proposed a definition for the term ''NEMA Design B, general purpose electric motor'' that was based on the definition of general purpose electric motor provided in paragraph 1.19.1.2, ''Design B,'' of NEMA MG 1–2006 Revision 1, but with three changes. See 73 FR 78235. First, the proposed definition removed the reference to 50 hertz and corresponding performance characteristics because the EISA 2007-prescribed efficiency standards for ''NEMA Design B, general purpose electric motors'' at 42 U.S.C. 6313(b)(2)(D) cover only 60-hertz motors. (See NEMA MG–1 (2006) Table 12–11) Second, it limited the maximum rated slip at rated load (i.e., the amount of physical force a motor is designed to output) to less than 5 percent for motors with fewer than 10 poles, because the EISA 2007-prescribed energy conservation standards only cover 2-, 4-, 6-, and 8-pole motors and, according to the footnote to MG1–2006 paragraph 1.19.1.2, motors with 10 or more poles are permitted to have slip slightly greater than 5 percent. Third, it corrected the referenced 60-hertz locked-rotor current paragraph from 12.35.3 to 12.35.1, because there is no paragraph 12.35.3 in MG1–2006 and the table under paragraph 12.35.1 contains the maximum currents associated with a locked rotor.

In response to comments received regarding the 2008 NOPR, the January 2011 SNOPR incorporated several changes to the initially proposed ''NEMA Design B motor'' definition. In the SNOPR, DOE proposed to adopt a broad definition of a NEMA Design B motor to include provisions regarding 50 hertz motors. Furthermore, DOE proposed to update the reference to ''NEMA MG1–2006'' to reflect the 2009 version of this document (''NEMA MG1–2009''). Finally, DOE proposed eliminating references to NEMA Design B motors to remove any confusion that these motors are solely a subpart of general purpose electric motors because a NEMA Design B motor may be configured in a manner that falls outside of the general purpose electric motor category. 76 FR 653–54. DOE indicated that it is inaccurate and inconsistent with industry practice to narrowly categorize NEMA Design B motors as only a subset of general purpose electric motor (subtype I). Instead, in DOE's view, a NEMA Design B motor can also fall under the category of general purpose electric motor (subtype II), such as a footless NEMA Design B motor, or other type of electric motor. 76 FR 654.

NEMA and ACEEE expressed concerns over the proposed changes for NEMA Design B motors. Both pointed out that the term ''NEMA Design B'' has been included as part of the DOE's definition of ''electric motor'' (now as a part of the definition for ''general purpose electric motor (subtype I) and, by extension, the definition of ''general purpose electric motor (subtype II)'') since 10 CFR part 431 was first codified in 1999. They stated that it was not separately defined then, and there is no need to do so now. Instead, they indicated that the reference to NEMA MG1 for the meaning of ''Design B'' in the proposed definition of ''general purpose electric motor (subtype I)'' is sufficient. (NEMA and ACEEE, No. 25 at p. 8) NEMA and ACEEE also questioned why DOE did not incorporate a definition for NEMA Design A, NEMA Design C, or IEC Design N (which they stated is the equivalent to NEMA Design B) motors. (NEMA and ACEEE, No. 25 at p. 8) In its submitted comment, NEEA offered no explicit feedback on DOE's proposed definition for NEMA Design B motors, but instead deferred to electric motor industry experts for comments on the necessity for, and the use of, the ''NEMA Design B'' designation as a further sub-category. (NEEA, et al., No. 24 at p. 2)

In addition to the above comments, NEMA and ACEEE stated that EISA 2007 categorized ''electric motors'' into two groups, general purpose electric motors subtypes I and II. NEMA and ACEEE explained that they believed the standards in section 313(b)(2) of EISA 2007 are for four particular groupings of ''electric motors'' based on those two classifications. They added that the terms ''NEMA Design B'' and ''General Purpose'' are qualifiers used to identify particular characteristics of one such grouping of ''electric motor'' selected from these two classifications. (NEMA and ACEEE, No. 25 at p. 8) Furthermore, in response to the proposed definition, NEMA and ACEEE argued that the reasoning for proposing a definition of ''NEMA Design B motor'' in 10 CFR 431.12 appeared to be related, in their view, to DOE incorrectly changing the type of motors identified under section 313(b)(2) of EISA 2007 as ''NEMA Design B, General Purpose Electric Motors'' to that of a ''NEMA Design B motor that is a general purpose electric motor'' in 10 CFR 431.25(d). They believed that had DOE kept the original EISA 2007 language, it should be clear that no definition of ''NEMA Design B motor'' is required in part 431. With the

original language, they argued, it is clear that NEMA Design B is simply a qualifier for the broader term ''electric motor.'' They added that because this term, NEMA Design B, was not defined previously but was understood, it remains unnecessary to define it now. Finally, NEMA and ACEEE reiterated the connection between NEMA Design B and IEC Design N motors, and stated that the standards prescribed by section 313(b)(2)(D) of EISA 2007 should apply to both motor designs, but only those that also meet the definition of either subtype I or II motors. (NEMA and ACEEE, No. 25 at pp. 7–9)

While DOE appreciates the concerns raised by NEMA and ACEEE, DOE is broadly defining the term ''NEMA Design B motor'' to preserve its flexibility to regulate electric motors covered under EPCA. Additionally, DOE is codifying only the definition of ''NEMA Design B motor'' (rather than NEMA Design A, B, C and IEC Design N) because the most recent industry standard defining this term (NEMA MG1–2009) appears to contain typographical errors—namely, erroneous table references related to performance characteristics that NEMA Design B motors must meet (i.e., locked-rotor current). Therefore, DOE wishes to clarify its interpretation of the term ''NEMA Design B'' and is codifying that term in today's rule. For ''NEMA Design A'' and ''IEC Design N'' motors, DOE believes that the industry standards referenced in its definitions of subtype I and II motors do not contain any errors. Accordingly, referring the reader to the specific industry standards that define these terms should be sufficient and require no further clarification. Consequently, DOE is not inclined to codify these definitions at this time. However, for ''NEMA Design C,'' since the SNOPR's publication, DOE has become aware of a typographical error in MG1–2009's definition of this term. Although DOE is not defining this term today, in large part because such a definition had not been proposed, DOE may clarify its interpretation of this term in the future.

As discussed previously, DOE disagrees with NEMA and ACEEE that EISA 2007 narrowed the definition of ''electric motors'' to only subtype I and subtype II motors. DOE also disagrees that changing the description for the group of motors described as ''NEMA Design B, general purpose electric motors'' in EISA 2007 to a ''NEMA Design B motor that is a general purpose electric motor'' is confusing or problematic. The proposed modification to this language was designed to clarify the terminology without changing the meaning and to establish consistency with other covered electric motors.

Although DOE is currently taking a broad approach in defining ''NEMA Design B'' motors, these motors are only required to meet energy conservation standards to the extent to which the energy conservation standards at 10 CFR 431.25 apply. In other words, only those NEMA Design B motors that fall into either the subtype I or subtype II categories are required to meet the applicable subtype I or subtype II energy efficiency levels prescribed by EISA 2007. Those NEMA Design B motors that fall outside of subtype I or II are not required to satisfy specific energy conservation standards at this time. For these reasons, DOE is clarifying that a NEMA Design B motor that is configured as a general purpose electric motor (subtype I or II) must meet the standards prescribed at 10 CFR 431.25(d). See Section F. ''Energy Conservation Standards for Electric Motors,'' infra. This approach also addresses the concern that DOE's proposal attempted to regulate 50 Hz motors. Because general purpose electric motors (subtypes I and II) are 60 Hz motors by definition, 60 Hz motors are, therefore, the only motors that are currently required to meet energy conservation standards in 10 CFR 431.25.

E. Fire Pump Motors Definition

EPCA section 342(b), as amended by section 313(b)(1)(B) of EISA 2007, prescribes energy efficiency standards for fire pump motors, which were subsequently codified at 10 CFR 431.25(d). 74 FR 12072. However, EPCA, as amended by EISA 2007, does not define the term ''fire pump motor.'' DOE proposed in its December 2008 NOPR to define ''fire pump motor'' as ''a Design B polyphase motor, as defined in NEMA MG1–2006, rated 500 horsepower (373 kW) or less, 600 volts or less, and that is intended for use in accordance with the National Fire Protection Association (NFPA) Standard 20–2007, 'Standard for the Installation of Stationary Pumps for Fire Protection.'" 73 FR 78235. DOE based this proposed definition primarily on the scope of the Underwriters Laboratories (UL) Standard 1004A–2001, ''Fire Pump Motors,'' and NFPA Standard 20–2007.

DOE's January 2011 SNOPR raised the possibility of modifying the proposed ''fire pump motor'' definition from the December NOPR by adding a publication date for the cited NFPA standard, making a correction to the title of the relevant NFPA standard, and adding a citation to UL Standard 1004–5 (2008). (This UL standard is the latest version to address fire pump motors.) This revised proposal would define a fire pump motor as an electric motor that is required to meet the performance and construction requirements set forth by NFPA Standard 20–2010, section 9.5, and UL Standard 1004–5 (2008). Based on its understanding of fire pump motors, DOE does not believe that these motors are necessarily a subset of general purpose electric motors (as defined in the January 2011 SNOPR). With this understanding, DOE, consistent with the statute, proposed that all fire pump motors, irrespective of whether they meet the design constraints of subtype I motors, would each be subject to the same efficiency level—i.e., the more lenient standards afforded to subtype II motors. 76 FR 654. (See also 42 U.S.C. 6313(b)(2)(B))

Regarding the SNOPR, NEMA and ACEEE raised concerns over the definition of ''fire pump motor.'' In their view, EISA 2007 defines only two types of motors: ''general purpose electric motors (subtype I)'' and ''general purpose electric motors (subtype II).'' Furthermore, they believe that EISA 2007 inadvertently omitted the word ''electric'' from the description of ''fire pump motors'' in section 313(b)(2)(B). Although they state that there is no need for a fire pump motor definition, NEMA and ACEEE contend that these motors should only consist of what they deem ''electric motors'' (i.e., subtype I and II motors) that are used with fire pumps. (NEMA and ACEEE, No. 25 at pp. 10–11)

Additionally, NEMA and ACEEE expressed concern over the inclusion of UL 1004–5 in the definition because UL 1004–5 states that the performance and construction standards for fire pump motors are given in other standards, such as NEMA MG1. Also, UL 1004–5 is not considered a performance and construction standard in the motor industry. As such, the definition of ''fire pump motor'' should not include it. Furthermore, they commented that the references to NFPA 20 and UL 1004–5 do not recognize the use of IEC motors with fire pumps and DOE should ensure that, if it chooses to maintain a definition for ''fire pump motor,'' it should cover those motors. They added that, if DOE opts to define ''fire pump motor'' without removing the UL 1004–5 reference from the proposed definition, DOE should add UL 1004–5 to the industry standards incorporated by reference and included at 10 CFR 431.14 and 10 CFR 431.15. (NEMA and ACEEE, No. 25 at p. 11) NEMA and ACEEE asserted that if UL 1004–5 is not dropped from the definition, then UL

674, which relates to explosion-proof motors (a specific characteristic covered under the subtype I motor definition), should also be included. Furthermore, to harmonize with other international protocols related to explosion-proof motors, DOE would need to include CSA C22.2 No. 145 and the appropriate IEC protocols as part of the referenced industry provisions in DOE's regulations.

Finally, NEMA and ACEEE made specific recommendations about DOE's definitions as they relate to ''fire pump motor.'' First, they stated that if DOE believes that fire pump motors should be a separate classification, an ''electric motor'' should be defined as ''a machine that converts electrical power into rotational mechanical power and is configured as a general purpose electric motor (subtype I) or general purpose electric motor (subtype II), including, but not limited to, fire pump electric motors.'' (NEMA and ACEEE, No. 25 at pp. 3 and 4) Second, NEMA and ACEEE recommended that ''fire pump motor'' should be changed to ''fire pump electric motor'' and suggested that a fire pump electric motor be defined as an electric motor that meets the requirements of sections 9.5.1.1 and 9.5.1.7 of the National Fire Protection Association (NFPA) Standard 20–2010, ''Standard for the Installation of Stationary Pumps for Fire Protection.'' NEMA and ACEEE specifically cited sections 9.5.1.1 and 9.5.1.7 of NFPA 20–2010 rather than 9.5 as a whole because these are the only provisions of that section that they believe apply to the fire pump electric motors that should be subject to energy conservation standards (i.e., those that are also subtype I or II motors). (NEMA and ACEEE, No. 25 at pp. 9–11) In other words, according to NEMA and ACEEE, if an electric motor meets the definition of subtype I or subtype II motor, it only has to meet the requirements of provisions 9.5.1.1 and 9.5.1.7 to be deemed a ''fire pump electric motor'' as DOE should define the term. The other sections of 9.5 of NFPA 20–2010 provide performance specifications that must be met by electric motors that fall outside the scope of subtype I and II motors (e.g., direct-current, universal, or single-phase motors) to be deemed fire pump motors.

As discussed in section III.A, DOE disagrees with NEMA and ACEEE that EISA 2007 narrowed the definition of ''electric motors'' to address only subtype I and subtype II motors. However, DOE agrees with NEMA and ACEEE that ''fire pump motors'' should be defined within the context of the broader term ''electric motors.'' DOE also agrees that IEC-equivalent motors should be included within the scope of the definition of ''fire pump electric motor,'' although NFPA 20 and UL 1004–5 do not explicitly recognize the use of IEC motors with fire pumps. DOE believes this change will help prevent any circumvention of energy conservation standards and will be consistent with the definitions for other motor categories.

DOE also agrees with commenters that referencing UL 1004–5 in the ''fire pump electric motor'' definition is unnecessary, particularly given its potential for confusion regarding performance and construction. Accordingly, DOE has dropped this reference from the final definition.

Finally, DOE disagrees with narrowing the cited sections of NFPA from 9.5 to reference only 9.5.1.1 and 9.5.1.7. As stated earlier in the context of NEMA Design B motors, DOE does not wish to limit the scope of motors for which it may establish energy conservation standards and is opting to take a broader approach that will help preserve its flexibility in regulating motors. Therefore, DOE is referencing all of section 9.5 in its definition of fire pump electric motor, including those sections that apply to motors that are not currently required to meet energy conservation standards.[8]

F. Fire Pump Motor Coverage

Section 313(b)(1)(B) of EISA 2007 amended EPCA section 342(b) by requiring that fire pump motors meet the efficiency levels prescribed in NEMA MG 1–2006 Table 12–11. That provision required fire pump motors manufactured (alone or as a component of another piece of equipment) to have a nominal full-load efficiency that is not less than as defined in NEMA MG–1 (2006) Table 12–11. (42 U.S.C. 6313(b)(2)(B)) The provision also provided manufacturers with a three-year grace period starting from EISA 2007's enactment before these motors would need to comply with these efficiency levels. Consequently, manufacturers were required to comply with these levels starting on December 19, 2010.

On March 23, 2009, DOE formally codified the MG1–2006 efficiency levels into 10 CFR part 431. 74 FR 12072. These efficiency values cover motors with a range from 1 through 500 horsepower and address motors built in 2-pole, 4-pole, 6-pole, and 8-pole configurations. Both open and enclosed fire pump motors are also addressed by this table. 74 FR 12061, 12072.

In response to the December 2008 NOPR, in which DOE did not explicitly define a horsepower range, several interested parties sought clarity over whether the covered range of horsepower ratings for fire pump motors was from 1- to 200-horsepower or 1- to 500-horsepower. (GE, Public Meeting Transcript, No. 8 at p. 147; WEG, Public Meeting Transcript, No. 8 at pp. 148–49; NEMA, No. 12 at pp. 8–9; NEEA, No. 10 at p. 2) Furthermore, Baldor noted that an excerpt of the language under EPCA section 342(b), as amended by section 313(b)(1)(B) of EISA 2007, mentions a 1- to 200-horsepower range for subtype I motors. Baldor stated that whether a fire pump motor covered under this EISA 2007 amendment—codified at 42 U.S.C. 6313(b)(2)(B)—was limited to the same 1- to 200-horsepower range as a subtype I motor was a matter of statutory interpretation. (Baldor, Public Meeting Transcript, No. 8 at pp. 112–13, 145, 149–50)

EISA 2007 prescribes energy conservation standards for general purpose electric motors (subtype I) rated from 1 through 200-horsepower. (42 U.S.C. 6313(b)(2)(A)) EISA 2007 also separately prescribes standards for fire pump motors without specifying any particular horsepower range. (See 42 U.S.C. 6313(b)(2)(B)) In DOE's view, with the inclusion of this separate fire pump motor section, Congress excluded fire pump motors from being treated solely as subtype I motors. Instead, fire pump motors, as a separate motor category under the statute, must satisfy the efficiency levels laid out in NEMA Standard MG1–2006, Table 12–11, which covers 1- through 500-horsepower motors. (42 U.S.C. 6313(b)(2)(B)) Consistent with this view, DOE proposed in its SNOPR that fire pump motor energy conservation standards apply to fire pump motors rated from 1- through 500-horsepower. 76 FR 655. DOE continues to hold the view that the energy conservation standards promulgated in the March 23, 2009, technical amendment are consistent with the manner in which EISA 2007 categorized these motors and prescribed their specific efficiency levels. (See 42 U.S.C. 6313(b)(1)(B)) Accordingly, DOE believes that EISA 2007 established fire pump motors as an individual class of electric motors separate from subtype I motors.

NEMA and ACEEE agreed with DOE's interpretation of EISA 2007 that the

[8] Although DOE is adopting a broad definition of ''fire pump electric motor,'' DOE notes that only fire pump electric motors that are general purpose electric motors (subtypes I or II) are currently required to meet energy conservation standards. These motors must satisfy those levels that are equivalent to those prescribed for subtype II motors (i.e., NEMA MG1–2009 Table 12–11 levels). See 42 U.S.C. 6313(b)(2)(B)–(C).

sections establishing standards for ''general purpose electric motors (subtype I)'' and ''fire pump motors'' (sections 313(b)(2)(A) and 313(b)(2)(B), respectively), do not preclude standards for ''fire pump motors'' rated higher than 200 horsepower but less than or equal to 500 horsepower. They noted that if a definition for ''fire pump motors'' is established and includes a reference to 9.5.1.1 of NFPA 20, which stipulates that fire pump motors must be NEMA Design B, the higher horsepower fire pump motors will be covered by the standards established for NEMA Design B motors (section 313(b)(2)(D) of EISA 2007) falling within the range from 200 through 500 horsepower. (NEMA and ACEEE, No. 25 at p. 12)

Finally, NEMA and ACEEE stated that the provisions in 10 CFR 431.25 should be modified and suggested that DOE explicitly state that the standards in 10 CFR 431.25 that apply to both subtypes of general purpose electric motors should exclude ''fire pump motors'' and refer the reader to the ''fire pump motors'' paragraph. Additionally, they stated that the paragraph for ''fire pump motors,'' currently in 10 CFR 431.25(d), should only include ratings up to 200 horsepower. They claim that those higher horsepower ''fire pump motors'' can be captured implicitly by the standards established for NEMA Design B motors currently referenced in 10 CFR 431.25(f). (NEMA and ACEEE, No. 25 at pp. 13–15)

DOE appreciates the comments of interested parties and, in today's final rule, it has incorporated a number of these suggestions. As stated in the previous section, DOE believes that a ''fire pump electric motor'' is a distinct category of ''electric motor'' that includes motors that are not necessarily ''general purpose electric motor (subtype I)'' or ''general purpose electric motor (subtype II).'' However, as described earlier, today's final rule clarifies that DOE views the relevant standards to apply only to those fire pump electric motors that are also subtype I or subtype II motors. DOE is adopting this more limited approach in light of the fact that the vast majority of fire pump motors fall into either the subtype I or II category. Moreover, without this initial limitation, the fire pump motor standards would apply to all motor types that may serve as fire pump motors, including several motor types that do not currently have energy conservation standards—e.g., direct current motors, universal motors, and single-phase motors. This fact is significant because DOE's current test procedures are not designed to measure the energy efficiency of such motor types. As a result, although the standards set by Congress do not appear to contemplate a restriction on which fire pump electric motors need to satisfy the prescribed standards, this limitation is necessary for the short-term until a suitable procedure can be developed to measure the efficiency of these other types of electric motors.

In the future, DOE may consider whether separate standards for these types of motors would be technologically feasible and economically justified. Until it reaches a determination on this issue and promulgates an appropriate test procedure for such motors, DOE is applying the fire pump motors standards only to those motors that fall within subtypes I or II. Therefore, at this time, DOE is codifying under 10 CFR 431.25(b) that only those ''fire pump electric motors'' that also satisfy the subtype I or subtype II definitions are required to meet specific energy conservation standards. These motors would need to satisfy the standards set out in the EISA 2007 amendments—i.e. the efficiency levels found in Table 12–11 of MG1–2006.

Furthermore, DOE is also modifying the language in 10 CFR 431.25 to more precisely state which motors are covered by the standards prescribed in each section. DOE notes that it is not relying on higher horsepower ''fire pump electric motors'' to be implicitly covered under the standards for NEMA Design B motors and is continuing to provide explicit language under a separate ''fire pump electric motors'' subsection (10 CFR 431.25(b)). These motors are required to meet energy conservation standards equivalent to Table 12–11, as prescribed by EISA 2007.

G. Energy Conservation Standards for Electric Motors

Interested parties also requested that DOE clarify several issues related to the scope of coverage and the efficiency levels in the tables of electric motor efficiency standards in 10 CFR 431.25.

First, under 10 CFR 431.25(a), electric motor manufacturers must comply with the energy efficiency levels that were prescribed by EPACT 1992. That provision, however, specifies no sunset date. Section 313(b) of EISA 2007 amended EPCA by prescribing energy conservation standards for subtype I and subtype II motors that manufacturers needed to meet for covered motors manufactured or imported on or after December 19, 2010. (42 U.S.C. 6313(b)(2)) These standards, and the compliance date, were subsequently codified at 10 CFR 431.25(c) and (e), respectively. Because the standards set by section 431.25(a), which applied to subtype I motors, have been superseded by the EISA 2007 levels but have no specified end date, NEMA argued that this situation was potentially confusing for manufacturers in deciding which provisions apply to their subtype I motors—the EPACT 1992 levels or the EISA 2007 levels. Consequently, NEMA requested guidance on the proper energy conservation standards for subtype I motors. (NEMA, No. 12 at p. 9) DOE addressed this issue in the 2011 SNOPR by proposing to delete 10 CFR 431.25(a) to clarify that the standards in this section no longer applied.

In view of the above statutory history and relationship of EPCA to EPACT 1992 and EISA 2007, it is DOE's view that an electric motor covered under 10 CFR 431.25(a) is a general purpose electric motor (subtype I), which is now required to meet the EISA 2007 energy efficiency levels. In other words, a subtype I motor—previously known simply as an ''electric motor''—that was manufactured or imported (alone or as a component of another piece of equipment) before December 19, 2010, is subject to the EPACT 1992 energy efficiency standards; a subtype I motor that was manufactured or imported (alone or as a component of another piece of equipment) on or after December 19, 2010, is subject to the EISA 2007 energy efficiency standards.

In response to these proposed changes, NEMA and ACEEE expressed concern over the removal of the table of efficiency standards that applied to motors manufactured or imported prior to December 19, 2010, from 10 CFR Part 431. They commented that many such motors manufactured prior to December 19, 2010, still remain in commerce and are certified to the efficiency levels in place at that time. They argued that the standards codified on March 23, 2009, should remain in place for a reasonable amount of time, so that these motors may lawfully remain in commerce. (NEMA and ACEEE, No. 25 at p. 13)

Today's rule conforms with the 2011 SNOPR regarding the removal of the EPACT 1992 energy efficiency levels from the CFR. While DOE understands stakeholder desire to verify that motors manufactured or imported prior to December 19, 2010, meet EPACT 1992 levels, DOE notes that the removal of the current table of standards located at 10 CFR 431.25(a) does not mean that electric motors manufactured or imported prior to December 19, 2010, that conform to EPACT 1992 levels and that are still in commerce violate DOE energy conservation standards. Motors manufactured or imported prior to

December 19, 2010, would need to satisfy the EPACT 1992 levels. To the extent that DOE pursues a compliance violation regarding pre-December 19, 2010 motors, those motors would be evaluated against the EPACT 1992 efficiency levels.

In addition, removing the existing tables in 10 CFR 431.25(a) that detail the previous efficiency levels that were required under EPACT 1992 will reduce potential confusion. Specifically, the EISA 2007 standards have displaced the older standards that Congress established in EPACT 1992 and the regulations should be updated to reflect that fact. Removal of the previous standards will help clarify the requirements that manufacturers must now satisfy by reducing the complexity of the regulatory text.

Second, in the December 2008 NOPR, DOE did not explicitly state that a NEMA Design B general purpose electric motor that otherwise meets the definition of a subtype I motor is subject to the EISA 2007 energy conservation standards that are codified at 10 CFR 431.25(c). NEMA noted that, given the proposed definitions and structure of 10 CFR 431.25, NEMA Design B general purpose electric motors rated from 1 horsepower up to and including 200 horsepower, would appear to remain at the same efficiency levels established by EPACT 1992 (codified at 10 CFR 431.25(a)) rather than the higher efficiency levels prescribed by EISA 2007.

To clarify the scope of energy conservation standards for NEMA Design B motors from 1 through 200 horsepower, DOE proposed two modifications of 10 CFR 431.25 in the 2011 SNOPR. Because subtype I motors include certain NEMA Design B motors, DOE proposed to specify that NEMA Design B motors rated 1 through 200 horsepower that are also subtype I motors are subject to the energy conservation standards in 10 CFR 431.25(c) (i.e., those for subtype I motors). In addition, since subtype II motors include certain NEMA Design B motors (e.g., footless motors), DOE proposed to specify that NEMA Design B motors rated 1 through 200 horsepower that are also subtype II motors are subject to energy conservation standards in 10 CFR 431.25(e) (i.e., those for subtype II motors). 76 FR 655.

Regarding NEMA Design B motors from 200 through 500 horsepower, EISA 2007 also established energy conservation standards for ''NEMA Design B, general purpose electric motors'' rated greater than 200 horsepower but less than or equal to 500 horsepower, which were later codified into the current version of 10 CFR 431.25(f). In response to the 2008 NOPR, NEMA asserted that the motor industry recognizes a ''NEMA Design B, general purpose electric motor'' as a specific group of motors that fit the definition of either ''electric motor'' from EPACT 1992 or ''general purpose electric motor (subtype I)'' from EISA 2007.

In the January 2011 SNOPR, DOE noted that EISA 2007 did not define the terms ''NEMA Design B, general purpose electric motor,'' ''NEMA Design B motor,'' or ''general purpose electric motor.'' In the absence of any statutory definition and the statute's apparent reliance on the agency's then-existing definition of ''general purpose motor,'' DOE views the regulatory definition of ''general purpose motor'' that was in place on EISA 2007's enactment date as the proper definition for ''general purpose electric motor'' as used in the term ''NEMA Design B, general purpose electric motor.'' The ''general purpose motor'' definition in place at the time of EISA 2007's enactment is the same as the ''general purpose electric motor'' definition proposed in the SNOPR, with minor differences for standards updates. DOE proposed that this definition, when read in conjunction with the definition of ''NEMA Design B'' proposed in the 2011 SNOPR, would adequately identify the motors regulated under 10 CFR 431.25(f). DOE realized that this interpretation could potentially include NEMA Design B motors that are general purpose electric motors that do not meet the proposed definition of ''general purpose electric motor (subtype I)'' or ''general purpose electric motor (subtype II).'' 76 FR 655. It is DOE's understanding, however, that there are few, if any, NEMA Design B motors that would be neither a subtype I nor a subtype II general purpose electric motor. 76 FR 655. Such motors that do not fall within one of the subtypes are not currently subject to energy conservation standards.

Third, at the time of the December 2008 NOPR, the energy efficiency standards tables contained in 10 CFR 431.25(c)–(f) listed motor ratings in horsepower, but not equivalent kilowatts. NEMA requested, in comments to that notice, that DOE include kilowatt power ratings in the then-newly codified tables that detail the EISA 2007 efficiency standards. (NEMA, No. 12 at p. 9) Without this change, NEMA raised concerns that metric-rated motors would not be covered. To ensure that the tables under 10 CFR 431.25(c)–(f) apply to metric-rated, kilowatt-equivalent motors, DOE subsequently proposed the possibility of amending the tables to provide an equivalent kilowatt rating for each horsepower. 76 FR 656.

Although the EISA 2007 definitions for subtype I and subtype II motors do not specifically mention motors rated in kilowatts, which is how IEC motors are rated, DOE believes that the statute covers IEC motors that are identical or equivalent to motors included in the statutory definitions. DOE understands that IEC motors generally perform identical functions as EISA 2007-covered electric motors. Comparable motors of both types provide virtually identical amounts of rotational mechanical power, and generally operate or provide power for the same pieces of machinery or equipment. A given industrial central air conditioner, for example, could operate with either an IEC or NEMA motor with little or no effect on performance. Providing equivalent kilowatt/horsepower ratings would be consistent with the already-codified EPACT 1992 levels and clarify their applicability. DOE is maintaining this approach for today's final rule and has codified kilowatt equivalents to horsepower ratings for each table of energy conservation standards in 10 CFR 431.25.

Finally, in the SNOPR, DOE proposed to clarify in 10 CFR 431.11, Purpose and scope, that the electric motors covered under subpart B are not small electric motors. DOE believes that this clarification is necessary because electric motors (covered under 10 CFR part 431, subpart B) and small electric motors (covered under 10 CFR part 431, subpart X) are separate and unique covered equipment subject to different regulatory requirements. DOE received no comments regarding this topic and is maintaining this proposed approach in today's final rule.

H. International Electrotechnical Commission Standards Incorporated by Reference

After EISA 2007 removed the definition of electric motor under 42 U.S.C. 6311(13), DOE subsequently proposed in the December 2008 NOPR to remove the corresponding test protocols incorporated by reference under 10 CFR 431.15. These protocols helped clarify critical elements in the previous electric motor definition. 73 FR 78227. These protocols included IEC Standards 60034–1 (1996), 60050–411 (1996), 60072–1 (1991), and 60034–12 (1980). Removal of these references was necessary in order to account for the statutory changes introduced by the removal of the ''electric motor'' definition that had previously been in place as part of EPCA.

In response to the December 2008 NOPR, NEMA commented that when DOE adopted the content of EPACT 1992 into 10 CFR part 431, it recognized the necessity of including for coverage purposes those equivalent motors designed in accordance with IEC standards that could be used in the same applications as motors designed in accordance with the NEMA MG1 standards. NEMA asserted that although the IEC standards do not particularly identify ''general purpose motors,'' those motors built according to IEC specifications can be used interchangeably with NEMA motors in most general purpose applications. Because of this fact, NEMA argued that the applicable IEC standards should be retained in 10 CFR part 431, and that motors constructed in accordance with those standards in metric-equivalent ratings should be considered as covered equipment under 10 CFR part 431. (NEMA, No. 10 at p. 10)

In the January 2011 SNOPR, DOE explained that it previously took such an approach when addressing IEC metric motors in the October 1999 electric motor test procedure final rule because of the interchangeability between IEC motors that are identical or equivalent to motors constructed in accordance with NEMA MG1. See 64 FR 54142–43 (October 5, 1999). The inclusion of parenthetical references to the IEC standards in the codified definition of ''electric motor'' under 10 CFR 431.2 (2000) clarified the applicability and coverage of IEC (i.e., metric-equivalent) electric motors. For example, under the EPACT 1992 definition of ''electric motor,'' a motor had to be ''continuous rated.'' DOE later clarified ''continuous rated'' in 10 CFR 431.2 (2000) to mean ''is rated for continuous duty (MG1) operation, or is rated duty type S1 (IEC).'' Although the statutory definition did not explicitly mention IEC motors, DOE had previously proposed that the term ''continuous rated'' apply to those electric motors that are equivalent to the ''continuous duty operation'' rating denoted by the parenthetical ''MG1'' or the equivalent IEC duty type ''S1.'' See 61 FR 60442. DOE later codified this approach at 10 CFR 431.2. 64 FR 54142 (October 5, 1999).

DOE believes that EISA 2007 provides the same breadth of coverage as EPACT 1992 did over IEC motors that are identical or equivalent to electric motors built in accordance with MG1. In the SNOPR, DOE proposed revised definitions for ''general purpose electric motor (subtype I)'' and ''general purpose electric motor (subtype II)'' that incorporated IEC-equivalent motors. Thus, in the SNOPR, DOE proposed to retain the IEC references in 10 CFR 431.15. In addition, DOE proposed to adopt the updated versions of two of the IEC standards, IEC Standards 60034–1 and 60034–12, to the 2004 and 2007 versions, respectively. 76 FR 656.

NEMA also noted in its comments to the December 2008 NOPR that a source to obtain IEC standards does not appear in 10 CFR 431.15(d). (NEMA, No. 10 at p. 10) In today's rule and in response to NEMA's comment, DOE reorganizes and updates 10 CFR 431.15, as it proposed in the SNOPR, to include each IEC standard incorporated by reference with corresponding updated information about how to obtain copies of these documents.

I. References to Various Industry Standards

DOE noted in the SNOPR that the current version of 10 CFR part 431 references several outdated standards, such as NEMA MG1–1993, IEEE Standard 112–1996 (Test Method B), and CSA C390–93 (Test Method 1). In the SNOPR, DOE proposed to update those references throughout 10 CFR part 431 to be consistent with the current, industry standards and test procedures—i.e., NEMA MG1–2009, IEEE Standard 112–2004 (Test Methods A and B), IEEE Standard 114–2001, CSA C390–10, CSA C747–09, IEC 60034–1 (2010), IEC 60050–411 (1996), IEC 60072–1 (1991), and IEC 60034–12 (2007) . 76 FR 656, 666, and 674. Additionally, after reviewing these updated protocols, DOE indicated that the exceptions to IEEE Standard 112–1996 (Test Method B) contained in paragraph (2) of appendix B to subpart B, ''2. Test Procedures,'' which were intended to clarify steps of the test procedure and various values for constants and equations, and to provide additional context where needed, are incorporated within the updated version of IEEE Standard 112–2004 Test Method B. 76 FR 656. DOE sought comment on whether this assessment of the updated test method was accurate and if the proposed procedure would adversely affect the measured losses and efficiency determined for an electric motor.

In the December 2008 NOPR, DOE stated that it had examined the current protocols from IEEE, CSA, and IEC. The agency concluded after this review that the proposed updates are consistent with the previous methodologies and will have neither an adverse effect on the measurement of losses or the determination of efficiency. DOE proposed adopting the IEEE test methods because: (1) Each represents an approach that is consistent with the existing test methods for electric motors, which have been in effect without issue since November 1999 as part of 10 CFR part 431; (2) they are the most current versions in use by industry and have been periodically updated to reflect the best approaches for measuring and determining the efficiency of electric motors (including small electric motors); and (3) they will, in DOE's view, provide accurate and repeatable measurements because they have tightly defined tolerances, provide necessary test equipment calibration specifications, and contain methods and procedures developed by electric motor manufacturers to fairly assess the performance characteristics of their products. 73 FR 78223.

NEMA and ACEEE had several comments in response to the SNOPR. First, they commented that the IEC standards proposed for inclusion in 10 CFR 431.15(e)(2)(ii)–(vi) that define the metric-designs equivalent to the covered NEMA motors should be updated to the most recent versions. (NEMA and ACEEE, No. 25 at p. 15) In particular, references to International Electrotechnical Commission Standard 60034–1 (1996*), Rotating Electrical Machines, Part 1: Rating and Performance* should be updated to the 2010 version. DOE agrees with this suggestion and, as with its other efforts at updating references to the test procedures, will update these IEC references.

Second, NEMA and ACEEE noted that the newest version of CSA C390, CSA C390–10, is no longer technically equivalent to IEEE Standard 112–2004 (Test Method B) and asserted that the preferred test standard in the U.S. should remain IEEE Standard 112–2004 (Test Method B). However, they also recommended that DOE examine the differences between IEEE Standard 112–2004 (Test Method B) and CSA C390–10 to determine if the CSA standard should be updated to reference CSA C390–10 (previously CSA C390–93 (Test Method 1)) and whether this more recent CSA standard would be permissible to use when determining motor efficiency. (NEMA and ACEEE, No. 25 at p. 15)

Advanced Energy supported DOE's proposal to incorporate the updated versions of the referenced standards in 10 CFR part 431. It also concurred with NEMA and ACEEE that there are differences between IEEE Standard 112 Test Method B and CSA C390–10, the most significant of these differences being how the magnetic core losses are determined under these protocols. Magnetic core losses are losses that

manifest themselves as heat in the steel components of an electric motor. These losses are important factors because they, along with I^2R (i.e., resistive) losses, comprise the most significant inefficiencies in an electric motor.[9] With respect to how magnetic core losses are determined, Advanced Energy explained that CSA C390–10 is more closely aligned with IEC 60034–2–1 '' Rotating Electrical Machines—Part 2–1: Standard Methods for Determining Losses and Efficiency from Tests'' than IEEE Standard 112–2004. However, Advanced Energy did not believe that the differences between IEEE Standard 112–2004 (Test Method B) and CSA C390–10 significantly affect the measured efficiency numbers, based on a number of studies comparing the efficiency differences between IEEE Standard 112–2004 (Test Method B), IEC 60034–2–1, and CSA C390–10.

In support of that view, Advanced Energy cited data from LTEE Hydro-Quebec in Canada, which found during testing a maximum difference of 0.13 percent efficiency points among the three standards. A University of Nottingham test of five motors obtained a maximum difference of 0.1 percent efficiency points between IEEE Standard 112–2004 (Test Method B) efficiency and IEC 60034–2–1. From its own tests, Advanced Energy concluded that differences between all three standards would result in full-load efficiency values that differed by less than 0.2 percentage points. Advanced Energy did this by providing two sets of test results. The first demonstrated that the same motor tested using IEC 60034–2–1 and CSA C390–10 would show no difference in full-load efficiency and the second demonstrated that the difference between IEC 60034–2–1 and IEEE Standard 112–2004 (Test Method B) would result in full-load efficiency values that differed by less than 0.2 percentage points. Therefore, Advanced Energy argued that because these data showed that IEC 60034–2–1 was equivalent to CSA C390–10, the data demonstrated that the difference between CSA C390–10 and IEEE Standard 112–2004 (Test Method B) would also be less than 0.2 percentage points. (Advanced Energy, No. 23 at p. 3) Advanced Energy noted that while it believes these differences are small, DOE will need to determine if these differences are small enough to consider these test methods equivalent. (Advanced Energy, No. 23 at pp. 2–3)

In view of the above comments about the equivalence of IEEE Standard 112–2004 (Test Method B) and CSA C390–10, including the results of the LTEE Hydro-Quebec, University of Nottingham, and Advanced Energy studies, DOE conferred with independent experts about IEEE Standard 112–2004 (Test Method B) and CSA C390–10, the methodologies, measurement of losses, and calculated efficiency. DOE understands that the test methods are not identical, but DOE believes that the differences are minimal and both tests will result in an accurate and similar measurement of efficiency. Given the variable nature of tested efficiency values for electric motors due to manufacturing and material differences, DOE believes that the variation in the calculated efficiency is insignificant and not likely to result in any manipulation of energy efficiency test results.[10] Moreover, DOE believes that removing CSA C390–10 would cause unnecessary disruption in current testing practices and compliance certification. Therefore, DOE is continuing to allow manufacturers to use either test method to certify compliance.

On a related note, GEA requested that IEC 60034–2–1 be included as an acceptable test method in 10 CFR Part 431. (GEA, No. 26 at p. 1) GEA considered the efficiency test methods of IEEE Standard 112 (Test Method B) and IEC 60034–2–1 to be almost identical to each other and asserted that both methods achieve the desired result of measuring the energy efficiency of a motor. While GEA provided no data to support its claim that IEC 60034–2–1 is almost identical to IEEE Standard 112 (Test Method B), Advanced Energy provided data in support of that view. As described previously, Advanced Energy provided test results using IEEE Standard 112–2004 (Test Method B), IEC 60034–2–1, and CSA C390–10 that demonstrated that the test procedures would result in full-load efficiency values that differed by less than 0.2 percentage points. (Advanced Energy, No. 23 at p. 3)

Additionally, NEMA and ACEEE noted that they were not aware of whether DOE had examined IEEE Standard 112 (Test Method E) for testing vertical motors (i.e., motors that are designed to be mounted in a vertical configuration), and they requested that DOE carry out this determination. NEMA and ACEEE requested that, if DOE determines IEEE Standard 112 (Test Method E) is acceptable, DOE should include it in 10 CFR Part 431. Otherwise, if it is not acceptable, they requested that DOE provide a test procedure that is acceptable. (NEMA and ACEEE, No. 25 at p. 15)

DOE appreciates the comments about IEC 60034–2–1 and IEEE Standard 112 (Test Method E). DOE will examine them further and may address them as part of a separate rulemaking.

Finally, GEA believed that DOE had made progress by including IEC standards for frame sizes that are consistent with NEMA frame sizes but noted that there had been no reference to the IEC motor efficiency classifications. GEA requested that DOE add a reference to the efficiency classifications laid out in IEC 60034–30, ''Rotating Electrical Machines—Part 30: Efficiency Classes of Single-Speed, Three-Phase, Cage-Induction Motors (IE-code)'' in the CFR. (GEA, No. 26 at p. 1) It asserted that the IE2 energy efficiency and IE3 premium efficiency ratings of IEC 60034–30 are comparable to NEMA MG1–2009 tables 12–11 and 12–12 respectively. Although DOE appreciates GEA's comment, it believes that incorporating a reference to the IEC tables of efficiency levels is unnecessary because the actual efficiency standards are included as a part of 10 CFR 431.25.

J. National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program Handbook 150–10 Update and Checklist

In the December 2008 NOPR, DOE proposed updating the references in the regulations from: (1) The 1994 edition of the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP) Handbook 150, ''Procedures and General Requirements'' to the 2006 edition; and (2) the 1995 edition of the NIST/NVLAP Handbook 150–10, ''Efficiency of Electric Motors'' to the 2007 edition. 73 FR 78228, 78236. Although following the NIST/NVLAP handbooks is not a required part of the electric motors test procedure, the handbook provides important guidance for assuring testing laboratory competency and is used by test facilities seeking accreditation under 10 CFR 431.18, 431.19, and 431.36(a)(2).

During the January 30, 2009, public meeting to discuss the December 2008 NOPR, two issues were raised regarding this proposed update. First, Baldor expressed concern that an update to

[9] Magnetic core losses are generated by two electromagnetic phenomena: hysteresis losses and eddy currents. Hysteresis losses are caused by magnetic domains resisting reorientation to the alternating magnetic field. Eddy currents are physical currents that are induced in the steel laminations by the magnetic flux of the windings.

[10] According to a study conducted by the Electrical Apparatus Service Association and the Association of Electrical and Mechanical Trades, ''The Effect of Repair/Rewinding on Motor Efficiency,'' the same motor tested at multiple locations showed a variation of up to 0.9 percent, even though the same test procedure was used.

NIST/NVLAP Handbook 150–10 could be problematic because it refers to test methods that are different from the updated test methods proposed by DOE. For example, the NIST/NVLAP Handbook 150–10 refers to proficiency in IEEE Standard 112–1996 (Test Method B) and CSA C390–93 (Test Method 1) to become an accredited laboratory. (Baldor, Public Meeting Transcript, No. 8 at p. 178) Because these industry test methods have been revised, DOE proposed in the December 2008 NOPR to update 10 CFR 431.16, appendix A to subpart B, and 10 CFR 431.15 to be consistent with current industry practice. 73 FR 78228. DOE indicated that it would consult with NIST and consider appropriate updates regarding the references in NIST/NVLAP Handbook 150–10.

Subsequently, NIST reviewed its Handbook 150–10 and issued a formal Laboratory Bulletin on March 19, 2009 (Lab Bulletin LB–42–2009) about the Efficiency of Electric Motors Program, available at *http://www.nist.gov/nvlap/upload/LB_42_2009–1.pdf.* That bulletin contains a series of updates to the industry standards referenced in Handbook 150–10. Although NIST did not update its references of CSA C390, DOE and NIST evaluated potential differences between the 1993 and 2010 versions of the Canadian standard and determined that there are no substantial differences between them that would result in a significant change in measured efficiency. Therefore, in the January 2011 SNOPR, DOE proposed to adopt the 2007 edition of NIST Handbook 150–10. DOE is maintaining this approach for its final rule. Additionally, in today's rule, DOE is adopting the March 2009 NVLAP Lab Bulletin, which contains the updates to industry references in the NIST handbook.

Second, Baldor commented that the 2007 edition of the handbook does not address the procedure used for accrediting a laboratory, which is contained in a checklist that it was unable to obtain and examine. (Baldor, Public Meeting Transcript, No. 8 at pp. 166–167) NEMA commented that it found a ''significant difference'' between the 1995 and 2007 editions of the NIST/NVLAP Handbook 150–10. NEMA noted that the 1995 edition provides (1) information on the required accuracy of the test equipment, (2) details of the test procedure to be used for testing induction motors, and (3) a checklist for the purpose of evaluating the test facility. NEMA expressed concern that the 2007 edition does not contain that technical information and noted that clause 1.6.2 of the NIST/NVLAP Handbook 150–10 (2007) indicates that all NVLAP programs must use the NIST Handbook 150 Checklist. NEMA commented that DOE should not incorporate by reference the 2007 edition of NIST/NVLAP Handbook 150–10 until the NIST/NVLAP Handbook 150–10 Checklist is available to the public and DOE has examined it to be certain it contains the same information about the accuracy of test equipment and the procedure for testing as the 1995 edition. (NEMA, No. 12 at pp. 11–12)

DOE consulted with NIST about the above matters and learned that the NIST/NVLAP Handbook 150–10 (2007) and the on-site assessment NIST/NVLAP Handbook 150–10 Checklist are available through the web links *http://www.nist.gov/nvlap/nvlap-handbooks.cfm* and *http://www.nist.gov/nvlap/upload/NIST-HB-150-10-Checklist.pdf* respectively.

After considering the comments from Baldor and NEMA, DOE further examined the 1995 and 2007 Checklists. In DOE's view, these two testing-related documents share the same information related to equipment accuracy, test procedures, and procedures for laboratory accreditation. Accordingly, DOE believes that the 2007 Checklist is a proper replacement for the provisions in the 1995 edition and is updating the regulations to include the new edition of the NIST Handbook 150–10 Checklist (Rev. 2007–05–04).

Because the two NIST/NVLAP handbooks, the lab bulletin, and the checklist are not requirements of the test procedure itself, but rather documents used to accredit a testing facility as being capable of conducting the necessary tests for evaluating the energy efficiency of an electric motor, DOE is providing all of the necessary information for these documents in 10 CFR 431.14 ''Sources for information and guidance.''

NEMA and ACEEE also had concerns with 10 CFR 431.18 and the continued use of the phrase ''the initial effective date'' in the statement ''[c]hanges in NIST/NVLAP's criteria, procedures, policies, standards, or other bases for granting accreditation occurring after the initial effective date of 10 CFR Part 431 shall not apply to accreditation under this part unless approved in writing by the Department of Energy.'' NEMA and ACEEE believed the phrase the ''initial effective date,'' which refers to October 5, 1999, may be confusing because neither commenter was aware of any established procedure for informing test facilities when DOE has approved a revision of the accreditation program. Both commenters encouraged DOE to establish and apply such a procedure to certification and accreditation programs. (NEMA and ACEEE, No. 25 at p. 16)

DOE appreciates the concerns that NEMA and ACEEE have raised regarding 10 CFR 431.18, ''Testing Laboratories.'' To eliminate any potential confusion over this issue, DOE is removing the sentence, ''Changes in NIST/NVLAP's criteria, procedures, policies, standards or other bases for granting accreditation, occurring subsequent to the initial effective date occurring subject to the initial effective date of 10 CFR Part 431, shall not apply to accreditation under this Part unless approved in writing by the Department of Energy.'' Reference to the effective date of the regulation is unnecessary as the date has passed, and any change approved in writing will be reflected in the regulatory text at the time of the change. DOE notes that the NIST/NVLAP criteria currently incorporated into the DOE regulations remain effective, and changes to these criteria shall not apply unless the changes are approved in writing by the Department.

K. Appendix A to Subpart B of Title 10 of the Code of Federal Regulations, Part 431

Prior to EISA 2007, the Policy Statement under appendix A to subpart B of 10 CFR part 431 provided interpretive guidance as to which types of motors DOE viewed as covered under EPCA. This policy statement was published in the **Federal Register** on November 5, 1997, in response to concerns expressed from manufacturers regarding uncertainty as to whether motors with certain modifications were ''electric motors'' covered under the statute. DOE based its guidance on the recommendations of motor manufacturers, original equipment manufacturers, energy efficiency advocates, trade associations, testing laboratories, and other government officials. 62 FR 59978.

In the December 2008 NOPR, DOE proposed to delete the contents of appendix A to subpart B since the appendix was no longer an interpretation of current law in light of the EISA 2007 amendments to EPCA. The appendix had been heavily based on the previous definition of ''electric motors'' that Congress removed. With the removal of that definition, much of the interpretive basis surrounding the policy statement required significant reconsideration. 73 FR 78228.

During the January 29, 2009, public meeting, Baldor commented that removing appendix A would result in no guidance and leave open the

possibility to greatly expanded guidance in the future. (Baldor, Public Meeting Transcript No. 8, p. 118) NEMA submitted a comment suggesting that DOE attempt to revise the guidance that appears in appendix A rather than deleting it completely. NEMA argued that this would help clarify some of the new interpretations that DOE would have in view of the EISA 2007 legislation. (NEMA, No. 12, p. 12)

In response, the January SNOPR included an alternative to the removal of appendix A—revision of the contents of appendix A to reflect the EISA 2007 changes to EPCA. Specifically, DOE proposed to: (1) Eliminate references to enactment dates that no longer apply; (2) update the scope of coverage to include subtype I and II motors; and (3) address the bounds of standard shaft dimensions applicable to subtype I and II motors. DOE did not propose language regarding fire pump or NEMA Design B motors because DOE did not believe that such guidance was necessary at that time, although DOE indicated that it may add such guidance at a future date. DOE specifically noted that, as a ''Policy Statement,'' appendix A represented DOE's interpretation of existing statutes and regulations but did not, and was not intended to, have the force and effect of law. 76 FR 657.

In response to the SNOPR, DOE received multiple comments from interested parties regarding appendix A. Multiple interested parties expressed support for DOE's plans to provide additional guidance on the bounds of standard shaft dimensions applicable to subtype I and II motors. These interested parties also expressed support for time phased implementation dates before such guidance takes effect, although suggested phase-in periods varied. Additionally, some interested parties requested clarification on certain categories of electric motors, such as gearmotors. Finally, ACEEE and NEMA suggested specific updates to the table that DOE proposed in its regulatory text for appendix A to Subpart B of Part 431. (NEMA and ACEEE, No. 25 at pp. 16–17)

In light of the comments received and DOE's desire to provide the public and all interested parties with guidance in a more expeditious manner, in today's final rule, DOE is removing appendix A from the Code of Federal Regulations (CFR), reformatting the information contained therein, and will post the contents on DOE's Web site as guidance (''Electric Motors Guidance''). The removal of appendix A from the CFR does not change the legal effect or authority of appendix A as appendix A was a ''Policy Statement'' that merely provided users with guidance as to DOE's interpretation of existing statutes and regulations. Unlike EPCA, as amended, and DOE's electric motor regulations, appendix A was never intended to have, and never had, the force and effect of law.

By placing appendix A on DOE's Web site as guidance, DOE will be able to respond more efficiently to questions regarding general electric motors coverage and share DOE's responses to all interested persons at the same time. Moving appendix A to DOE's Web site will also eliminate any potential confusion as to the legal effect of appendix A. The updated guidance document will be available at *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.* The guidance will incorporate changes based on comments received in this rulemaking regarding appendix A.

The updated guidance will address the bounds of standard shaft dimensions applicable to subtype I and subtype II motors. DOE understands that NEMA Standard MG1–2009 and IEC Standard 60072–1 (1991) specify tolerances for the shaft extension diameter and keyset that relate to the fit between the shaft and the device mounted on the shaft. DOE is aware that shafts of special diameter, length, or design are often provided at a customer's request for use in particular applications. However, there are electric motors with non-standard shafts that could be used in most general purpose applications and would then be considered subtype I or subtype II general purpose electric motors. DOE received inquiries regarding whether motors with shaft designs that are not necessarily in conformance with the standard shaft types and dimensions in NEMA MG1 or IEC 60072–1 were covered under EPCA. (Baldor, No. 16; WEG, No. 17) In response to such inquiries, and in view of possible confusion in the marketplace, DOE proposed to add guidance on shaft diameter, length, shoulder location, and special designs under section III of appendix A to subpart B of 10 CFR part 431 in the January 2011 SNOPR. 76 FR 658.

The Electric Motors Guidance will specify for certain design features the range of variation in motor characteristics beyond which a motor would no longer be considered by DOE as general purpose. Manufacturers should not attempt to circumvent the efficiency standards by making minor modifications to a motor in an attempt to characterize an otherwise general purpose electric motor as a non-general purpose electric motor. Whether a user can use a motor in most general purpose applications is a critical factor in assessing whether a given motor is a general purpose electric motor.

DOE proposed language to provide guidance on the amount of variation from standard characteristics that would enable a motor to maintain its general purpose classification, as follows:

TABLE III.1—ALLOWABLE SHAFT DIMENSION VARIATIONS

Design feature	Variation allowed from standard characteristic
Shaft Diameter	Any variation in the shaft diameter between the standard shaft diameter of the next lower and higher frame numbers series maintains the general purpose classification of a motor.
Shaft Length	Any shaft length between and inclusive of 0.5 to 1.25 times the standard shaft length of the motor maintains the general purpose classification of the motor.
Shoulder Location	An increase less than or equal to 25 percent in either the ''BA'' (MG1) or ''C'' (IEC) dimensions of the standard motor frame dimensions maintains the general purpose classification of the motor.
Special Shaft Designs	The special shaft designs of a flat section in shaft (for pulley mounting) and shafts with a threaded hole maintain the general purpose classification of the motor. Alternatively, shafts with threads on the outside of the shaft or a stepped shaft do not currently maintain their general purpose classification. If DOE receives information that manufacturers are switching to motors with outside threads and stepped-shaft design variants to avoid efficiency improvements, then DOE may change the guidance to classify motors with outside threads and stepped shafts as general purpose electric motors. 76 FR 658, 673.

NEEA stated that it ''strongly supports'' DOE actions to clarify regulations and prevent circumvention of standards and in this regard supported DOE's decision to regulate non-standard shaft dimensions. It recommended that up to one year should be allowed for such motors to come into compliance with the applicable standards established by EISA 2007. (NEEA, et al., No. 24 at p. 3) Several interested parties indicated their concern over the enforcement of these shaft and shoulder dimensions. Particularly, these parties were concerned that if DOE took the position that motors with non-standard shaft lengths and sizes would be treated as general purpose electric motors for purposes of compliance with the EISA 2007 standards, manufacturers would require additional time to adjust to this new policy. NEMA noted that its members and their customers have spent a considerable amount of time and effort to adopt the EISA 2007 standards by the effective date of December 19, 2010, and have made significant changes both in manufacturing processes for motors and the equipment that use the motors to comply with the applicable provisions under 10 CFR Part 431. In view of these concerns, NEMA and ACEEE have requested a time-phased implementation of three years for the changes in guidance pertaining to special shafts. They believe that this will allow motor users and manufacturers the necessary time to implement the required changes. (NEMA and ACEEE, No. 25 at p. 17–18).

Regarding DOE's enforcement of its electric motors regulations in light of DOE guidance, DOE reminds stakeholders that the former appendix A was a guidance document and did not constitute a regulatory requirement. Similarly, any future guidance does not change the scope of coverage for electric motors. Therefore, although DOE understands that some electric motors may require some design modifications, DOE declines to establish an implementation date for the enforcement of energy conservation standards for motors with special shaft dimensions. DOE will consider cases on an individual basis when evaluating any potential noncompliance.

In response to the January 2011 SNOPR, the Rossi Gearmotor Division of Habasit America (Rossi) commented that integral gearmotors are effectively general purpose electric motors with relatively simple modifications that would not affect energy efficiency. While these motors often cannot be used independent of the gear reducer, they can be technologically and economically manufactured to the energy efficiency levels of a standard NEMA or IEC motor, which is evidenced by the fact that most integral gearmotor manufacturers selling in the U.S. market offer a high efficiency gearmotor. However, it added that the majority of those manufacturers would want DOE to continue to consider such motors outside the scope of regulation, which would continue to allow standard efficient integral gearmotors to be offered at lower first costs relative to energy efficient integral gearmotors. Rossi stated that manufacturers of integral gearmotors have a statutory responsibility to meet energy efficiency standards where it is technologically feasible and economically justified. (Rossi, No. 22 at pp. 1–2).

NEMA and ACEEE requested that DOE clarify that only motors connected to a stand-alone gear assembly would be treated as covered equipment. NEMA and ACEEE stated that a separately contained gear assembly can be intended for mounting on a C-face or D-flange on a motor of otherwise standard construction. They added that such a gear assembly is not generally a ''stand-alone'' unit and the assembly with the motor would not be an ''integral gearmotor.'' (NEMA and ACEEE, No. 25 at p. 26)

As stated in the former appendix A, DOE only considers a motor to be an ''integral gearmotor'' if it is a combination of a motor and a gear drive (or assembly of gears). In this combined package, the gear drive (or assembly of gears) and the motor are not stand-alone entities. Also as noted in the former appendix A, DOE did not consider such equipment to be covered by EPCA. The motor portion of an integral gearmotor is usually not a complete motor and thus not capable of being used in most general purpose applications. Additionally, integral gearmotors are generally not constructed with a T- or U-frame and they can have unique performance characteristics, physical dimensions, and casing, flange, and shafting dimensions. As a result, DOE considers such motors outside the scope of EPCA as amended by EISA 2007. Finally, DOE recognizes that an electric motor could be connected to a stand-alone gear drive (or assembly of gears) and clarifies that it does not consider such a configuration to be an integral gearmotor. If an electric motor is connected to a stand-alone gear drive (or assembly of gears), DOE considers it covered equipment if it also meets the definition of subtype I or subtype II.

L. Definition of Small Electric Motor

Subsequent to the publication of the July 7, 2009, small electric motor test procedures final rule (74 FR 32059), Baldor expressed concern over the clarity of certain key terms contained within the statutory definition of a small electric motor, asking DOE to clarify the statutory definition of ''small electric motor'' by interpreting key phrases in the definition, specifically: ''general purpose,'' ''induction motor,'' ''two-digit frame number series,'' and ''IEC metric equivalent motors.'' (Baldor, No. 15 at p. 2) Baldor suggested that DOE consider clarifying the definition by adding parenthetical identifiers ''(MG1)'' and ''(IEC)'' to the definition after each of these four key phrases to indicate the industry reference from which DOE interprets the meaning of that phrase. (Baldor, No. 15 at p. 2)

Section 340(G) of EPCA, 42 U.S.C. 6311(13)(G), defines the term ''small electric motor'' to mean a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987. When DOE codified this definition into the CFR, DOE added the phrase ''including IEC metric equivalent motors'' to clearly signal that a motor that otherwise satisfied the technical requirements spelled out in the statutory definition would not be exempt from coverage simply because it was built using metric—rather than English (Imperial)—units. 74 FR 32072. DOE applied the term ''small electric motors'' to refer to those motors that are built in a two-digit frame series and that are general purpose and possess standard ratings and standard operating characteristics, an application that a Federal appellate court has upheld as permissible. See *National Electrical Manufacturers Association* v. *DOE,* 654 F.3d 496 (4th Cir. 2011). However, should it become necessary, DOE may consider providing further clarification as required.

M. Canadian Standards Association Test Procedures for Small Electric Motors

In the December 2008 NOPR, DOE proposed permitting manufacturers to select one of three test methods to measure the energy efficiency of its covered small electric motors: IEEE Standard 114, IEEE Standard 112, or CAN/CSA C747–94. 73 FR 78223, 78238. These choices were consistent with those for electric motors listed in 10 CFR 431.16. Under that provision, a manufacturer may select either an IEEE or CSA test method for determining the

efficiency of covered 1–200 horsepower electric motors. DOE adopted IEEE Standard 114–2001 for single-phase small electric motors and both IEEE Standard 112–2004 Test Method A and Test Method B in its final rule for polyphase small electric motors. 74 FR 32065–66, 32073–74. Since IEEE Standard 112 Test Method A applies to polyphase small electric motors below 1 kilowatt (1.34 horsepower), DOE determined that Test Method A would apply to polyphase small electric motors rated at or below 1 horsepower, which is the first common horsepower rating below 1 kilowatt (1.34 horsepower). Similarly, IEEE Standard 112 Test Method B would apply to polyphase small electric motors rated greater than 1 horsepower. DOE also adopted CAN/CSA–C747–94 as an alternative test method for single-phase motors. In the small electric motors test procedure final rule, DOE stated that it was not adopting alternative test methods for polyphase small electric motors based on CAN/CSA–747–94 or CSA C390–10 because of potential inconsistencies in the measured efficiency associated with units tested under IEEE Standard 112–2004 (Test Method B). 74 FR 32066.

In the January 2011 SNOPR, DOE proposed to add alternatives to provide manufacturers with greater testing flexibility. In particular, DOE proposed to permit testing using: (1) CSA C747–09 as an alternative to IEEE Standard 112 (Test Method A) for polyphase small electric motors rated less than or equal to 1 horsepower (0.746 kilowatt); and (2) CSA C390–10, as an alternative to IEEE Standard 112 (Test Method B) for polyphase small electric motors that have a rating greater than 1 horsepower (0.746 kilowatt). DOE indicated that using the CSA C747–09 and CSA C390–10 in this manner will result in consistent measurements compared to the applicable IEEE Standard 112 and IEEE Standard 114 test methods adopted in the small electric motors final rule, and help promote the harmonization of test methods internationally. 76 FR 658.

NEMA and ACEEE suggested including CSA C747–09 as an equivalent protocol to the appropriate IEEE 114 and 112 Methods. (NEMA and ACEEE, No. 25 at p. 18) They also provided comments on CSA C390–10 as it relates to IEEE Standard 112 (Test Method B), which are addressed in section III.I of today's notice. Advanced Energy pointed out that an updated version of the IEEE Standard 114 was published in December 2010 and advised DOE to reference this standard rather than the superseded IEEE Standard 114–2001. (Advanced Energy, No. 23 at p. 4)

DOE has decided to codify the changes proposed in the SNOPR with the addition of the changes suggested by interested parties—namely, to update IEEE Standard 114 to the 2010 version and allow the use of CSA C390–10 as an equivalent to IEEE Standard 112. DOE believes that it is important to have the most current standards referenced in its regulatory text and it understands that the new version of CSA C390 is essentially equivalent to IEEE Standard 112 (Test Method B). DOE will update the referenced IEEE Standard 114 to the most recent December 2010 version because it reflects the most current industry practices. Because DOE believes the two methods are equivalent, DOE may use either test procedure when testing electric motors for compliance with EPCA, as amended.

N. Small Electric Motor Represented Efficiency Value

In DOE's notice proposing energy conservation standards for small electric motors, the term ''nominal full-load efficiency'' was defined as the arithmetic mean of the full-load efficiency of a population of motors. DOE received numerous comments on this definition, all of which were summarized in its final rule on energy conservation standards for small electric motors. 75 FR 10874 (March 9, 2010). Ultimately, DOE agreed with comments made by NEMA and Baldor and opted not to establish energy conservation standards in terms of nominal efficiency. 75 FR 10914. Instead, DOE established energy conservation standards for small electric motors in terms of ''average full-load efficiency.'' 75 FR 10947.

NEMA had also sought clarity on the term ''nominal full-load efficiency'' in the context of the December 2008 proposal. It noted that DOE had not fully explained the efficiency value for which test results are to be compared for the purpose of determining compliance. NEMA asked how DOE would require the full-load efficiency to be represented on small electric motors, noting that motors are not marked with the average full-load efficiency. (NEMA, No. 12 at p. 3)

In developing the January 2011 SNOPR, DOE considered the relevant comments submitted during the small electric motors rulemaking proceedings. DOE recognized that its standards for electric motors and small electric motors use different metrics—i.e., nominal full-load efficiency (electric motors) and average full-load efficiency (small electric motors). The nominal efficiency values for electric motors are based on a logical sequence of standard values in NEMA Standard MG1–2009 (Table 12–10) and are familiar to motor users. However, there is no comparable set of standardized values adopted by NEMA for small electric motors and there is no statutory requirement that efficiency standards for these motors be set in terms of their nominal full-load efficiency.

As mentioned earlier, DOE established small electric motor energy conservation standards in terms of ''average full-load efficiency'' in the final rule. 75 FR 10914, 10947 (March 9, 2010). The analyses and results supporting the final energy conservation standard levels for small electric motors were calculated using an average efficiency metric. In the 2011 SNOPR, DOE proposed procedures for reporting the average full-load efficiency of these small electric motors that would be consistent with the energy conservation standards set in the March 2010 rule. With respect to the term ''nominal full-load efficiency,'' since this term is not used in the small electric motors standard, DOE proposed leaving the term undefined. If DOE amended the test procedure to measure the nominal full-load efficiency of small electric motors, the change would alter the applicable metric, which, in turn, could require a change in the energy efficiency standard levels for small electric motors because the average full-load efficiency standards in place would need to be recalculated in terms of nominal full-load efficiencies. (42 U.S.C. 6293(e)) NEMA viewed the average full-load efficiency definition in the small electric motors energy conservation standards final rule as ambiguous and noted that the term ''represented efficiency'' had yet to be defined. Therefore, in the 2011 SNOPR, DOE proposed procedures for determining the represented efficiency of small electric motors and how that value relates to the average full-load efficiency of a sample of motors.

In the SNOPR preamble, DOE proposed to treat the represented efficiency as the efficiency that corresponds to a 5 percent increase in losses, compared to the tested efficiency of a random sample of five or more units of a basic model. 76 FR 659. However, this approach was not fully consistent with the language and equations proposed in 10 CFR 431.445 of the proposed regulatory text, which suggested that the average full-load efficiency of a sample of motors must be greater than or equal to a motor's represented efficiency with an increase of 5 percent in motor losses. 76 FR 674–75. In other words, if the motor's represented efficiency is adjusted to a

new efficiency that equates to an increase in motor losses of 5 percent, the average full-load efficiency of the tested sample must be greater than or equal to that new, adjusted, efficiency.

NEMA and ACEEE had several comments regarding DOE's January 2011 proposal to define ''represented efficiency value.'' First, NEMA and ACEEE argued that no definition is needed in addition to the previously defined terms ''average full-load efficiency'' and ''NEMA nominal efficiency,'' which are already in use by the industry. They commented that the representative efficiency used to check the average efficiency of a sample should be the nominal full-load efficiency value for the small electric motors, and did not believe that a separately defined ''representative efficiency'' is necessary. They asserted that the definition of ''nominal full-load efficiency'' in 10 CFR 431.12 should be added to 10 CFR 431.442 to cover small electric motors. Furthermore, NEMA and ACEEE commented that the relationship between average full-load efficiency and represented efficiency, as defined in 10 CFR 431.445(c)(3), conflicts with the statement in the 2011 SNOPR preamble that ''represented efficiency'' is ''that efficiency that corresponds to a 5 percent increase in losses, compared to the tested efficiency of a random sample of five or more units of a basic model.'' (NEMA and ACEEE, No. 25 at p. 19)

NEMA and ACEEE also expressed concern that the ''arbitrary 5% increase in losses'' proposed by DOE that a manufacturer would use when reporting and certifying its equipment would require a manufacturer to understate the actual value efficiency of its motors. In their view, DOE does not require a manufacturer of any other covered product in Part 431 to understate the actual efficiency, and DOE should not require electric motor manufacturers to do so. Furthermore, NEMA and ACEEE disagreed with the selection of the 5 percent factor. They noted that the value of 5 percent chosen for electric motors was supported by NEMA round robin tests and studies by NIST/NVLAP in developing the accreditation program for test facilities to follow when determining electric motor efficiency. It was their opinion that until sufficient studies have been performed to determine how the ''average full-load efficiency'' will be determined for a large population of small electric motors based on a sample of five motors, this margin should be increased to no less than 15 percent. (NEMA and ACEEE, No. 25 at p. 20)

Finally, NEMA and ACEEE expressed concern over the sample size of five motors for the ''tested efficiency.'' In their view, the proposal fails to recognize that this sample of five motors could be taken from a population of thousands of small electric motors of the same design. This situation leaves open the possibility that the selected motors could be outliers to the general population of small electric motors produced by a manufacturer. (NEMA and ACEEE, No. 25 at p. 19)

DOE notes that it did not propose a definition for the term ''represented average full-load efficiency.'' DOE agrees with the commenters that such a definition is unnecessary, given that the term ''average full-load efficiency'' is already defined and will be used with respect to small electric motors in a similar manner as ''nominal-full-load efficiency'' is used with respect to electric motors (as represented on the electric motor nameplate). For electric motors, the term ''represented nominal full load efficiency'' is understood by electric motor manufacturers as denoting the efficiency of a basic model for which a manufacturer is attempting to demonstrate compliance. (See 10 CFR 431.17(b)(2).)

To make these concepts clearer with respect to small electric motors, DOE is replacing the term ''represented average-full load efficiency'' with the term ''required average-full load efficiency.'' In the context of small electric motors, the term ''required average-full load efficiency'' refers to the average full-load efficiency that a small electric motor basic model must satisfy to comply with the applicable standard. DOE believes that ''required'' is a preferable term for small electric motors because it does not connote labeling requirements as ''represented'' does for electric motors.

This change is important for two reasons. First, there are no labeling requirements currently in place for small electric motors. Second, manufacturers prefer to use nominal full-load efficiency values on their labels and to represent the efficiency of a large population of motors with the same design (both electric motors and small electric motors) with a single efficiency value. Because the standards for small electric motors are in terms of average full-load efficiencies (and not standardized nominal values used for labeling electric motors), using the term ''required'' distinguishes the rating for small electric motors from the nominal full-load efficiency values used to rate electric motors.

In addition to these revisions, DOE is clarifying one portion of the text within Section 431.445(c)(2). DOE is making this change to ensure that the limited conditions under which substitute components may be used are more easily understood. These changes are being made to improve the overall readability of this section and are consistent with DOE's proposal.

DOE also clarifies that the regulatory text and equations appearing in the SNOPR correctly lay out the manner in which manufacturers are to determine the certified efficiency of their motors. See 76 FR 674–75. DOE's proposal regarding the represented (now required) efficiency of a small electric motor was intended to be consistent with DOE's current regulations for electric motors. In other words, DOE is clarifying that the average full-load efficiency of a sample should be greater than or equal to the required efficiency (plus a 5 percent increase in losses) for that sample.

DOE notes that in the context of all other regulated consumer products and commercial equipment, manufacturers are required to rate the energy efficiency performance of their products or equipment in a conservative manner not only to ensure that those products and equipment satisfy the required energy conservation standards, but also to ensure that the final product or equipment performs at least as well as the represented efficiency. Against this background, DOE notes that its proposal centers on requiring manufacturers to apply test results when determining the energy efficiency of a particular basic model and to certify compliance using the applicable small electric motor energy efficiency level. The average efficiency of the required sample must be greater than or equal to the required efficiency level plus a 5 percent increase in motor losses. For example, if a manufacturer has a small electric motor with a required energy conservation standard level of 88.5 percent, demonstrating that a small electric motor basic model meets that level would require that the average of a sample of at least 5 tested motors must be greater than or equal to 88.5 percent plus a 5 percent increase in motor losses, or 88.0 percent.[11]

Furthermore, DOE emphasizes that a manufacturer seeking to certify a particular basic model must test at least 5 units (or samples) of a basic model. If

[11] Motor losses (ML) are calculated using the equation ML = (100/μ) − 1, where μ equals efficiency. Consider the example in the text. At 88.5 percent efficient, ML = 0.130, and a 5 percent increase would make ML = 0.136. Then, the previous equation can be rearranged as follows, μ = 100/(ML+1). Plugging in 0.136 for ML and solving for μ yields a new efficiency of 88.0 percent.

a manufacturer believes that this sample size will not be representative of their population of that basic model, it may test more units at its discretion to determine its certified efficiency.

DOE appreciates the comments regarding the use of ''nominal full-load efficiency'' when referring to a small electric motor's ''represented full-load efficiency,'' now ''required full-load efficiency.'' However, because ''nominal full-load efficiency'' is not used in the small electric motors standard, DOE has decided to leave the term undefined. Should DOE amend the test procedure to measure the nominal full-load efficiency of small electric motors, it would likely necessitate changes to the energy conservation standards as well. If such a change were made to the regulated metric, DOE would alter, as appropriate, the applicable methodology and then make a corresponding change in the energy conservation standards consistent with other statutory requirements. (42 U.S.C. 6293(e)). Consequently, DOE is not requiring the ''required full-load efficiency'' to be stated or reported in terms of ''nominal full-load efficiency.'' However, DOE realizes that this is the industry standard for labeling motors and is clarifying that small electric motor manufacturers can still use the standardized values for nominal full-load efficiency that appear in NEMA MG1–2009 Table 12–10 to label their motors. Consistent with 42 U.S.C. 6317(d), DOE will consider the promulgation of detailed requirements related to this equipment.

Finally, in response to the comments by NEMA and ACEEE suggesting that DOE raise the proposed power loss factor from 5 to 15 percent, DOE is not inclined to change its proposal for a number of reasons. First, the proposed value is consistent with the value used for medium electric motors. That value, as NEMA and ACEEE pointed out, was based on round robin testing and testing from NIST/NVLAP that supported its use. DOE also notes that the 5 percent allowance has been an accepted tolerance for electric motors since DOE published its first final rule for electric motors test procedures on October 5, 1999. 64 FR 54153 Second, there is no reason to believe that the variation in performance of small electric motors should be any different from medium electric motors. At the lowest horsepower ratings covered for medium electric motors, the standard frame sizes are very similar to those used for small electric motors. Third, DOE understands that small electric motors and medium electric motors are built with the same materials that have the same variations in properties that affect motor losses. As a result, there are no engineering reasons that would necessitate the use of a power loss factor for small electric motors that exceeds by three-fold the loss factor provided for electric motors. These facts collectively suggest that whether a motor is a small or medium electric motor does not have a significant bearing on the variation in tested efficiency and it would be unnecessary to provide an additional 10 percent of loss variation for small electric motors. Finally, adopting the approach suggested by NEMA and ACEEE would have the effect of lowering the permitted efficiency level for a basic model by one NEMA nominal efficiency band. DOE notes that such a significant increase in the permitted motor loss value would allow manufacturers to produce motors at significantly reduced efficiency levels and potentially undercut the applicable energy conservation standard.

DOE also notes that, contrary to the assertions made by NEMA and ACEEE, consumer products and other commercial equipment are required to meet a prescribed efficiency level without the benefit of an added loss factor. In that sense, motor manufacturers are presented with an additional margin for compliance when compared to other types of commercial equipment or consumer products. DOE's inclusion of this factor is in recognition of the changes in motor performance that are observed because of material variability and engineering limitations inherent in certain aspects of motor manufacturing. Given continuing advances in manufacturing, however, DOE may revisit the continued inclusion of a standard power loss factor as part of future revisions to its standards. DOE notes that in its most recent Certification, Compliance and Enforcement rule, there is no allowance for efficiency losses. See 76 FR 12422 (March 6, 2011).

Furthermore, based on small electric motor test data generated by an independent laboratory, a 5 percent increase in losses has been shown to be a reasonable allowance for an increase in losses relative to a motor's labeled full-load efficiency. This 5 percent value falls within the margin of error for state-of-the-art testing equipment used to measure the efficiency losses in a motor relative to its labeled full-load efficiency value. Based on testing information DOE has reviewed, small electric motors were able to meet the 5 percent variation.

DOE's analysis of small electric motor efficiency included a review of test results from 27 small electric motors as provided by an independent laboratory. Although the tests show a range of rated losses, ranging from 81 percent to 179 percent of rated losses (excluding one outlier), nine of these tests demonstrate that a 5 percent increase in losses is reasonable. This is significant for two reasons. First, these tests show that a 5 percent loss is technologically feasible today. Second, DOE anticipates that the same tests conducted after manufacturers are required to comply with the small electric motor standards would show much less variation in rated losses resulting from the standard. Moreover, NEMA/ACEEE did not provide DOE with any studies or data contradicting the proposed 5 percent motor loss value.

As an added check, DOE also reviewed the test data that examined electric motor efficiency. Those tests indicated that when tolerance levels are prescribed, the measured efficiency remains within the prescribed band—in this case, the prescribed band is delineated by the NEMA-developed efficiency bands found in MG–1. Given that there are no engineering reasons that would limit the ability of manufacturers to meet a prescribed efficiency value under similar conditions, manufacturers should be capable of meeting the required efficiency levels when applying the same motor loss value for small electric motors as well.

O. Validation of the Small Electric Motor Alternative Efficiency Determination Method

Section 343(a)(2) of EPCA requires that test procedures prescribed for electric motors be ''reasonably designed to produce test results which reflect energy efficiency,'' yet not be ''unduly burdensome'' to conduct. (42 U.S.C. 6314(a)(2)) As discussed in section III.D.3 of the December 22, 2008 NOPR, DOE recognizes that manufacturers produce large numbers of basic models of small electric motors, numbering in the thousands. 73 FR 78223. These large numbers are due in part to the frequency with which units are modified because of material price fluctuations which, in turn, often necessitate the development of new basic models.

In view of the substantial number of small electric motors that could be subject to an individual testing requirement for each basic model, the final small electric motors test procedure rule included the use of an alternative efficiency determination method (AEDM). 74 FR 32067, 32073. An AEDM is a predictive mathematical model developed from engineering

analyses of design data and substantiated by actual testing. It represents the energy consumption characteristics of one or more basic models. Before using an AEDM, a manufacturer must determine its accuracy and reliability through actual testing of a statistically valid sample of at least five basic models. (10 CFR 431.445) For each basic model, the manufacturer must test a sample size of at least five units selected at random according to the criteria adopted in section 10 CFR 431.445. After validating an AEDM's accuracy, the manufacturer may use that AEDM to determine the efficiencies of other basic models of small electric motors without further testing. DOE may consider requiring periodic verification subsequent to initial substantiation in a separate rulemaking on compliance, certification, and enforcement.

In the December 2008 NOPR, DOE proposed to adopt procedures for small electric motors that would allow a manufacturer to certify compliance by using an AEDM and a statistically meaningful sampling procedure for selecting test specimens that would be consistent with the existing requirements in 10 CFR 431.17 that currently apply to electric motors. 73 FR 78223–24, 78238–39. In the January 2011 SNOPR, DOE proposed additional requirements that are consistent with the AEDM approach already adopted for 1–200 horsepower electric motors. These proposals helped clarify portions of the AEDM procedure adopted in the final rule for small electric motors. DOE requested comments from interested parties on these requirements for a manufacturer to substantiate the accuracy of its AEDM. 76 FR 660.

In response to the January 2011 SNOPR, NEMA and ACEEE supported the adoption of AEDM usage and verification procedures for small electric motors that would be based on the procedures already in place for electric motors. (NEMA and ACEEE, No. 25 at p. 22) Advanced Energy also agreed with DOE's proposal to use actual testing to validate an AEDM model for small electric motors. However, it requested that DOE place more emphasis on an AEDM's subsequent verification. Advanced Energy noted that it would be helpful for the current language, which calls for subsequent verification of AEDMs to be conducted on a ''periodic'' basis using a specific time period, such as annually, to provide quality control to the process of AEDMs. (Advanced Energy, No. 23 at p. 4)

DOE appreciates these comments. However, as noted previously, DOE is planning on addressing these comments in a separate rulemaking. Between publication of the SNOPR and this final rule, DOE initiated a rulemaking specifically for AEDMs for all products and equipment; these comments will be addressed in that rulemaking.

P. Small Electric Motor Nationally Recognized Certification and Testing Laboratory Accreditation Programs

EPCA provides different requirements for determining the energy efficiency of regulated small electric motors and electric motors. In particular, section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of ''electric motors'' to certify, through an independent testing or certification program nationally recognized in the United States, that any electric motor subject to EPCA efficiency standards meets the applicable standard.[12] (42 U.S.C. 6316(c)) No such requirement for independent testing or certification applies to small electric motors.

In the December 2008 NOPR, DOE proposed to allow a manufacturer to self-certify its small electric motors (i.e., not require ''independent testing''). This approach would be consistent with the compliance certification requirements for other commercial equipment such as high-intensity discharge lamps and distribution transformers, which are covered equipment under section 346 of EPCA. 73 FR 78224.

In its comments to the NOPR, at 74 FR 32068 (July 7, 2009), NEMA observed that many small electric motors sold in the U.S. are also sold in Canada, and that Canadian regulatory entities are considering following DOE's lead in developing energy efficiency standards for small electric motors. (NEMA, No. 12 at p. 4) NEMA noted that because the only means to certify compliance for electric motors in Canada is through the CSA Energy Efficiency Verification Program, it is likely that the Canadian government will require small electric motors to be certified through the same CSA Energy Efficiency Verification Program. NEMA requested that DOE recognize independent third party efficiency certification programs for small electric motors, but not mandate the use of independent third party certification programs or accreditation programs for testing facilities. Rather, it stressed that DOE recognition of such programs would encourage motor manufacturers to use third party accreditation programs, such as NVLAP, to accredit their own test facility, which could then be used to self-certify under 10 CFR 431.17(a)(5)(ii). In addition, NEMA recommended that DOE allow sufficient time for the approval of such programs and manufacturer participation in such programs because no accreditation programs for testing in accordance with IEEE Standard 112 (Test Method A), IEEE Standard 114, or CSA C747 currently exist. (NEMA, No. 12 at pp. 4–5)

NEEA supported the creation of a nationally recognized certification program or accredited laboratory, according to the requirements that currently apply to electric motors. (See 10 CFR 431.17(a)(5)) It recommended that DOE apply the same requirements to small electric motors. (NEEA, No. 10 at p. 2)

Responding to these comments, DOE proposed in the January 2011 SNOPR to add the same provisions regarding nationally recognized certification programs to the small electric motors regulations as are currently found in the electric motors regulations at 10 CFR 431.17(a)(5), 431.20, and 431.21. DOE proposed to allow the use of such approved programs but it added that it may also, in the future, require manufacturers to test small electric motors through a nationally recognized certification program or a testing laboratory that has been accredited through a process similar to that of NIST/NVLAP. 76 FR 660. DOE notes that 10 CFR sections 431.19 and 431.20, respectively, provide for DOE recognition of accreditation bodies and nationally recognized certification programs.

In written comments, NEMA and ACEEE agreed that independent third party compliance certification programs for small electric motors should be approved as DOE had proposed through the additions of sections 431.447 and 431.448. However, they stressed that any approved certification program for small electric motors should not be mandatory—these programs should continue to be one of the procedures available to manufacturers when certifying their small electric motors to the applicable standards. Furthermore, they commented that, similar to electric motors, participation in a laboratory accreditation program for the testing of small electric motor efficiency should not be mandatory if it is possible to obtain equivalent recognition of the test facility through participation in a certification program. (NEMA and

[12] Further, 10 CFR 431.17(a)(5) provides for a manufacturer to establish compliance either through: (1) A certification program that DOE has classified as nationally recognized, such as CSA or Underwriters Laboratories, Inc., or (2) testing in any laboratory that is accredited by the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP).

ACEEE, No. 25 at p. 22) NEMA and ACEEE also noted that in DOE's SNOPR, DOE did not include sections for small electric motors corresponding to the provisions currently in place for electric motors—10 CFR 431.18 (''Testing Laboratories'') and 10 CFR 431.19 (''Department of Energy recognition of accreditation bodies''). These commenters urged DOE to begin the process of establishing proper certification and accreditation programs in the immediate future. (NEMA and ACEEE, No. 25 at pp. 22–23)

Advanced Energy recommended that third party accreditation programs and laboratory accreditation programs be established and made available for motor manufacturers seeking compliance for small electric motors. Furthermore, it commented that these programs should be made mandatory to match the testing and certification policies of electric motors. Advanced Energy suggested that DOE and NIST work together to develop laboratory accredited programs for all new test standards referenced in the SNOPR, and that all third party certification programs currently recognized by DOE should have NVLAP accreditation for motor efficiency testing because it improves testing consistency and expertise of the programs for determining motor efficiency.

In view of the above comments, DOE will codify the proposed requirements for sections 431.447 and 431.448 in today's final rule, with one minor change. DOE believes that an independent third party certification should not be mandatory at this time because such a requirement would conflict with DOE's goal of reducing testing burdens for small electric motor manufacturers. Furthermore, mandatory use of third-party certification would also nullify the advantage that manufacturers would gain through the use of an AEDM, which DOE currently believes offers a reasonably accurate method of demonstrating the efficiency of a given basic model of a small electric motor. In sum, until there is a DOE-approved nationally recognized certification program for small electric motors, manufacturers must self-certify their small electric motors as required in today's rule at section 431.445(b)(5)(ii). Section 431.445(b)(5)(i) of today's rule differs from the proposed rule in that it allows a manufacturer to ''use'' a certification program rather than ''have'' a certification program. This minor change clarifies that manufacturers can use their own approved certification program or an approved third-party certification program. In terms of participation in laboratory accreditation, DOE will continue to work with NIST/NVLAP to develop such accreditation procedures in the near future.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget 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 the Office of Management and Budget (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://www.gc.doe.gov*.

As described in the preamble, today's final rule presents additional test procedure options consistent with current industry practice that manufacturers may use when certifying their equipment as compliant, clarifies definitions for certain key terms, clarifies the scope of energy conservation standards for electric motors, and updates references to standards publications and test procedures otherwise incorporated by reference. DOE certified to the Office of Advocacy of the Small Business Administration (SBA) that the proposed test procedures for electric motors and small electric motors would not have a significant economic impact on a substantial number of small entities. After consideration of comments received on the economic impact of the rule, discussed in more detail below and elsewhere in the preamble, DOE continues to certify that the test procedures would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

To estimate the number of small businesses impacted by the rule, DOE considered the size standards for a small business listed by the North American Industry Classification System (NAICS) code and description under 13 CFR 121.201. To be considered a small business, a manufacturer of electric motors or small electric motors and its affiliates may employ a maximum of 1,000 employees. DOE estimates that there are approximately 20 domestic motor manufacturers that manufacture electric motors or small electric motors covered by EPCA, and no more than six of these manufacturers are small businesses employing a maximum of 1,000 employees. These estimates are based on analyses DOE conducted in the final rule establishing energy conservation standards for small electric motors at 75 FR 10874 (March 9, 2010) and the final rule that set forth test procedures for electric motors at 64 FR 54114 (October 5, 1999). In these previous rules, DOE calculated the number of motor manufacturers, including the number of manufacturers qualifying as small businesses, based on interviews with motor manufacturers and publicly available data. Since the promulgation of those rules, and after further examining the motor industry, which included surveying the motor industry and determining the number of manufacturers remaining, DOE has not discovered the presence of any new manufacturers of electric or small electric motors that would necessitate a change to these previous estimates.

To determine the anticipated economic impact of the testing requirements on small manufacturers, DOE examined current industry practices and steps taken in the design of the rule to minimize the testing burden on manufacturers. Today's final rule will continue to allow a manufacturer to certify compliance through its election of either an independent testing program or a certification program. Today's rule will also continue to follow the NEMA sampling plan for determining compliance, which DOE adopted on October 5, 1999, (64 FR 54114). Use of the sampling plan is consistent with industry practice. In addition, today's final rule is consistent with current test procedures and methodologies that the industry already uses (i.e., IEEE Standard 114, IEEE Standard 112, CSA C390, and CSA C747.) DOE examined these methodologies in the December 22, 2008, test procedure notice of proposed rulemaking, which today's

final rule supplements. The 2008 proposal stated that because DOE proposed adopting those requirements that the industry already follows, DOE did not find that the revisions in that proposal would result in any significant increase in testing or compliance costs, or otherwise be unduly burdensome. 73 FR 78220. Today's rule does not increase the reporting, recordkeeping, or other compliance requirements beyond those requirements already established for the testing and compliance certification of electric motors and small electric motors. Moreover, today's final rule does not adopt additional testing requirements, tighter tolerances, or greater accuracy than what is technologically feasible and economically justified. In addition, DOE continues to believe that allowing a manufacturer to choose between two equally valid test procedures will reduce undue burden on that manufacturer or private labeler.

DOE did not receive any comments from SBA or the public in response to its certification. DOE did receive comments from stakeholders on the potential economic impacts of the rule. These comments, which are addressed in the preamble, all urged DOE to give manufacturers one to three years to comply with energy conservation standards for motors types not previously covered—i.e., special shaft and 100 mm frame motors. In response to these comments, the Department has agreed to give manufacturers of IEC 100 mm frame size motors three years after the effective date of today's rule to comply with energy conservation standards and relevant test procedures. (As described in today's rule, DOE declines to establish an implementation date for the enforcement of energy conservation standards for motors with special shaft dimensions because shaft dimensions were addressed in guidance and guidance does not change the scope of coverage for electric motors.)

In view of the foregoing, DOE certifies that today's final rule would not impose significant economic impacts on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has provided its 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

Manufacturers of covered electric motors must certify to DOE that their electric motors comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their electric motors according to the relevant DOE test procedure, including any amendments adopted for that test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 10 CFR Part 431, Subpart B.

The collection-of-information requirement for the certification and recordkeeping provisions related to electric motors is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement was approved by OMB and is current under OMB Control Number 1910–1400. DOE estimated the reporting burden for the certification to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

This final rule amends certain aspects related to the test procedures for electric and small electric motors. 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 equipment covered by today's 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 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://www.gc.doe.gov.* DOE examined today's 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. Today's 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 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's 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.

Today's 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 in this notice incorporates testing methods contained in the following commercial standards: (1) CSA C390–10, *Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,* March 22, 2010; (2) CSA C747–09, *Energy efficiency test methods for small motors,* October 1, 2009; (3) IEC Standard 60034–1 (2010), *Rotating Electrical Machines, Part 1: Rating and Performance,* Section 4: Duty, clause 4.2.1 and Figure 1; (4) IEC Standard 60034–12 (2007), *Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors,* clauses 5.2, 5.4, 6, and 8, and Tables 1, 2, 3, 4, 5, 6, and 7; (5) NEMA Standards Publication MG1–2009 Section I (Part 1), Section I (Part 4), Section II (Part 12), and Section II (Part 14); (6) NEMA Standards Publication Mg1–1967 Section C and Section D; and (7) IEEE Standard 114, *Standard Test Procedure for Single-Phase Induction Motors,* December 23, 2010.

DOE has evaluated these revised standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act (i.e., that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC about the impact of these test procedures on competition and received no objections to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's 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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practices and procedure, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on April 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 431 of chapter II of title 10, Code of Federal Regulations, as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.11 is revised to read as follows:

§ 431.11 Purpose and scope.

This subpart contains energy conservation requirements for electric motors. It contains test procedures that EPCA requires DOE to prescribe, related requirements, energy conservation standards prescribed by EPCA, labeling rules, and compliance procedures. It also identifies materials incorporated by reference in this part. This subpart does not cover ''small electric motors,'' which are addressed in subpart X of this part.

■ 3. Section 431.12 is amended by:

■ a. Removing from the introductory text, ''K through M'' and adding ''U and V'' in its place;

■ b. Revising the definitions of ''accreditation,'' ''CSA,'' ''definite purpose motor,'' ''general purpose electric motor (subtype I),'' ''general purpose electric motor (subtype II),'' and ''nominal full-load efficiency;''

■ c. Removing the definition of ''general purpose motor;'' and

■ d. Adding in alphabetical order, new definitions for ''electric motor,'' ''fire pump electric motor,'' ''general purpose electric motor,'' and ''NEMA Design B motor.''

The revisions and additions read as follows:

§ 431.12 Definitions.

* * * * *

Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in Test Method B of IEEE Std 112–2004 and CSA C390–10 (incorporated by reference, see § 431.15).

* * * * *

CSA means Canadian Standards Association.

Definite purpose motor means any motor that cannot be used in most general purpose applications and is designed either:

(1) To standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in NEMA MG1–2009, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, see § 431.15); or

(2) For use on a particular type of application.

Electric motor means a machine that converts electrical power into rotational mechanical power.

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Fire pump electric motor means an electric motor, including any IEC-equivalent, that meets the requirements of section 9.5 of NFPA 20 (incorporated by reference, see § 431.15).

General purpose electric motor means any electric motor that is designed in standard ratings with either:

(1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA MG1–2009, paragraph 14.2, ''Usual Service Conditions,'' (incorporated by reference, see § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA MG1–2009, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, see § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

General purpose electric motor (subtype I) means a general purpose electric motor that:

(1) Is a single-speed, induction motor;

(2) Is rated for continuous duty (MG1) operation or for duty type S1 (IEC);

(3) Contains a squirrel-cage (MG1) or cage (IEC) rotor;

(4) Has foot-mounting that may include foot-mounting with flanges or detachable feet;

(5) Is built in accordance with NEMA T-frame dimensions or their IEC metric equivalents, including a frame size that is between two consecutive NEMA frame sizes or their IEC metric equivalents;

(6) Has performance in accordance with NEMA Design A (MG1) or B (MG1) characteristics or equivalent designs such as IEC Design N (IEC);

(7) Operates on polyphase alternating current 60-hertz sinusoidal power, and:

(i) Is rated at 230 or 460 volts (or both) including motors rated at multiple voltages that include 230 or 460 volts (or both), or

(ii) Can be operated on 230 or 460 volts (or both); and

(8) Includes, but is not limited to, explosion-proof construction.

Note to Definition of General purpose electric motor (subtype I): References to ''MG1'' above refer to NEMA Standards Publication MG1–2009 (incorporated by reference in § 431.15). References to ''IEC'' above refer to IEC 60034–1, 60034–12, 60050–411, and 60072–1 (incorporated by reference in § 431.15), as applicable.

General purpose electric motor (subtype II) means any general purpose electric motor that incorporates design elements of a general purpose electric motor (subtype I) but, unlike a general purpose electric motor (subtype I), is configured in one or more of the following ways:

(1) Is built in accordance with NEMA U-frame dimensions as described in NEMA MG1–1967 (incorporated by reference, see § 431.15) or in accordance with the IEC metric equivalents, including a frame size that is between two consecutive NEMA frame sizes or their IEC metric equivalents;

(2) Has performance in accordance with NEMA Design C characteristics as described in MG1 or an equivalent IEC design(s) such as IEC Design H;

(3) Is a close-coupled pump motor;

(4) Is a footless motor;

(5) Is a vertical solid shaft normal thrust motor (as tested in a horizontal configuration) built and designed in a manner consistent with MG1;

(6) Is an eight-pole motor (900 rpm); or

(7) Is a polyphase motor with a voltage rating of not more than 600 volts, is not rated at 230 or 460 volts (or both), and cannot be operated on 230 or 460 volts (or both).

Note to Definition of General purpose electric motor (subtype II): With the

exception of the NEMA Motor Standards MG1–1967 (incorporated by reference in § 431.15), references to ''MG1'' above refer to the 2009 NEMA MG1–2009 (incorporated by reference in § 431.15). References to ''IEC'' above refer to IEC 60034–1, 60034–12, 60050–411, and 60072–1 (incorporated by reference in § 431.15), as applicable.

* * * * *

NEMA Design B motor means a squirrel-cage motor that is:

(1) Designed to withstand full-voltage starting;

(2) Develops locked-rotor, breakdown, and pull-up torques adequate for general application as specified in sections 12.38, 12.39 and 12.40 of NEMA MG1–2009 (incorporated by reference, see § 431.15);

(3) Draws locked-rotor current not to exceed the values shown in section 12.35.1 for 60 hertz and 12.35.2 for 50 hertz of NEMA MG1–2009; and

(4) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

Nominal full-load efficiency means, with respect to an electric motor, a representative value of efficiency selected from the ''nominal efficiency'' column of Table 12–10, NEMA MG1–2009, (incorporated by reference, see § 431.15), that is not greater than the average full-load efficiency of a population of motors of the same design.

* * * * *

■ 4. A new § 431.14 is added to read as follows:

§ 431.14 Sources for information and guidance.

(a) *General.* The standards listed in this paragraph are referred to in the DOE procedures for testing laboratories, and recognition of accreditation bodies and certification programs but are not incorporated by reference. These sources are given here for information and guidance.

(b) *NVLAP.* National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, M/S 2140, Gaithersburg, MD 20899–2140, 301–975–4016, or go to *http://www.nist.gov/nvlap/.* Also see *http://www.nist.gov/nvlap/nvlap-handbooks.cfm.*

(1) NVLAP Handbook 150, Procedures and General Requirements, February 2006.

(2) NVLAP Handbook 150–10, Efficiency of Electric Motors, February 2007.

(3) NIST Handbook 150–10 Checklist, Efficiency of Electric Motors Program, (2007–05–04).

(4) NVLAP Lab Bulletin Number: LB–42–2009, Changes to NVLAP Efficiency of Electric Motors Program, March 19, 2009.

(c) *ISO/IEC.* International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland/ International Electrotechnical Commission, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20, Switzerland.

(1) ISO/IEC Guide 25, General requirements for the competence of calibration and testing laboratories, 1990.

(2) ISO Guide 27, Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk, 1983.

(3) ISO/IEC Guide 28, General rules for a model third-party certification system for products, 2004.

(4) ISO/IEC Guide 58, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, 1993.

(5) ISO/IEC Guide 65, General requirements for bodies operating product certification systems, 1996.

■ 5. Section 431.15 is revised to read as follows:

§ 431.15 Materials incorporated by reference.

(a) *General.* The Department of Energy incorporates by reference the following standards and test procedures into subpart B of part 431. The Director of the Federal Register has approved the material listed for incorporation by reference 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 DOE regulations unless and until DOE amends its test procedures. 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 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/.* Also, this 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: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *CSA.* Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or go to *http://www.shopcsa.ca/onlinestore/welcome.asp.*

(1) CSA C390–10, Test methods, marking requirements, and energy efficiency levels for three-phase induction motors, March 2010, IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of part 431.

(2) [Reserved]

(c) *IEC.* International Electrotechnical Commission Central Office, 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland, +41 22 919 02 11, or go to *http://webstore.iec.ch.*

(1) IEC 60034–1 Edition 12.0 2010–02, (''IEC 60034–1''), Rotating Electrical Machines, Part 1: Rating and Performance, February 2010, IBR approved as follows: section 4: Duty, clause 4.2.1 and Figure 1, IBR approved for § 431.12.

(2) IEC 60034–12 Edition 2.1 2007–09, (''IEC 60034–12''), Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors, September 2007, IBR approved as follows: clauses 5.2, 5.4, 6, and 8, and Tables 1, 2, 3, 4, 5, 6, and 7, IBR approved for § 431.12.

(3) IEC 60050–411, International Electrotechnical Vocabulary Chapter 411: Rotating machines, 1996, IBR approved as follows: sections 411–33–07 and 411–37–26, IBR approved for § 431.12.

(4) IEC 60072–1, Dimensions and Output Series for Rotating Electrical Machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080, 1991, IBR approved as follows: clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4, IBR approved for § 431.12.

(d) *IEEE.* Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), or *http://www.ieee.org/web/publications/home/index.html.*

(1) IEEE Std 112–2004, Test Procedure for Polyphase Induction Motors and Generators, approved February 9, 2004, IBR approved as follows: section 6.4, Efficiency Test Method B, Input-Output with Loss Segregation, IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of part 431.

(2) [Reserved]

(e) *NEMA.* National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1752, Rosslyn,

Virginia 22209, 703–841–3200, or go to *http://www.nema.org/.*

(1) NEMA Standards Publication MG1–2009 (''NEMA MG1–2009''), Motors and Generators, copyright 2009, IBR approved as follows:

(i) Section I, General Standards Applying to All Machines, Part 1, Referenced Standards and Definitions, paragraphs 1.18.1, 1.18.1.1, 1.19.1.1, 1.19.1.2, 1.19.1.3, and 1.40.1, IBR approved for § 431.12;

(ii) Section I, General Standards Applying to All Machines, Part 4, Dimensions, Tolerances, and Mounting, paragraphs 4.1, 4.2.1, 4.2.2, 4.4.1, 4.4.2, 4.4.4, 4.4.5, and 4.4.6, Figures 4–1, 4–2, 4–3, 4–4, and 4–5, and Table 4–2, IBR approved for § 431.12;

(iii) Section II, Small (Fractional) and Medium (Integral) Machines, Part 12, Tests and Performance—AC and DC Motors:

(A) Paragraphs 12.35.1, 12.35.2, 12.38.1, 12.38.2, 12.39.1, 12.39.2, and 12.40.1, 12.40.2, and Tables 12–2, 12–3, and 12–10, IBR approved for § 431.12;

(B) Paragraph 12.58.1, IBR approved for § 431.12 and appendix B to subpart B of part 431;

(C) Paragraph 12.58.2, IBR approved for § 431.31.

(iv) Section II, Small (Fractional) and Medium (Integral) Machines, Part 14, Application Data—AC and DC Small and Medium Machines, paragraphs 14.2 and 14.3, IBR approved for § 431.12.

(2) NEMA Standards Publication MG1–1967, (''NEMA MG1–1967''), Motors and Generators, January 1968, IBR approved as follows:

(i) Part 11, Dimensions, IBR approved for § 431.12;

(ii) Part 13, Frame Assignments—A–C Integral-Horsepower Motors, IBR approved for § 431.12.

(f) *NFPA.* National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471, 617–770–3000, or go to *http://nfpa.org/.*

(1) NFPA 20, 2010 Edition, Standard for the Installation of Stationary Pumps for Fire Protection, section 9.5, IBR approved for § 431.12.

(2) (Reserved)

■ 6. Section 431.18, paragraph (b) is revised to read as follows:

§ 431.18 Testing laboratories.

* * * * *

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/ National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR Part 285. The National Voluntary Laboratory Accreditation Program, ''Procedures and General Requirements,'' NIST Handbook 150–10, February 2007, and Lab Bulletin LB–42–2009, Efficiency of Electric Motors Program, (referenced for guidance only, see § 431.14) present the technical requirements of NVLAP for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program ''Procedures and General Requirements,'' which contains 15 CFR part 285 plus all general NIST/ NVLAP procedures, criteria, and policies. Information regarding NIST/ NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, (301) 975–4016 (telephone), or (301) 926–2884 (fax).

■ 7. Section 431.19 is amended by:

■ a. Adding at the end of the last sentence in paragraph (c)(3) ''(referenced for guidance only, see § 431.14)''; and

■ b. Revising paragraphs (b)(4) and (c)(4), to read as follows:

§ 431.19 Department of Energy recognition of accreditation bodies.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Method B or CSA C390–10, (incorporated by reference, see § 431.15).

(c) * * *

(4) Expertise in electric motor test procedures. The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Std 112–2004 Test Method B and CSA C390–10, (incorporated by reference, see § 431.15). This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories, (referenced for guidance only, see § 431.14) to energy efficiency testing for electric motors.

* * * * *

■ 8. Section 431.20 is amended by:

■ a. Adding at the end of the last sentence of paragraph (c)(3) ''(referenced for guidance only, see § 431.14)''; and

■ b. Revising paragraphs (b)(4) and (c)(4) to read as follows:

§ 431.20 Department of Energy recognition of nationally recognized certification programs.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Method B or CSA C390–10, (incorporated by reference, see § 431.15). It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

* * * * *

(c) * * *

(4) *Expertise in electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Std 112–2004 Test Method B or CSA C390–10, (incorporated by reference, see § 431.15). This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories (referenced for guidance only, see 431.14) to energy efficiency testing for electric motors.

* * * * *

■ 9. Section 431.25 is revised to read as follows:

§ 431.25 Energy conservation standards and effective dates.

(a) Except as provided for fire pump electric motors in paragraph (b) of this section, each general purpose electric motor (subtype I) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, including a NEMA Design B or an equivalent IEC Design N motor that is a general purpose electric motor (subtype I), manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full-load efficiency that is not less than the following:

TABLE 1—NOMINAL FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS (SUBTYPE I), EXCEPT FIRE PUMP ELECTRIC MOTORS

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency					
	Open motors (number of poles)			Enclosed motors (number of poles)		
	6	4	2	6	4	2
1/.75	82.5	85.5	77.0	82.5	85.5	77.0
1.5/1.1	86.5	86.5	84.0	87.5	86.5	84.0
2/1.5	87.5	86.5	85.5	88.5	86.5	85.5
3/2.2	88.5	89.5	85.5	89.5	89.5	86.5
5/3.7	89.5	89.5	86.5	89.5	89.5	88.5
7.5/5.5	90.2	91.0	88.5	91.0	91.7	89.5
10/7.5	91.7	91.7	89.5	91.0	91.7	90.2
15/11	91.7	93.0	90.2	91.7	92.4	91.0
20/15	92.4	93.0	91.0	91.7	93.0	91.0
25/18.5	93.0	93.6	91.7	93.0	93.6	91.7
30/22	93.6	94.1	91.7	93.0	93.6	91.7
40/30	94.1	94.1	92.4	94.1	94.1	92.4
50/37	94.1	94.5	93.0	94.1	94.5	93.0
60/45	94.5	95.0	93.6	94.5	95.0	93.6
75/55	94.5	95.0	93.6	94.5	95.4	93.6
100/75	95.0	95.4	93.6	95.0	95.4	94.1
125/90	95.0	95.4	94.1	95.0	95.4	95.0
150/110	95.4	95.8	94.1	95.8	95.8	95.0
200/150	95.4	95.8	95.0	95.8	96.2	95.4

(b) Each fire pump electric motor that is a general purpose electric motor (subtype I) or general purpose electric motor (subtype II) manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full-load efficiency that is not less than the following:

TABLE 2—NOMINAL FULL-LOAD EFFICIENCIES OF FIRE PUMP ELECTRIC MOTORS

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
1/.75	74.0	80.0	82.5	.....	74.0	80.0	82.5	75.5
1.5/1.1	75.5	84.0	84.0	82.5	77.0	85.5	84.0	82.5
2/1.5	85.5	85.5	84.0	84.0	82.5	86.5	84.0	84.0
3/2.2	86.5	86.5	86.5	84.0	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	87.5	85.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	88.5	87.5	85.5	89.5	89.5	88.5
10/7.5	89.5	90.2	89.5	88.5	88.5	89.5	89.5	89.5
15/11	89.5	90.2	91.0	89.5	88.5	90.2	91.0	90.2
20/15	90.2	91.0	91.0	90.2	89.5	90.2	91.0	90.2
25/18.5	90.2	91.7	91.7	91.0	89.5	91.7	92.4	91.0
30/22	91.0	92.4	92.4	91.0	91.0	91.7	92.4	91.0
40/30	91.0	93.0	93.0	91.7	91.0	93.0	93.0	91.7
50/37	91.7	93.0	93.0	92.4	91.7	93.0	93.0	92.4
60/45	92.4	93.6	93.6	93.0	91.7	93.6	93.6	93.0
75/55	93.6	93.6	94.1	93.0	93.0	93.6	94.1	93.0
100/75	93.6	94.1	94.1	93.0	93.0	94.1	94.5	93.6
125/90	93.6	94.1	94.5	93.6	93.6	94.1	94.5	94.5
150/110	93.6	94.5	95.0	93.6	93.6	95.0	95.0	94.5
200/150	93.6	94.5	95.0	94.5	94.1	95.0	95.0	95.0
250/186	94.5	95.4	95.4	94.5	94.5	95.0	95.0	95.4
300/224	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
350/261	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
400/298	.....	.....	95.4	95.4	.....	.....	95.4	95.4
450/336	.....	.....	95.8	95.8	.....	.....	95.4	95.4
500/373	.....	.....	95.8	95.8	.....	.....	95.8	95.4

(c) Except as provided for fire pump electric motors in paragraph (b) of this section, each general purpose electric motor (subtype II) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, including a NEMA Design B or an equivalent IEC Design N motor that is a general purpose electric motor (subtype II),

manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full-load efficiency that is not less than the following:

TABLE 3—NOMINAL FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS (SUBTYPE II), EXCEPT FIRE PUMP ELECTRIC MOTORS

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
1/.75	74.0	80.0	82.5	.....	74.0	80.0	82.5	75.5
1.5/1.1	75.5	84.0	84.0	82.5	77.0	85.5	84.0	82.5
2/1.5	85.5	85.5	84.0	84.0	82.5	86.5	84.0	84.0
3/2.2	86.5	86.5	86.5	84.0	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	87.5	85.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	88.5	87.5	85.5	89.5	89.5	88.5
10/7.5	89.5	90.2	89.5	88.5	88.5	89.5	89.5	89.5
15/11	89.5	90.2	91.0	89.5	88.5	90.2	91.0	90.2
20/15	90.2	91.0	91.0	90.2	89.5	90.2	91.0	90.2
25/18.5	90.2	91.7	91.7	91.0	89.5	91.7	92.4	91.0
30/22	91.0	92.4	92.4	91.0	91.0	91.7	92.4	91.0
40/30	91.0	93.0	93.0	91.7	91.0	93.0	93.0	91.7
50/37	91.7	93.0	93.0	92.4	91.7	93.0	93.0	92.4
60/45	92.4	93.6	93.6	93.0	91.7	93.6	93.6	93.0
75/55	93.6	93.6	94.1	93.0	93.0	93.6	94.1	93.0
100/75	93.6	94.1	94.1	93.0	93.0	94.1	94.5	93.6
125/90	93.6	94.1	94.5	93.6	93.6	94.1	94.5	94.5
150/110	93.6	94.5	95.0	93.6	93.6	95.0	95.0	94.5
200/150	93.6	94.5	95.0	94.5	94.1	95.0	95.0	95.0

(d) Each NEMA Design B or an equivalent IEC Design N motor that is a general purpose electric motor (subtype I) or general purpose electric motor (subtype II), excluding fire pump electric motors, with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full-load efficiency that is not less than the following:

TABLE 4—NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN B GENERAL PURPOSE ELECTRIC MOTORS (SUBTYPE I AND II), EXCEPT FIRE PUMP ELECTRIC MOTORS

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
250/186	94.5	95.4	95.4	94.5	94.5	95.0	95.0	95.4
300/224	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
350/261	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
400/298	.....	.....	95.4	95.4	.....	.....	95.4	95.4
450/336	.....	.....	95.8	95.8	.....	.....	95.4	95.4
500/373	.....	.....	95.8	95.8	.....	.....	95.8	95.4

(e) For purposes of determining the required minimum nominal full-load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or two kilowatt ratings listed in any table of energy conservation standards in paragraphs (a) through (d) of this section, each such motor shall be deemed to have a listed horsepower or kilowatt rating, determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers; or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula 1 kilowatt = (1⁄0.746) horsepower. The conversion should be calculated to three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraph (e)(1) or (e)(2) of this section, whichever applies.

(f) This section does not apply to definite purpose motors, special purpose motors, or those motors exempted by the Secretary.

■ 10. Remove § 431.30.

■ 11. Section 431.31, paragraph (a)(2) is revised to read as follows:

§ 431.31 Labeling requirements.

(a) * * *

(2) *Display of required information.* All orientation, spacing, type sizes, type

faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full-load efficiency shall be identified either by the term ''Nominal Efficiency'' or ''Nom. Eff.'' or by the terms specified in paragraph 12.58.2 of NEMA MG1–2009, (incorporated by reference, see § 431.15) as for example ''NEMA Nom. Eff. ____.'' The Compliance Certification number issued pursuant to § 431.36 shall be in the form ''CC ____.''

* * * * *

§ 431.36 [Amended]

■ 12. Amend § 431.36 by removing ''Beginning April 26, 2003, a'' from the first sentence in paragraph (a) and adding ''A'' in its place.

Appendix A to Subpart B of Part 431 [Removed and Reserved]

■ 13. Remove and reserve appendix A to subpart B of part 431.

■ 14. Appendix B to subpart B of part 431 is revised to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full-Load Efficiency of Electric Motors

1. *Definitions.*

Definitions contained in §§ 431.2 and 431.12 are applicable to this appendix.

2. *Test Procedures.*

Efficiency and losses shall be determined in accordance with NEMA MG1–2009, paragraph 12.58.1, ''Determination of Motor Efficiency and Losses,'' (incorporated by reference, see § 431.15) and either:

(1) CSA C390–10, (incorporated by reference, see § 431.15), or

(2) IEEE Std 112–2004 Test Method B, Input-Output With Loss Segregation, (incorporated by reference, see § 431.15).

3. *Amendments to test procedures.*

Any revision to IEEE Std 112–2004 Test Method B, NEMA MG1–2009, or CSA C390–10, (incorporated by reference, see § 431.15) shall not be effective for purposes of certification and compliance testing unless and until this appendix and 10 CFR Part 431 are amended to incorporate that revision.

■ 15. Section 431.441 is revised to read as follows:

§ 431.441 Purpose and scope.

This subpart contains definitions, test procedures, and energy conservation requirements for small electric motors, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317. This subpart does not cover ''electric motors,'' which are addressed in subpart B of this part.

§ 431.442 [Amended]

■ 16. Amend § 431.442, by removing ''*CAN/CSA''* and adding ''*CSA''* in its place.

■ 17. Amend § 431.443 by:

■ a. Revising paragraphs (b)(1), (c)(1) and (c)(2); and

■ b. Adding a new paragraph (b)(2).

The revisions and additions read as follows:

§ 431.443 Materials incorporated by reference.

* * * * *

(b) * * *

(1) CSA C747–09 (''CSA C747''), Energy efficiency test methods for small motors, October 2009, IBR approved for §§ 431.444; 431.447.

(2) CSA C390–10, Test methods, marking requirements, and energy efficiency levels for three-phase induction motors, March 2010, IBR approved for §§ 431.444; 431.447.

(c) * * *

(1) IEEE Std 112–2004, Test Procedure for Polyphase Induction Motors and Generators, approved February 9, 2004, IBR approved as follows:

(i) Section 6.3, Efficiency Test Method A, Input-Output, IBR approved for §§ 431.444; 431.447;

(ii) Section 6.4, Efficiency Test Method B, Input-Output with Loss Segregation, IBR approved for §§ 431.444; 431.447.

(2) IEEE Std 114–2010, Test Procedure for Single-Phase Induction Motors, approved September 30, 2010, IBR approved for §§ 431.444; 431.447.

■ 18. Section 431.444, paragraph (b) is revised to read as follows:

§ 431.444 Test procedures for the measurement of energy efficiency.

* * * * *

(b) *Testing and Calculations.* Determine the energy efficiency and losses by using one of the following test methods:

(1) Single-phase small electric motors: Either IEEE Std 114–2010 or CSA C747 (incorporated by reference, see § 431.443);

(2) Polyphase small electric motors less than or equal to 1 horsepower (0.75 kW): Either IEEE Std 112–2004 Test Method A or CSA C747 (incorporated by reference, see § 431.443); or

(3) Polyphase small electric motors greater than 1 horsepower (0.75 kW): Either IEEE Std 112–2004 Test Method B or CSA C390–10 (incorporated by reference, see § 431.443).

■ 19. Section 431.445, paragraph (b)(5) is added and paragraph (c) is revised to read as follows:

§ 431.445 Determination of small electric motor efficiency.

* * * * *

(b) * * *

(5) *Use of a certification program.* (i) A manufacturer may use a certification program, that DOE has classified as nationally recognized under § 431.447, to certify the average full-load efficiency of a basic model of small electric motor, and issue a certificate of conformity for the small electric motor.

(ii) For each basic model for which a certification program is not used as described in paragraph (b)(5)(i) of this section, any testing of a motor to determine its energy efficiency must be carried out in accordance with paragraph (c) of this section.

(c) *Additional testing requirements applicable when a certification program is not used*—(1) *Selection of basic models for testing.* (i) Basic models must be selected for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models that have the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12 calendar month period beginning in 2015, whichever is later, and comply with the standards set forth in § 431.446;

(B) The basic models should be of different horsepowers without duplication;

(C) At least one basic model should be selected from each of the frame number series for which the manufacturer is seeking compliance; and

(D) Each basic model should have the lowest average full-load efficiency among the basic models with the same rating (''rating'' as used here has the same meaning as it has in the definition of ''basic model'').

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(2) *Selection of units for testing within a basic model.* For each basic model selected for testing,[1] a sample of units shall be selected at random and tested. The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be no fewer than five units, except when fewer than five units of a basic model

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

would be produced over a reasonable period of time (approximately 180 days). In such cases, each unit produced shall be tested.

(3) *Applying results of testing.* When applying the test results to determine whether a motor complies with the required average efficiency level:

The average full-load efficiency of the sample, $\bar{X}$ which is defined by

$$\overline{X} = \frac{1}{n}\sum_{i=1}^{n} X_i$$

where X_i is the measured full-load efficiency of unit i and n is the number of units tested, shall satisfy the condition:

$$\overline{X} \geq \frac{100}{1 + 1.05\left(\frac{100}{RE} - 1\right)}$$

where RE is the required average full-load efficiency.

■ 20. A new § 431.447 is added to read as follows:

§ 431.447 Department of Energy recognition of nationally recognized certification programs.

(a) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized in the United States (''nationally recognized''), the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 431.448. The petition must demonstrate that the program meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of small electric motors continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

(2) It must be independent of small electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to operate a certification system in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747 (incorporated by reference, see § 431.443) or similar procedures and methodologies for determining the energy efficiency of small electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) *Standards and procedures.* A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for determining the compliance of small electric motors with the applicable energy efficiency standards. It should explain why it believes such relationship would not compromise its independence in operating a certification program.

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, General requirements for bodies operating product certification systems, ISO/IEC Guide 27, Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk, and ISO/IEC Guide 28, General rules for a model third-party certification system for products, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, General requirements for the competence of calibration and testing laboratories.

(4) *Expertise in small electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747– (incorporated by reference, see § 431.443) and with similar procedures and methodologies. This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories to energy efficiency testing for electric motors.

(5) The ISO/IEC Guides referenced in paragraphs (c)(3) and (c)(4) of this section are not incorporated by reference, but are for information and guidance only. International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland/ International Electrotechnical Commission, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20, Switzerland.

(d) *Disposition.* The Department will evaluate the petition in accordance with § 431.448, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as a nationally recognized certification program.

■ 21. Add a new § 431.448 to read as follows:

§ 431.448 Procedures for recognition and withdrawal of recognition of certification programs.

(a) *Filing of petition.* Any petition submitted to the Department pursuant to § 431.447(a), shall be entitled ''Petition for Recognition'' (''Petition'') and must be submitted, in triplicate to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition

or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments.* DOE shall publish in the **Federal Register** the Petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a Petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner.* A petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Public announcement of interim determination and solicitation of comments.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue an interim determination on the Petition as soon as is practicable following receipt and review of the Petition and other applicable documents, including, but not limited to, comments and responses to comments. The petitioner shall be notified in writing of the interim determination. DOE shall also publish in the **Federal Register** the interim determination and shall solicit comments, data and information with respect to that interim determination. Written comments and responsive statements may be submitted as provided in paragraphs (b) and (c) of this section.

(e) *Public announcement of final determination.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall, as soon as practicable, following receipt and review of comments and responsive statements on the interim determination publish in the **Federal Register** a notice of final determination on the Petition.

(f) *Additional information.* The Department may, at any time during the recognition process, request additional relevant information or conduct an investigation concerning the Petition. The Department's determination on a Petition may be based solely on the Petition and supporting documents, or may also be based on such additional information as the Department deems appropriate.

(g) *Withdrawal of recognition*—(1) *Withdrawal by the Department.* If the Department believes that a certification program that has been recognized under § 431.447 is failing to meet the criteria of paragraph (b) of the section under which it is recognized, the Department will so advise such entity and request that it take appropriate corrective action. The Department will give the entity an opportunity to respond. If after receiving such response, or no response, the Department believes satisfactory corrective action has not been made, the Department will withdraw its recognition from that entity.

(2) *Voluntary withdrawal.* A certification program may withdraw itself from recognition by the Department by advising the Department in writing of such withdrawal. It must also advise those that use it (for a certification organization, the manufacturers) of such withdrawal.

(3) *Notice of withdrawal of recognition.* The Department will publish in the **Federal Register** a notice of any withdrawal of recognition that occurs pursuant to this paragraph (g).

[FR Doc. 2012–10434 Filed 5–3–12; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 77 Friday,
No. 87 May 4, 2012

Part III

Department of Homeland Security

Transportation Security Administration

Aviation Security Advisory Committee (ASAC) Meeting; Notice

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee (ASAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) on May 21, 2012, to discuss the formation of sub-committees and the agenda for the year. This meeting will be open to the public.

DATES: The Committee will meet on Monday, May 21, 2012, from 1:30 p.m.–4:00 p.m. This meeting may end early if all business is completed.

ADDRESSES: The meeting will be held at the Transportation Security Administration Headquarters, 601 12th Street South, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dean Walter, ASAC Designated Federal Officer, Transportation Security Administration (TSA–28), 601 12th Street South, Arlington, VA 20598–4028, *Dean.Walter@dhs.gov,* 571–227–2645.

SUPPLEMENTARY INFORMATION:

Summary

Notice of this meeting is given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). ASAC operates under the authority of 46 U.S.C. 70112 and provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Administrator of TSA on matters affecting civil aviation security.

This meeting is open to the public, but attendance is limited to 125 people. The meeting will be held at TSA Headquarters, which is a secure facility. Members of the public must register in advance with their full name and company/association to attend. In addition, members of the public must make advance arrangements to present oral statements at the meeting. The public comment period will be held during the meeting from approximately 3:30 p.m. to 4:00 p.m., depending on the meeting progress. Speakers are requested to limit their comments to two minutes. Please note that the public comment period will end following the last call for comments. Written statements may also be presented to the Committee. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than May 14, 2012, to register to attend the meeting and/or to speak at the meeting. Written statements shall also be submitted no later than May 14, 2012. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Agenda

The agenda for the meeting is as follows:

1. Chairman's Welcome and Introduction.
2. Opening Remarks.
3. Risk-Based Security Update.
4. Sub-Group Formation.
   a. Risk-Based Security Working Group.
   b. International Sub-Committee.
   c. General Aviation Sub-Committee.
   d. Air Cargo Sub-Committee.
   e. Passenger Advocacy Sub-Committee.
5. Public Question/Comment Period.

Issued in Arlington, Virginia, on April 27, 2012.

John P. Sammon,

Assistant Administrator, Office of Security Policy and Industry Engagement.

[FR Doc. 2012–10817 Filed 5–3–12; 8:45 am]

BILLING CODE 9110–05–P

FEDERAL REGISTER

Vol. 77 Friday,
No. 87 May 4, 2012

Part IV

The President

Proclamation 8806—Asian American and Pacific Islander Heritage Month, 2012
Proclamation 8807—National Building Safety Month, 2012
Proclamation 8808—National Physical Fitness and Sports Month, 2012
Proclamation 8809—Older Americans Month, 2012
Proclamation 8810—Law Day, U.S.A., 2012
Proclamation 8811—Loyalty Day, 2012
Proclamation 8812—National Day of Prayer, 2012

Federal Register
Vol. 77, No. 87
Friday, May 4, 2012

Presidential Documents

Title 3—

The President

Proclamation 8806 of May 1, 2012

Asian American and Pacific Islander Heritage Month, 2012

By the President of the United States of America

A Proclamation

Generations of Asian Americans and Pacific Islanders (AAPIs) have helped make America what it is today. Their histories recall bitter hardships and proud accomplishments—from the laborers who connected our coasts one-and-a-half centuries ago, to the patriots who fought overseas while their families were interned at home, from those who endured the harsh conditions of Angel Island, to the innovators and entrepreneurs who are driving our Nation's economic growth in Silicon Valley and beyond. Asian American and Pacific Islander Heritage Month offers us an opportunity to celebrate the vast contributions Asian Americans and Pacific Islanders have made to our Nation, reflect on the challenges still faced by AAPI communities, and recommit to making the American dream a reality for all.

Asian Americans and Pacific Islanders comprise many ethnicities and languages, and their myriad achievements embody the American experience. Asian Americans and Pacific Islanders have started businesses, including some of our Nation's most successful and dynamic enterprises. AAPI men and women are leaders in every aspect of American life—in government and industry, science and medicine, the arts and our Armed Forces, education and sports.

Yet, while we celebrate these successes, we must remember that too often Asian American and Pacific Islanders face significant adversity. Many AAPI communities continue to fight prejudice and struggle to overcome disparities in education, employment, housing, and health care. My Administration remains committed to addressing these unique challenges. Through the White House Initiative on Asian Americans and Pacific Islanders, we are working to expand opportunities for AAPI communities by improving access to Federal programs where Asian American and Pacific Islanders are currently underserved. To learn more about the Initiative, visit www.WhiteHouse.gov/AAPI.

As we also take this occasion to reflect on our past, we mark 70 years since the Executive Order that authorized the internment of Japanese-Americans during World War II. Last month, I announced my intent to posthumously award the Presidential Medal of Freedom—the country's highest civilian honor—to Gordon Hirabayashi, who openly defied this forced relocation, and bravely took his challenge all the way to the United States Supreme Court.

This year, we also commemorate the 100th anniversary of the first Japanese cherry blossom trees planted in Washington, D.C., an enduring symbol of the friendship shared between the United States and Japan and a reminder of America's standing as a Pacific nation. Over the centuries, we have maintained a long, rich history of engagement in the Asia-Pacific region, and our AAPI communities have been essential to strengthening the economic, political, and social bonds we share with our partners around the world.

This month, we reflect on the indelible ways AAPI communities have shaped our national life. As we celebrate centuries of trial and triumph, let us

rededicate ourselves to making our Nation a place that welcomes the contributions of all people, all colors, and all creeds, and ensures the American dream is within reach for all who seek it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2012 as Asian American and Pacific Islander Heritage Month. I call upon all Americans to visit www.AsianPacificHeritage.gov to learn more about the history of Asian Americans and Pacific Islanders, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11011
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8807 of May 1, 2012

National Building Safety Month, 2012

By the President of the United States of America

A Proclamation

In neighborhoods and workplaces across America, professionals throughout government and industry work to implement building safety solutions that strengthen resilience and meet community needs. By designing and implementing state-of-the-art building safety, energy efficiency, and fire prevention codes and standards, they help save lives and prevent disruption in the wake of disaster. Resilient infrastructure is essential to an America built to last, and during National Building Safety Month, we recommit to strengthening our Nation's ability to withstand the threats and hazards we face.

My Administration is committed to advancing that mission. With leadership from the Federal Emergency Management Agency, we continue to develop robust public-private partnerships that help communities prepare for, withstand, and recover from disasters. We are drawing upon cutting edge science and technology to establish stronger codes and standards for disaster resilience. And moving forward, we must promote research and development that will drive innovation in construction and retrofitting techniques. I encourage all Americans to visit www.Ready.gov to learn more about preparedness and find out how to get involved.

Whether protecting our communities from fires, floods, earthquakes, severe storms, or other disasters, building safety professionals play a critical role in making America safe, strong, and sustainable. This month, we celebrate their work, and we rededicate ourselves to ensuring our Nation remains ready and resilient.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2012 as National Building Safety Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of building safety, and I further urge Americans to learn more about how they can contribute to building safety at home and in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11013
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8808 of May 1, 2012

National Physical Fitness and Sports Month, 2012

By the President of the United States of America

A Proclamation

In July 1961, President John F. Kennedy remarked that ''the strength of our democracy and our country is really no greater in the final analysis than the well-being of our citizens.'' He envisioned a renewed national commitment to leading a more active and vigorous life—to pursuing health of mind and body in equal proportion. Over half a century later, that call to action still rings true. During National Physical Fitness and Sports Month, we rededicate ourselves to empowering Americans young and old with the tools to pursue a healthy lifestyle.

From the classroom to the court, countless Americans enrich their lives and their health by getting active. Regular physical activity promotes strong mental and physical development, builds lean muscle, and plays an essential role in maintaining a healthy weight. Coupled with nutritious meals, it can help prevent a wide variety of chronic diseases, including cancer, heart disease, and stroke—three leading causes of death in the United States. Yet, with inactivity and obesity continuing to put millions at risk, we know we must do more to help individuals, families, and communities across our Nation make exercise an easy, accessible part of daily life.

My Administration is committed to realizing this vision. With First Lady Michelle Obama's *Let's Move!* initiative and the President's Council on Fitness, Sports, and Nutrition, we are working to give more Americans the tools and information they need to maintain a healthy lifestyle. We are striving to ensure children have access to nutritious food at school and at home, and we are partnering with organizations across our country to help more Americans get active. To learn more about these initiatives, the President's Active Lifestyle Award, and how to get involved in your community, visit www.LetsMove.gov and www.Fitness.gov.

All of us can play a role in giving our children a strong start and ensuring a healthy future for our Nation. By coming together to exercise with friends or family, children and adults can support each other in living a more active life. Schools can bring more physical education into the curriculum before, during, or after the school day. And community leaders can promote physical activity by expanding safe routes for children to walk or ride a bike to school, revitalizing parks and playgrounds, and developing sports and fitness programs that are accessible to all. As we celebrate the progress we have made toward these goals, let us recommit to making positive change in our lives by eating healthy and embracing an active lifestyle.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2012 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily physical activity, sports participation, and good nutrition a priority in their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11014
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8809 of May 1, 2012

Older Americans Month, 2012

By the President of the United States of America

A Proclamation

America endured great trials and heralded defining triumphs over the course of the 20th century, and the men and women who saw us through that time remain among our Nation's greatest assets. Through their guiding wisdom, enduring love of family, and inspiring commitment to country, older Americans continue to steer and enhance our national life.

Our seniors make countless contributions as active participants in communities across America. From our parks and schools to our faith and service organizations, the generosity and talents of active seniors augment our children's education, bring our families together, and strengthen the fabric of our society. This year's theme for Older Americans Month, ''Never Too Old to Play,'' celebrates the accomplishments of older Americans and encourages them to find even more ways to stay engaged. May 7 through May 11, 2012, is also Senior Corps Week, when we celebrate the service of the over 300,000 Senior Corps volunteers. Individuals interested in information on local volunteer opportunities can visit www.SeniorCorps.gov.

As we honor the achievements and ongoing contributions of older Americans, my Administration is working with States, territories, and tribes to provide them with support to stay healthy, independent, and engaged. We remain deeply committed to strengthening Medicare, protecting Social Security, enhancing Older Americans Act programs, and implementing the historic Affordable Care Act, which provided more than 32 million seniors with at least one free preventive service or wellness visit last year and helped over 5 million save more than $3.2 billion on prescription drug costs in 2010 and 2011. The Department of Health and Human Services recently awarded more than $1.3 billion in grants to ensure the health and independence of America's older adults, including $20 million focused on fitness, chronic disease self-management, and medication management. And the Consumer Financial Protection Bureau is safeguarding older Americans from unscrupulous financial schemes that threaten their fiscal security.

Our seniors have devoted their entire lives to building the future their children and grandchildren deserve. During Older Americans Month, we celebrate their successes and recommit to supporting them as they shape America's next great generation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2012 as Older Americans Month. I call upon all Americans of all ages to acknowledge the contributions of older Americans during this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11021
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8810 of May 1, 2012

Law Day, U.S.A., 2012

By the President of the United States of America

A Proclamation

When President Dwight D. Eisenhower established Law Day in 1958, he proclaimed it ''fitting that the people of this Nation should remember with pride and vigilantly guard the great heritage of liberty, justice, and equality under law which our forefathers bequeathed to us.'' Today, we celebrate that enduring legacy and renew our commitment to a democracy sustained by the rule of law.

This year's Law Day theme, ''No Courts, No Justice, No Freedom,'' recalls the historic role our courts have played in protecting the fundamental rights and liberties of all Americans. Our courts are the guarantors of civil justice, social order, and public safety, and we must do everything we can to enable their critical work. The courthouse doors must be open and the necessary services must be in place to allow all litigants, judges, and juries to operate efficiently. Likewise, we must ensure that access to justice is not an abstract theory, but a concrete commitment that delivers the promise of counsel and assistance for all who seek it.

Today, let us reflect upon the role generations of legal and judicial professionals have played in building an America worthy of the ideals that inspired its founding. The timeless principles of equal protection and due process remain at the heart of our democracy, and on Law Day, we recommit to upholding them not just in our time, but for all time.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2012, as Law Day, U.S.A. I call upon all Americans to acknowledge the importance of our Nation's legal and judicial systems with appropriate ceremonies and activities, and to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11024
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8811 of May 1, 2012

Loyalty Day, 2012

By the President of the United States of America

A Proclamation

More than two centuries ago, our Founders laid out a charter that assured the rule of law and the rights of man. Through times of tranquility and the throes of change, the Constitution has always guided our course toward fulfilling that most noble promise that all are equal, all are free, and all deserve the chance to pursue their full measure of happiness. America has carried on not only for the skill or vision of history's celebrated figures, but also for the generations who have remained faithful to the ideals of our forebears and true to our founding documents. On Loyalty Day, we reflect on that proud heritage and press on in the long journey toward prosperity for all.

In the years since our Constitution was penned and ratified, Americans have moved our Nation forward by embracing a commitment to each other, to the fundamental principles that unite us, and to the future we share. We weathered the storms of civil war and segregation, of conflicts that spanned continents. We overcame threats from within and without—from the specter of fascism abroad to the bitter injustice of disenfranchisement at home. We upheld the spirit of service at the core of our democracy, and we widened the circle of opportunity not just for a privileged few, but for the ambitious many. Time and again, men and women achieved what seemed impossible by joining imagination to common purpose and necessity to courage. That legacy still burns brightly, and the ideals it embodies remain a light to all the world.

Countless Americans demonstrate that same dedication to country today. It endures in the hearts of all who put their lives on the line to defend the land they love, just as it moves millions to improve their communities through volunteerism and civic participation. Their actions help ensure prosperity for this generation and those yet to come, and they honor the immutable truths enshrined in our Nation's founding texts. On Loyalty Day, we rededicate ourselves to the common good, to the cornerstones of liberty, equality, and justice, and to the unending pursuit of a more perfect Union.

In order to recognize the American spirit of loyalty and the sacrifices that so many have made for our Nation, the Congress, by Public Law 85–529 as amended, has designated May 1 of each year as ''Loyalty Day.'' On this day, let us reaffirm our allegiance to the United States of America, our Constitution, and our founding values.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 1, 2012, as Loyalty Day. This Loyalty Day, I call upon all the people of the United States to join in support of this national observance, whether by displaying the flag of the United States or pledging allegiance to the Republic for which it stands.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11026
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8812 of May 1, 2012

National Day of Prayer, 2012

By the President of the United States of America

A Proclamation

Prayer has always been a part of the American story, and today countless Americans rely on prayer for comfort, direction, and strength, praying not only for themselves, but for their communities, their country, and the world.

On this National Day of Prayer, we give thanks for our democracy that respects the beliefs and protects the religious freedom of all people to pray, worship, or abstain according to the dictates of their conscience. Let us pray for all the citizens of our great Nation, particularly those who are sick, mourning, or without hope, and ask God for the sustenance to meet the challenges we face as a Nation. May we embrace the responsibility we have to each other, and rely on the better angels of our nature in service to one another. Let us be humble in our convictions, and courageous in our virtue. Let us pray for those who are suffering around the world, and let us be open to opportunities to ease that suffering.

Let us also pay tribute to the men and women of our Armed Forces who have answered our country's call to serve with honor in the pursuit of peace. Our grateful Nation is humbled by the sacrifices made to protect and defend our security and freedom. Let us pray for the continued strength and safety of our service members and their families. While we pause to honor those who have made the ultimate sacrifice defending liberty, let us remember and lend our voices to the principles for which they fought—unity, human dignity, and the pursuit of justice.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 3, 2012, as a National Day of Prayer. I invite all citizens of our Nation, as their own faith directs them, to join me in giving thanks for the many blessings we enjoy, and I call upon individuals of all faiths to pray for guidance, grace, and protection for our great Nation as we address the challenges of our time.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11028
Filed 5–3–12; 2:00 pm]
Billing code 3295–F2–P

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